

23 March 2018

Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Ms McNally

Secretary's Environmental Assessment Requirements
Site: 11 Gibbons Street, Redfern
Application number: SSD 7749

I am writing to you in relation to the Secretary's environmental assessment requirements (SEARs) issued to Future Living Community Housing Limited on 2 August 2016 in relation to the above site (Attachment 1).

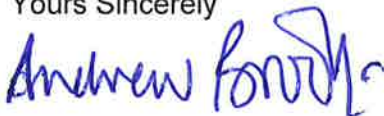
SGCH Sustainability (SGCHS) is a registered and accredited Tier 1 Community Housing Provider (CHP) of social and affordable housing accommodation and services under the National Regulatory System for Community Housing. We have an agreement with the current landowners, Sydney City Council to purchase the site with an intention to provide new social and affordable housing. The purchase contract is expected to be completed in early April.

The purpose of my letter is to request that the applicant listed on the SEARs be changed to SGCHS so that we can submit a State Significant Development application (SSD) to the Department of Planning and Environment for this site. The SSD and supporting environmental impact assessment (EIS) will be prepared generally in accordance with the existing SEARs.

We have sought advice from Colin Biggers and Paisley Lawyers (CBP) (Attachment 2) as to whether the SEARs can continue to be relied upon. CBP has advised there is no reason to restrict the change in proponent/applicant.

In view of the above, it is requested that you change the name of the applicant on the SEARs to refer to SGCHS so that we can proceed to prepare an EIS, ready for submission by 1 August 2018.

Yours Sincerely



Andrew Brooks
General Manager Development and Property Services

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Attachment 1: Secretary's Environmental Assessment Requirements (SEARs)

Secretary's Environmental Assessment Requirements

Section 78A(8A) of the *Environmental Planning and Assessment Act* Schedule 2 of the *Environmental Planning and Assessment Regulation 2000*

Application Number	SSD 7749
Proposal Name	Social and Affordable Housing
Location	11 Gibbons Street, Redfern
Applicant	FutureLiving Community Housing
Date of Issue	2 August 2016
General Requirements	The Environmental Impact Statement (EIS) must meet the minimum form and content requirements in clauses 6 and 7 of Schedule 2 of the <i>Environmental Planning and Assessment Regulation 2000</i>. Notwithstanding the key issues specified below, the EIS must include an environmental risk assessment to identify the potential environmental impacts associated with the development. Where relevant, the assessment of the key issues below, and any other significant issues identified in the risk assessment, must include: - adequate baseline data; - consideration of potential cumulative impacts due to other development in the vicinity; and - measures to avoid, minimise and if necessary, offset the predicted impacts, including detailed contingency plans for managing any significant risks to the environment. The EIS must be accompanied by a report from a qualified quantity surveyor providing: - a detailed calculation of the capital investment value (CIV) (as defined in clause 3 of the Environmental Planning and Assessment Regulation 2000) of the proposal, including details of all assumptions and components from which the CIV calculation is derived; - an estimate of the jobs that will be created by the future development during the construction and operational phases of the development; and - certification that the information provided is accurate at the date of preparation.
Key issues	The EIS must address the following specific matters: 1. Statutory Context – including: Address the statutory provisions applying to the development contained in all relevant environmental planning instruments, including: - the <i>Environmental Planning & Assessment Act 1979</i>; <i>State Environmental Planning Policy (State & Regional Development) 2011</i>; <i>State Environmental Planning Policy (State Significant Precincts) 2005</i>; <i>State Environmental Planning Policy (Infrastructure) 2007</i>; <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>; <i>State Environmental Planning Policy (Urban Renewal) 2010</i>; <i>State Environmental Planning Policy No. 55 – Remediation of Land</i>; <i>State Environmental Planning Policy No. 64 – Advertising and Signage</i>; <i>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development and accompanying Apartment Design Guide</i>;

	• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</i> • <i>State Environmental Planning Policy No. 1 – Development Standards;</i> and • <i>Sydney Local Environmental Plan 2012.</i> Address the relevant planning provisions, goals and strategic planning objectives in the following: • NSW State Priorities; • A Plan for Growing Sydney; • Sydney 2030 (The City of Sydney Council); • Development Near Rail Corridors and Busy Roads- Interim Guideline; • Guide to Traffic Generating Developments (RMS); • NSW Planning Guidelines for Walking and Cycling; • NSW Long Term Transport Master Plan; • Draft Urban Design Principles – Redfern Centre; • Redfern Waterloo Built Environment Plan (Stage One) August 2006; • Redfern Waterloo Authority Contributions Plan 2006; • Redfern Waterloo Authority Affordable Housing Contributions Plan 2006; • City of Sydney Public Domain Manual; • Sydney Development Control Plan 2012; • Sydney's Cycling Future; • Sydney's Rail Future; and • Sydney's Walking Futures. 2. Built Form and Urban Design The EIS shall address: • demonstrate how the proposal exhibits design excellence in accordance with the urban design principles of the Redfern Waterloo Built Environment Plan (Stage One) August 2006. This must include documentary evidence of the design excellence process followed as referred to in Clause 22 of the <i>State Environmental Planning Policy (State Significant Precincts) 2005</i> including a design options analysis which demonstrates the different tower siting and design options considered; • address the height, bulk and scale of the proposed development within the context of the locality and ensure it does not create unacceptable environmental impacts such as excessive overshadowing, wind impacts, view loss or privacy loss. This shall include: - o view analysis to and from the site from key vantage points and streetscape impacts, including impacts from entrances, exits and street approaches to the Redfern Railway Station group. Photomontages or perspectives should be provided showing the proposed development; - o view impact analysis from various levels of adjoining developments; and - o solar access analysis outlining impacts on adjoining developments, including design options to minimise impacts; • detail the design quality of the building, with specific consideration of the overall site layout, connectivity, open spaces and edges, façades, massing, setbacks, building articulation, materials, colours, landscaping, rooftop and mechanical plant; • detail any proposed building signage; • address public art opportunities in areas visible from the street or accessible to the public; and • address how the proposal relates to and activates Gibbons Street and Marion Street frontages, and accentuates the public domain.
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	3. Environmental and Residential Amenity The EIS shall: • address how the proposal achieves a high level of environmental and residential amenity including solar access, acoustic impacts, visual privacy, apartment sizes and mix, overshadowing, noise and vibration emanating from Gibbons Street and nearby train lines, and wind impacts; and • demonstrate that the proposal maintains the amenity of surrounding residential development (both existing, approved or proposed). 4. Operation and Management The EIS shall provide a detailed description of the operation of the proposal, including but not limited to: • requirements of the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> including: - o an application for a site compatibility statement; and - o details of the community housing provider/s operating the housing. • types of housing to be provided, including any targeted groups, eligibility and tenure. • on-site staffing and support services, including: - o staff roles, numbers and hours of work; and - o support services operating from the site. • community consultation during operation, including: - o identification of key stakeholders, including but not limited to neighbouring residents, emergency services, social service providers, and Aboriginal groups; and - o methods of engaging with key stakeholders. 5. Safety The EIS shall: • outline built and management measures to ensure residents' safety and security within the complex and in the surrounding public domain; • consider Crime Prevention through Environmental Design (CPTED) principles including any opportunities for street activation, surveillance and other crime prevention treatments. 6. Noise The EIS shall identify the main noise generating sources and activities at all stages of construction and any noise sources during future operation, including communal and private open space. Outline measures to minimise and mitigate the potential noise impacts on surrounding occupiers of land. 7. Transport and Accessibility (Construction and Operation) The EIS shall: • provide existing and future development daily and peak hour vehicle, public transport, pedestrian and bicycle movements and existing traffic and transport facilities provided on the road network; • detail the proposed number of car parking spaces and bicycle parking provision and compliance with relevant parking controls; • assess the impact of additional traffic generated by the proposed development on the existing road, pedestrian and bicycle network and operation of bus services; • include details of service vehicle movements and site access arrangements (including vehicle type and likely arrival and departure times of service vehicles); • demonstrate how users of the development will be able to make travel choices that support the achievement of State Plan targets. This includes describing the measures to be implemented to promote sustainable means of transport including public transport usage, car sharing scheme, pedestrian and bicycle linkages, end of trip facilities and parking provisions;
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	• demonstrate appropriate provision, design and location of on-site bicycle parking and end of trip facilities as per Austroads Cycling Aspects of Australian Guide; and • prepare a draft Construction Traffic Management Plan which details the access arrangements at all stages of construction, and measures to mitigate any associated pedestrian, cyclists, public transport and traffic impacts. This Plan shall include truck routes, truck movements, hours of operation, access arrangements, parking arrangements and traffic control measures for all demolition/construction activities. Should the development require the closure of walking and/or cycling facilities, adequate safety and diversion measures should be installed to limit time delay and detour distances. 8. European and Aboriginal Heritage The EIS shall: • include a Heritage Impact Statement (HIS) prepared in accordance with the guidelines in the <i>NSW Heritage Manual</i> that addresses the significance of, and provides an assessment of the impact on the heritage significance of heritage items on the development site and in the vicinity, particularly on the setting of the State Heritage listed Redfern Railway Station group; • prepare a historical archaeological assessments in accordance with <i>Assessing Significance for Historical Archaeological Sites and Relics</i> (Heritage Division, 2009); • identify non-Aboriginal heritage items within the area affected by the proposal. A statement of significance and an assessment of the impact of the proposal on the heritage significance of these items should be undertaken. Any policies/measures to conserve their heritage significance should be identified. This assessment should be undertaken in accordance with the guidelines in the <i>NSW Heritage Manual</i>; and • identify whether the site has any significance to Aboriginal cultural heritage and archaeology and identify appropriate measures to preserve any significance. The proposal should have regard to any impacts on places, items or relics of significance to Aboriginal people. Where it is likely the project will impact on the Aboriginal heritage, adequate community consultation should take place regarding the assessment of significance, likely impacts and management/ mitigation measures. The identification of cultural heritage values should be guided by the <i>Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW</i> (DECCW, 2011). 9. Ecologically Sustainable Development (ESD) • Detail how best practice ESD principles will be incorporated in the design, construction and ongoing operation phases of the development; • Describe the measures to be implemented to minimise consumption of resources, energy and water, including details of alternative energy and water supplies, rainwater harvesting, proposed end uses of potable and non-potable water, demonstration of water sensitive urban design and any water conservation measures; • Describe the measures to be implemented to minimise the volume and frequency of stormwater discharge as a result of any impermeable surfaces, such as paving, driveways and carparks, including measures to improve water quality; and • Demonstrate that the environmental performance of the proposed development has been assessed against a suitably accredited rating scheme to meet industry best practice. 10. Drainage and Flooding The EIS shall address drainage / flooding issues associated with the development / site, including stormwater, drainage infrastructure and incorporation of Water Sensitive Urban Design measures.
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	11. Contributions and/or Voluntary Planning Agreement The EIS shall address the contributions payable pursuant to the <i>Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006</i> and the <i>Redfern-Waterloo Authority Contributions Plan 2006</i> and any material public benefits adjacent to the site. 12. Waste The EIS shall address waste handling, storage and collection systems for the residential, and other uses, including an analysis of the size and location of waste collection areas and access for service vehicles. 13. Consultation The EIS must describe the pre-submission consultation and community engagement process, issues raised and how the proposed development has been amended in response to these issues. A short explanation should be provided where amendments have not been made to address an issue. During the preparation of the EIS, you must consult with the relevant local, State or Commonwealth Government authorities, service providers, and community groups including: • City of Sydney Council; • Urban Growth NSW Development Corporation; • Aboriginal Housing Corporation; • NSW Police – Redfern Local Area Command; • Transport for NSW – CBD Coordination Office; • Roads and Maritime Services; • Sydney Trains; • Department of Family and Community Services (Housing); • appropriate social service organisations; and • neighbouring residents.
Further consultation after 2 years	If you do not lodge a development application and EIS for the development within 2 years of the issue date of these DGRs, you must consult further with the Secretary in relation to the preparation of the EIS.
References	The assessment of the key issues listed above must take into account relevant guidelines, policies, and plans as identified. While not exhaustive, the following attachment contains a list of some of the guidelines, policies, and plans that may be relevant to the environmental assessment of this proposal.

Plans & Documents

Plans and Documents	The following plans and relevant documentation shall be submitted; 1. An existing site survey plan drawn at an appropriate scale illustrating: • the location of the land, boundary measurements, area (sqm) and north point; • the existing levels of the land in relation to buildings and roads; • location and height of existing structures on the site; • location and height of adjacent buildings and private open space; and • all levels to be to Australian Height Datum (AHD). 2. A locality/context plan drawn at an appropriate scale should be submitted indicating: • significant local features such as parks, community facilities and open space and heritage items; • the location and uses of existing buildings, shopping and employment areas; and • traffic and road patterns, pedestrian routes and public transport nodes. 3. Drawings at an appropriate scale illustrating: • the location of any existing building envelopes or structures on the land in relation to the boundaries of the land and any development on adjoining land; • detailed plans, sections and elevations of the development, including plans which clearly show all proposed internal alterations and additions to the existing Art Gallery building. • the height (AHD) of the proposed development in relation to the land; and • any changes that will be made to the level of the land by excavation, filling or otherwise. 4. Landscape plan illustrating treatment of open space areas on the site. 5. Visual Impact Assessment: • The visual impact assessment, including focal lengths, must be done in accordance with Land and Environment Court requirements. In addition, the EIS must include the following: 6. shadow diagrams; 7. access impact statement; 8. view analysis/photomontage; 9. CPTED assessment; 10. stormwater concept plan; 11. sediment and erosion control plan; 12. landscape plan, including any public domain works; 13. preliminary construction management plan, inclusive of a construction traffic management plan and cumulative impact of construction activities on other nearby sites; 14. geotechnical and structural report; 15. heritage impact statement report; 16. wind impact assessment report; 17. contamination assessment report; 18. traffic and transport assessment report; 19. signage details (if proposed); and 20. schedule of materials and finishes.
Documents to be submitted	• 1 hard copy and 1 electronic copy of all the documents and plans for the Test of Adequacy; • 10 hard copies of the documents (once the application has been determined adequate); • 10 hard copies of the plans in full colour at A3 and 2 hard copies of the plans in full colour at A0 or A1 (whichever is to scale); • 10 copies of all the documentation and plans on CD-ROM (PDF format) not exceeding 10Mb in size.

Attachment 2: Colin Biggers and Paisley Lawyers Advice

Our Ref: TAN.1801464

23 March 2018

COLIN
BIGGERS
& PAISLEY
LAWYERS

Kim Gray
Development Manager - Development and Property Services
SGCH Sustainability
PO Box 348
Hurstville BC NSW 1481

By Email Kim.Gray@sghc.com.au

Dear Kim

**Secretary's Environmental Assessment Requirements
Land: 11 Gibbons Street, Redfern (Site)**

We refer to your email dated 15 February 2018.

Purpose

1. The purpose of this letter is to provide our legal advice as to whether the Secretary's Environmental Assessment Requirements (**SEARs**) issued to FutureLiving Community Housing for a state significant development (**SSD**) project in relation to the Site can continue to be relied upon in preparing an environmental impact statement (**EIS**) for the same proposed project.

Assumptions

2. Our advice assumes, based on your instructions, that:
 - (a) development of the Site by SGCH Sustainability (**SGCHS**) will be consistent with the proposal outlined in the SEARs request made by JBA on behalf of FutureLiving Community Housing Limited (**FutureLiving**); and
 - (b) SGCHS will purchase the Land from City of Sydney Council.

Summary

3. The *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) and the *Environmental Planning and Assessment Regulations 2000* (NSW) (**Regulations**) do not address the situation where there is a change in the applicant for SEARs.
4. The Act and Regulations do not require that the name of the responsible person be stated, only that the "responsible person" must make a written application to the Secretary

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- for the SEARs. The "responsible person" must ensure that an EIS complies with any SEARs provided in writing to the person.
5. SGCHS would now be the applicant for an SSD application. Therefore the responsible person for preparing the EIS is now SGCHS and it now needs to comply with the SEARs issued to lodge the SSD application.
 6. The rationale behind the requirement for SEARs and an EIS does not relate to controlling who may make an EIS, but instead focuses on ensuring the content of an EIS complies with the Secretary's requirements for environmental assessment.
 7. It would be an absurd outcome if due to a name change of the "responsible person" or a change in the entity making the SSD application for that new entity not to be able to rely on the SEARs.
 8. Despite our above view, it would resolve any doubt if the Secretary could efficiently change the name on the **enclosed** SEARs to SGCHS.
 9. We recommend that you start preparing the EIS in accordance with the issued SEARs given:
 - (a) your instructions that SGCHS intends to pursue generally the same development as described in FutureLiving's request for SEARs; and
 - (b) there being no legal reason to restrict the amendment of the SEARs to change the proponent to SGCHS.

Relevant law

10. Under section 78A(8) of the Act:

"(8) A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations."
11. The Regulations control how an EIS must be prepared by the applicant. Clause 2 of Part 2 of Schedule 2 states:

"This Part applies to an environmental impact statement prepared under section 78A (8) or 112 of the Act."
12. Clause 3(1) of Schedule 2 then states:

*"(1) Before preparing an environmental impact statement, **the responsible person** must make a written application to the Secretary for the environmental assessment requirements with respect to the proposed statement." [emphasis added]*
13. Clause 1 of Schedule 2 of the Regulations defines "responsible person" as:

*"the **applicant or proponent** responsible for preparing an environmental impact statement" [emphasis added]*
14. This is important because the following subclauses (except for clause 3(2)) make reference to the responsible person on a number of occasions.
15. As indicated in parentheses above, clause 3(2) is an exception to this. That clause states:

"(2) The application is to be in a form approved by the Secretary and must include particulars of the location, nature and scale of the development or activity."

16. There is no requirement that the name of the responsible person be included, as the clause is more focused on the site and its context and the proposed development.

17. However in contrast, clause 3(5) states:

*"(5) The Secretary is to **notify the responsible person and** (where relevant) the responsible authority in writing within the required time of the environmental assessment requirements. The Secretary may modify those requirements by further notice in writing."*

18. Clause 3(7) provides a 2 year window for the responsible person to apply for approval after notifying the responsible person of the SEARs, and states:

*"(7) If the development application or application for approval to which the environmental impact statement relates is not made within 2 years after notice is last given under subclause (5), **the responsible person** must consult further with the Secretary in relation to the preparation of the statement."* [emphasis added]

19. If this circumstance arises, this clause enables further consultation between the responsible person and the Secretary.

20. Finally, clause 3(8) imposes an obligation on the "responsible person" to comply with SEARs:

*"(8) **The responsible person** must ensure that an environmental impact statement complies with any environmental assessment requirements that have been provided in writing **to the person** in accordance with this clause."*

[Emphasis added]

Analysis

21. As is clear from the above, the Act and Regulations do not deal with the situation where the applicant for SEARs changes. It neither explicitly allows for it or prohibits it. These types of scenarios create uncertainty.

22. To understand whether it is possible to prepare an EIS based on the SEARs issued to another entity, there is a need to properly construe the above statutory regime.

23. The starting point is section 78A(8) of the Act. This requires the applicant for the SSD to prepare an EIS. Up until now there has been no applicant for an SSD since no application has been lodged with an EIS. However, if SGCHS intend to lodge an application for an SSD development then it needs to include an EIS with it, and it would become the responsible person.

24. Another entity has already applied for the SEARs complying with clause 3(1) of the Regulations, and the Secretary has issued SEARs to the "applicant" FutureLiving.

25. In our view, the definition of "responsible person" is important. That person can be either:

- (a) the applicant responsible for preparing the EIS; or
- (b) the proponent responsible for preparing the EIS.

26. The words "responsible for preparing the EIS" anchor back to the obligations contained in clause 3 of Schedule 2 of the Regulation and section 78A(8) of the Act. The eventual applicant or proponent responsible for preparing the EIS is the entity lodging the application for SSD. Given that entity is now SGCHS, in our view, it is arguable that the responsible person is now SGCHS, and as the "responsible person" it must ensure that an EIS complies with the SEARs provided previously to the "responsible person". The fact that the responsible person was constituted by a different entity should not matter, since the definition of "responsible person" is focussed on that person's role as the applicant or proponent for preparing the EIS, whoever that entity is at the relevant time.
27. An alternative construction of the provisions might be that the Act and Regulations do not contemplate there being a change, and that where there is a change, the SEARs need to be issued to that entity for it to lodge an SSD application with an EIS. It may also be argued that the SEARs are personally issued, and do not run with the land (like a development consent), meaning new SEARs or amended SEARs need to be issued.
28. We consider that view to misunderstand the rationale for SEARs and an EIS in the first place. They are provided not to control who may make an EIS, but instead to ensure the content of the EIS complies with the Secretary's requirements for environmental assessment. If they satisfy those requirements then it should not matter that there has been a change in the entity who applied for the SEARs and the entity who makes the application for SSD with the EIS. What matters is whether the EIS is consistent with the SEARs.
29. In this regard, the purpose of an EIS was stated in *Bell v Minister for Urban Affairs & Planning & Port Waratah Coal Service Ltd* (1997) 95 LGERA 86:

"The purpose of an environmental impact statement is to alert the decision maker and the public to the inherent problems of the proposed development, to encourage public participation, and to ensure that the decision maker takes a hard look at what is proposed."
30. SEARs direct the preparation of an EIS so that the purpose of the EIS is achieved.
31. The current circumstances are not addressed by the Act nor the Regulations, but the purpose of an EIS is to alert the decision maker and the public to the environmental impact of the proposed development. A change to the proponent listed on the SEARs should therefore have no bearing upon achieving the purpose of an EIS. As SGCHS has advised its development will be generally consistent with that described in FutureLiving's request for SEARs, we see no legal reason for the Department to restrict this from occurring.
32. We have also checked the Department's policy information and confirm this does not deal with whether SGCHS would have to apply afresh for SEARs in order to change the name of the proponent on already issued SEARs. There is also no form available to fill out to make minor changes to the particulars of already issued SEARs. The lack of information on this likely stems from the fact this situation does not arise often, and since the Act and Regulations are silent on it.
33. Although we consider it appropriate to lodge an SSD application with an EIS complying with the SEARs issued to FutureLiving, to resolve any doubt, the Secretary of the Department of Planning and Environment could change the name on the enclosed SEARs to reflect that the responsible person is now SGCHS.

23 March 2018
Kim Gray

If you have any questions in relation to the above advice, please contact Todd Neal.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Todd Neal', with a stylized, cursive flourish.

Todd Neal

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