

# Penklis Lawyers

Our Ref: APP: PFS: Meadowbank

9 July 2012

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The Director-General  
NSW Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

Attention: Mr S Truong [simon.truong@planning.nsw.gov.au](mailto:simon.truong@planning.nsw.gov.au)

Dear Director-General,

**MP – 0110 – Achieve Australia Limited Concept Plan, Meadowbank  
Director-General's Requirements  
Property: 76 Belmore Street and 8 Junction Street, Meadowbank**

We are the solicitors for Friends of Crowle Home Inc. 9896024 ("Friends of Crowle Home").

We have read:

- Don Fox Planning's *Response to Submissions and Preferred Project Report (Belmore Street, Ryde)* dated 22 May 2012 ("Response to Submissions and Preferred Project Report"), and
- Elton Consulting's *Social Impact Review of Achieve Australia Limited's proposed re-development of 74-76 Belmore Street, Ryde*, dated 20 April 2012 ("Elton Review")

filed with the Department on behalf of Achieve Australia Limited ("Achieve").

We remain opposed to the Concept Plan Application because, among other things:

- Based on our reading and considering the Response to Submissions and Preferred Project Report and the Elton Review, even now Achieve has *not* complied with:
  - Clause 17 (Consultation), and
  - clause 18 (Impact on existing and future residents/tenants)

of the Director-General's Requirements ("DGR"), and we address this in more detail later in this letter

- Achieve has not addressed "concern over the social impacts" the Department raised in its letter dated 9 November 2011 sent to Achieve (C/- Mr David Kettle, Senior Town Planner at Don Fox Planning)
- In particular, Achieve has not provided the "detailed response to the social impact review undertaken by Judith Stubbs and Associates" the Department required in that letter dated 9 November 2011, and the Response to Submissions and Preferred Project Report and the Elton Review do not do that. Dr Stubbs' report is of course *Proposed Redevelopment of Crowle Home, Meadowbank: Review of Social Impacts and Consultation* dated 20 September 2011 and was attached to our letter dated 30 September 2011 to the Director-General, NSW Department of Planning and Infrastructure.

We assert on behalf of Friends of Crowle Home:

- the Director-General recommend refusal of the Concept Plan Application in its entirety for the reasons set out in this letter and our earlier letter dated 30 September 2011 including its attachments: that is, Dr Judith Stubb's report, Mr Harvey Sanders' report and Blake Dawson's memorandum
- the Planning Assessment Commission conduct a public meeting and meet with interested people (including our client) before determining the Concept Plan Application, and in this regard we note that it has attracted more than 25 public submissions. Issues calling for consideration at this public meeting include:
  - Achieve's failing to address adequately DGRs and in particular DGR 17 (Consultation) and DGR 18 (Impact on existing and future residents/tenants)
  - Achieve's failing to provided the "detailed response to the social impact review undertaken by Judith Stubbs and Associates" the Department required in its letter dated 9 November 2011
  - Interests of stakeholders (as Achieve defines them, see below at page 14) including residents and former residents of Crowle Home and their families and carers
  - Bed Bonds
  - Providing cluster housing at 76 Belmore Street and 8 Junction Street, Meadowbank ("the Crowle Home Site"), for residents and former residents of Crowle Home on the Crowle Home Site
  - Providing cluster housing elsewhere
  - Reducing, and not replacing, community-owned bed stock for intellectually disabled people with moderate to high support needs in the Ryde local government area, and

- Transparency.

### **Failing to address clause 18 of the Director-General's Requirements**

One of the main thrusts of our letter dated 30 September 2011 to the Director-General addressed Achieve's failure to address the social impacts of the proposed project on existing and future residents of Crowle Home: see our letter at page 2.

Clause 18 of the DGR states as follows:

*"18. Impact on existing and future residents/tenants*

- *The EA shall address the social, health and safety considerations with respect to both the existing disadvantaged/disabled tenants and residents and any new disadvantaged/disabled tenants and residents. The assessment should consider the social, health and safety impacts and should include, but not be limited to, the following:*
  - *prepare a relocation strategy for existing tenants and private residents/occupants, including consideration of timing, relocation assistance and protocols for ensuring that existing residents/tenants will not be disadvantaged by any relocation;*
  - *address the adequacy of existing services, social infrastructure, employment opportunities and open space to meet the needs of new disadvantaged/disabled tenants/residents and identify the range of new services proposed to meet the needs of tenants/residents;*
  - *identify the nature of consultation with the existing community regarding the relocation strategy; and*
  - *identify how the Concept Plan has considered affordability and housing choice for the disadvantaged and disabled."*

The Elton Review makes no mention of clause 18 of the DGR in its 33 pages.

What is the purpose of DGRs if not observed? Use of the word "requirements" suggests at least they are mandatory, not optional. They are *not* called, for example and by way of contrast, "recommendations" as in Director-General's *Recommendations*.

If, for example, it is the case that "Achieve Australia has been working for several years on addressing the social impact of moving residents to a community setting, and undertaking stakeholder consultation" (as the Elton Review asserts at page 1), why is that information not provided fully satisfying clause 18 of the DGR?

Further, the Department had cause to state in its letter dated 9 November 2011 to Don Fox Planning that:

"Social Impact Assessment

- The Department *raises concern* over the social impacts as a result of relocating existing residents of the Crowle Home and users of the day care facility. Further details of the relocation and housing strategies are required including:
  - detailed housing and care options available to relocated residents giving consideration to specific care needs;
  - demonstration of how the strategy complies with relevant NSW guidelines;
  - demonstration of appropriate consultation with residents and relevant agencies over the relocation and housing strategies; and
  - details providing evidence of how the strategies will be successfully implemented including any transition plans.
- Greater commitment to the number of dwellings to be provided on site for existing home residents including the type of dwellings to be dedicated and intended levels of care to be provided.
- A detailed response to the social impact review undertaken by Judith Stubbs and Associates is required (submission No. 84).
- Evidence of an appropriate and justified level of consultation with the current Crowle Home community regarding future development of the site and any proposed relocation and housing strategies” [emphasis added].

In our opinion, Achieve does not provide the required information. In other words, Achieve has not complied with DGR 18.

## Consultation

### *Clause 17 of Director-General's Requirements*

Our letter dated 30 September 2011 to the Director-General of the Department pointed to Achieve’s failing to address DGR 17. Dr Judith Stubbs’ expert report supported this assertion: see *Proposed Redevelopment of Crowle Home, Meadowbank: Review of Social Impacts and Consultation* dated 20 September 2011. Further, Dr Stubbs referred to the Department’s *Guidelines for Major Project Community Consultation* (October 2007). She stated in part (see page 2 of her report):

“consultation is part of working openly with the community and other stakeholders and providing opportunities for their views and preferences to have input into the assessment process and decision making” with the goal of consultation being “to strengthen decision making by ensuring all relevant issues are considered.”

We repeat the assertion that Achieve has not complied with DGR 17 in the sense of complying with the Department’s *Guidelines for Major Project Community Consultation*. There is *nowhere* in the Elton Review where the author states words to the effect Achieve has complied with Department’s *Guidelines for Major Project Community Consultation*. Not even the Elton Review asserts that.

In addition:

- The Elton Review's own examples offered as evidence of good practice show in our opinion that Achieve's consulting was, and is, inadequate:
  - Woolcott Research, and
  - The meeting with John Alexander MP
- Admissions made in the Elton Review itself in our opinion support that assertion: see below.

*The meeting with John Alexander MP*

The Elton Review puts forward to the Department the meeting with John Alexander MP as evidence of Achieve consulting with groups: see at page 31. Since the Elton Review raises this meeting as an example of Achieve's consultation, it is worthwhile in our opinion we narrate what actually happened in relation to this meeting.

The facts are these. Friends of Crowle Home approached Mr Alexander's office because he is the Federal member for Bennelong and the Crowle Home Site is situated within his electorate. Mr Alexander is also Achieve's patron. Friends of Crowle Home approached Mr Alexander because it could not secure a meeting with Achieve or its advisors and consultants. In other words, Achieve did not arrange this meeting: Friends of Crowle Home instigated it. (The Elton Review does not mention this).

Based on our discussions with Mr Alexander and his office manager, Ms Jaci Armstrong, they intended Friends of Crowle Home (along with Penklis Lawyers and its other expert consultants) to sit down with Achieve's CEO and senior management and discuss Friends of Crowle Home's concerns about redeveloping the Crowle Home Site and, in particular, providing cluster housing on the Crowle Home Site for Crowle residents as part of Achieve's redevelopment and the Bed Bonds issue.

Philip Sutherland of Penklis Lawyers received a telephone call from Jaci Armstrong the day or so before the proposed meeting. Jaci said to Philip words to the effect: "Achieve refuses to attend the meeting with Friends of Crowle Home if you attend the meeting. Achieve says that none of Friends of Crowle Home's lawyers or experts are allowed to attend." In other words, if Philip Sutherland attended, Achieve was cancelling the meeting. Jaci went on to say words to the effect: "Achieve will meet with Friends of Crowle Home only if three nominated members attend without lawyers and consultants." In other words, Achieve dictated who attended the meeting from Friends of Crowle Home's side as a condition of its attending the meeting. (Again, the Elton Review does not mention this).

Based on our instructions, that limited the capacity of the persons attending the meeting from Friends of Crowle Home (who describe themselves as housewives) to discuss specific issues

(including technical issues) to their satisfaction and on an informed basis. These issues were identified on the agenda as cluster housing on the Crowle Home Site and Bed Bonds.

By comparison, Achieve was represented by:

- its CEO
- Executive Director of NSW Department of Ageing, Disability and Home Care (who we are instructed did much of the talking from Achieve's side), and
- a public relations consultant from the Wilkinson Group (see [www.wilkinson-group.com.au](http://www.wilkinson-group.com.au)) which we understand Achieve retains.

In other words, what was good for the goose (Achieve) was not good for the gander: that is, Friends of Crowle Home. We do not understand the reason for which the Executive Director of NSW Department of Ageing, Disability and Home Care (in other words, a very senior public servant) was present at the meeting given the meeting was always planned as a meeting between Achieve and Friends of Crowle; or indeed the reason for which a public relations consultant accompanied Achieve's CEO.

Based on what Mr Alexander said to us, it was Mr Alexander's intention Friends of Crowle Home and Achieve, and their respective advisors and experts, hold subsequent meetings under the auspices of his good offices for the purpose of genuine consulting. Mr Alexander offered to spend time convening and attending these meetings in order to promote consultation properly so-called. These meetings have not occurred; and we have no reason to believe they will occur.

It is only fair of us on behalf of our client, Friends of Crowle Home, to acknowledge Mr Alexander's and Ms Armstrong's attempts to facilitate, at our client's request, Friends of Crowle Home's meeting with Achieve and we mean no criticism of Mr Alexander and Ms Armstrong. As the proverb has it, "You can take a horse to water but you can't make it drink."

We are instructed Mr Alexander's office made a transcript of this meeting with the prior approval of all those attending including Achieve's CEO. Mr Alexander's office circulated the document to participants. The Department must request this transcript from Achieve's CEO so it can determine for itself the "consultation" taking place at that meeting and whether it was consultation properly so-called within the meaning of the Department's *Guidelines for Major Project Community Consultation*. The Department may also wish to read and consider what Achieve by its CEO and those attending on its part said at the Alexander meeting and determine if what was said is consistent with other assertions Achieve makes in relation to the Concept Plan Application.

Achieve can have no issue providing the transcript to the Department given the Elton Review holds up the John Alexander meeting as an exemplary demonstration of Achieve's "consulting". For our client's part, we are instructed it has no objection to the Department

receiving the transcript and putting it with submissions on the website for public scrutiny, and it gives the Department its approval to do so.

To the extent the full story is *not* told in relation to the meeting, the Elton Review falls short, in our opinion, when offering the Alexander meeting as an example of Achieve's consulting to the standard of the Department's *Guidelines for Major Project Community Consultation*.

As for consulting with groups (see the Elton Review at page 31), RASAIID is nothing to do with Friends of Crowle Home, as Achieve knows. The two entities are wholly separate.

#### *Woolcott Research*

The Elton Review also offers the work of Woolcott Research as an example of consulting with neighbours in the vicinity of the Crowle Home Site: see the Elton Review at pages 29-30.

Based on our instructions received from one member of Friends of Crowle Home, who by coincidence received Woolcott Research's telephone call at home, the researcher did *not* ask as one of the list of questions put to householders the \$60,000 question, namely:

“Are you in favour of closing down Crowle Home, relocating the residents and redeveloping the Crowle Home Site into nearly 500 apartments?” (Or indeed any one of those questions).

The question arises: why not?

One possible answer is: because the response a neighbour may give (that is, “No”) is not what the researcher (commissioned by Achieve) wanted to hear.

Instead, the Elton Review provides a subjective conclusion when summing up the value of Woolcott Research's work carried out on Achieve's behalf:

“The Woolcott Research survey therefore supports in general the move of Crowle Home residents to living in the community, though opposes the idea of moving to larger cluster homes. In our view the survey backs the approach taken by the management of Achieve Australia in the de-institutionalisation strategy.”

We make these comments:

- Instructions given to Woolcott Research are not provided
- Questions researchers put to neighbours are not provided
- Setting out the questions in full permits the Department to make an independent assessment of the value of Woolcott Research's work in terms of consultation properly so-called
- Query the value of responses to questions in relation to social impact in the context of housing moderate to high intellectually disabled people?

- It is common knowledge market researchers *may* ask questions designed to obtain a particular answer or support a particular conclusion, and
- Despite all this, the Department is asked in effect to accept the Elton Review's conclusion.

Indeed, on one view, proper consultation with Friends of Crowle Home would have given it the opportunity to assist Achieve and its researcher, Woolcott Research, design the questions prior to Woolcott Research contacting neighbours living in the vicinity of Crowle Home.

There is of course the ultimate issue of how in this context commissioning a market research company to telephone randomly selected neighbours to ask them questions in a telephone poll constitutes consulting in the sense of the Department's *Guidelines for Major Project Community Consultation*. In our opinion, it doesn't. On the other hand, it may do if the answers given in response to the questions formulated policy, and Achieve implemented that policy. However, we understand from reading the Elton Review Achieve may have already decided redevelopment would *not* include cluster housing on the Crowle Home Site. That is, and in other words, *before* Woolcott Research contacted neighbours in late 2011.

We can't assert this was definitely the case because we don't know for certain the chronology of events in the sense of what came first, Woolcott Research's work or the decision redevelopment would *not* include cluster housing on the Crowle Home Site. In this regard, we point to this extract from the Elton Review (at page 29):

“[b]etween 27 October and 1 November 2011 Woolcott Research conducted 300 telephone interview of a representative sample of people living in the Ryde area ...”  
[emphasis added].

By comparison, there is this statement in the Elton Review (at page 31):

“The 2010 Economic Appraisal report favoured off-site community living, rather than a cluster home, and this was agreed by Achieve Australia management and ratified by ADHC. *From this point onwards, the type of community living to be adopted has not been open to consultation ...*” [emphasis added].

Are we to understand from those two extracts the Woolcott Research's work took place after the decision was made that redevelopment would *not* include cluster housing on the Crowle Home Site?

If the answer to that question is “Yes”, and Achieve (and ADHC) had made its decision *before* Woolcott Research undertook its work towards the end of 2011, how is Woolcott Research's work evidence of consultation within the meaning of the Department's *Guidelines for Major Project Community Consultation*? Consulting for the purpose of designing policy (if that was the intention) *after* making the decision is a waste of time and resources, and not consulting properly so-called.



*Admissions made in the Elton Review that consulting was inadequate*

That consultation was “limited” is conceded in the Elton Review which states (at page 8):

*“Although there was limited direct consultation with residents and their families about the rejection of the larger cluster option ...”* [emphasis added].

There is too the extract from the Elton Review (at page 31) we have quoted immediately above where Achieve’s own consultant admits Achieve was not open to consultation:

*“The 2010 Economic Appraisal report favoured off-site community living, rather than a cluster home, and this was agreed by Achieve Australia management and ratified by ADHC. From this point onwards, the type of community living to be adopted has not been open to consultation ...”* [emphasis added].

As for the consultation described in pages 25-31 in the chapter, “Stakeholder Consultation”, we cannot comment on each assertion because we don’t have time and resources to take instructions in that regard given the Department’s deadline for commenting. As a general comment, families are better placed to comment based on individual experience. Dr Stubbs found consultation inadequate and we have no reason to believe based on our instructions generally that things have changed in that regard. Further, Mr Harvey Sanders of Design Collaborative Pty Ltd advised us today that in his opinion Achieve has not addressed his proposal that cluster housing form part of stage 1 of the Crowle Home redevelopment which was attached to our letter dated 30 September 2011 to the Director-General.

As for consulting with government agencies (see the Elton Review at page 30), we consider that it was an extraordinary omission that ADHC had not commented on the Concept Plan Application prior to our writing our letter dated 30 September 2011 to the Director-General.

*Achieve’s giving “the cold shoulder”*

Based on our instructions and our own experience:

- Achieve does not wish to meet with lawyers and expert consultants working for Friends of Crowle Home
- We are advised by Ashurst (formerly Blake Dawson) acting for Friends of Crowle Home and families of Crowle Home residents that it has sought to meet with Achieve and Achieve has refused to meet with it
- Angela Penklis of Penklis Lawyers asked Achieve’s lawyers Prolegis for a meeting in 2011 and she was told that Achieve wished to see a list of questions in advance before deciding whether or not to meet with her
- Angela Penklis and Philip Sutherland at Penklis Lawyers have never had a request from Achieve, or anyone acting for Achieve, to meet with it even though a meeting conducted in the proper spirit was welcomed, and is still welcomed
- Achieve denied Penklis Lawyers and Ashurst the opportunity to meet with it at the John Alexander meeting referred to above

- Achieve denied Friends of Crowle Home's expert consultants the opportunity to meet with it at the John Alexander meeting referred to above, and
- Despite Mr Alexander's intention to hold further meetings between Friends of Crowle Home and Achieve, none are planned.

We had hoped our meeting with Achieve may facilitate genuine consultation.

*What does the Elton Review say about the cluster housing proposal?*

We stated in our letter dated 30 September 2011 that (see at page 2):

"Friends of Crowle Home's preferred choice of accommodation is for cluster housing for residents of Crowle Home on the Crowle Home Site."

Here are some of the comments made in the Elton Review about the cluster housing proposal.

- At page 8:  

"In our opinion there is evidence that Achieve Australia carefully considered the alternative of building a larger cluster home to replace Crowle Home. They arrived at the decision to pursue group homes based on independent research, due internal process and with the support of Government. Although there was *limited direct consultation with residents and their families about the rejection of the larger cluster option*, it Achieve Australia's stated policy to allow people choice over their future living options. Their proposal for a number of off-site smaller scale cluster homes may satisfy the concerns raised by the Friends of Crowle" [emphasis added].
- At page 11:  

"With this commitment to retaining apartments on the Belmore Street site, *it will be possible for all 22 existing Crowle Home residents to remain on the site*, if this is their wish. As such, residents would be able to retain an association with a site where they have lived for most of their lives. However, due to the disruption that will be caused during construction, many residents may choose to move to purpose built accommodation in surrounding neighbourhoods" [emphasis added].
- At page 31:  

"The 2010 Economic Appraisal report favoured off-site community living, rather than a cluster home, and this was agreed by Achieve Australia management and ratified by ADHC. From this point onwards, the type of community living to be adopted *has not* been open to consultation ..." [emphasis added].

In summary, there is in our opinion on the face of the Elton Review confusion about whether or not Achieve intends providing the option to house Crowle Home residents on the Crowle Home Site.

As for this statement, it may "... be possible for all 22 existing Crowle Home residents to have the option to remain in the location where they have lived for most of their lives", we make these comments:

- We are instructed this is the first time Friends of Crowle Home or any of its members have heard Achieve provide this option
- Where is the detail providing for accommodating Crowle Home residents on-site?
- Is the accommodation in the form of cluster housing or in apartments in the new development on the Crowle Home Site?
- Has Achieve informed parents and carers of Crowle Home residents about this option?
- In particular, has Achieve made this option available to parents and carers holding Bed Bonds?
- Did Achieve inform parents and carers of former Crowle Home residents they had the option of permitting their Crowle Home resident to return to the Crowle Home site when Achieve relocated the resident away from the Crowle Home Site?
- We would like the opportunity to ask people we know who are parents and carers of former Crowle Home residents to ask them if they were told about this option of remaining on the Crowle Home Site
- Is Achieve providing the parents and carers of Crowle Home residents with the option of returning to the Crowle Home Site in a legally effective and enforceable agreement?
- Cluster housing on the Crowle Home Site for residents and former residents of Crowle Home is not going to happen unless the Department makes it happen, in our opinion.

#### *Bed bonds*

Parents and others purchasing Bed Bonds believed their relatives had accommodation at Crowle Home for life. In this regard, we refer to our letter dated 30 September 2011 to the Director-General at pages 6-7.

The Concept Plan Application does not address Achieve's obligation to honour Bed Bonds. The Elton Review does not address Achieve's obligation either. The Response to Submissions and Preferred Project Report states (at page 6) "Achieve Australia is aware of the Bed Bonds and considers this to be outside the scope of the Concept Plan application." In other words, Achieve ignores the issue. We suggest that if the option of remaining on the Crowle Home Site is genuine (as to which see immediately above) Achieve should consult at least with Bed Bond holders. And based on our instructions, Achieve has not done so.

Further, the Response to Submissions and Preferred Project Report and the Elton Review offer no evidence that Achieve has consulted on Bed Bonds.

The Federal Court of Australia made an order in *Achieve Foundation Limited v ACNewCo Limited: In the Matter of Achieve Foundation Limited and The Crowle Foundation Limited*

[2010] FCA 382 (21 April 2010) that Achieve must take on all the liabilities of The Crowle Foundation when taking all its assets including the Crowle Home site upon merger. We are instructed Achieve has not, and is not, honouring Bed Bonds. If Achieve is providing the option for Crowle Home residents to live in the completed development as it asserts in the Response to Submissions and Preferred Project Report (at page 6) and the Elton Review (at page 11) we would have thought the first people Achieve would have consulted with were parents and carers of Crowle Home residents, and former residents, holding Bed Bonds.

Incidentally, we suggest ADHC has already made up its mind as to the future use of the Crowle Home Site (see in this regard the extract quoted above from the Elton Review at page 31) and in terms of natural justice principles is not sufficiently impartial to review the Bed Bonds issue.

#### *Retaining Crowle Home not an option*

The Elton Review states (at page 4):

“[r]etaining the previous institutional arrangements was not an option open to Crowle Home management, both when the institution was run by The Crowle Foundation (to 2008) and by Achieve Australia (from 2009).”

We wish to make several points in this respect and these relate to issues first raised in our letter dated 30 September 2011 to the Director-General at pages 4-6:

- We are instructed this statement does not reflect what Achieve told parents, relatives and carers of residents at Crowle Home immediately prior to the scheme of arrangement when their consent to the merger with Achieve was critical to The Achieve Foundation taking over Crowle’s assets including the Crowle Home Site
- The judge in the Federal Court of Australia recorded in his judgment when approving the scheme of arrangement that, among other things, “[i]n the Scheme Booklet, it was also said that the merger would *ensure the survival, long term viability and success* of the activities of both Achieve and Crowle ...” [emphasis added]: see *Achieve Foundation Limited v ACNewCo Limited: In the Matter of Achieve Foundation Limited and The Crowle Foundation Limited* [2010] FCA 382 (21 April 2010) at paragraph 27 per Foster J. On one view, this tends to support what our client instructs us is the case; namely, members of The Crowle Foundation were not told Crowle Home was closing, residents were re-locating and the Crowle Home Site redeveloped.

#### *Numbers of residents at Crowle Home*

The Elton Review addresses the number of residents at Crowle Home during 1991-2011: see at pages 6-7. It states (at page 7):

“As opposed to adopting a radically new strategy on how residents will be supported, Achieve Australia has largely continued the previous policies of The Crowle Foundation of re-locating residents from an institutional setting into community living.”

We are instructed that the former board of The Crowle Foundation gave parents a commitment when moving residents into the community that they could move back into Crowle Home if their needs became high and their living in the community did not meet those needs. That is very different from Achieve relocating residents. With The Crowle Foundation, the person could come back to Crowle Home as needs dictated; with Achieve no one moves back once relocated. So based on our instructions, the Elton Review’s suggesting Achieve continues The Crowle Foundation’s policy of relocation is misleading.

As for the statement made in the Elton Review at page 7 “[i]n our opinion, this information supplied by Achieve Australia contradicts the claim that Crowle Home had some 90 residents “as recently as two years ago”, we relied on Blake Dawson’s memorandum dated 21 September 2011 which is an annexed to our letter dated 30 September 2011. The memorandum states: “[a]s recently as two years ago, Crowle Home accommodated 90 residents, although we understand that approximately 30 residents remain on site today.”

Ashurst (formerly Blake Dawson) is acting for Friends of Crowle Home on a pro bono basis.

*Friends of Crowle Home Inc.*

The Elton Review states (at page 31):

“We have been informed by Achieve Australia management that in their opinion the “Friends of Crowle Home Inc”, an organisation registered in August 2011, are [sic] not representative of the views of Crowle Home residents ... We are not able to verify this information as the Friends do not provide public information, for example through a website.”

Further, the Elton Review identifies those whom Achieve recognised in its own “August 2011 Change Management Plan (Achieve Australia, 2011a)” as stakeholders. The Elton Review states (at page 14):

“The main stakeholder groups affected by the closure of Crowle Home are:

- Long term Crowle Home residents with disability.
- Families and other providers of support to people with disability.
- Staff members.
- People with disability who use day program at Crowle Home.
- Volunteers who use facilities at Crowle Home for meetings, social events and as a store for goods sold through retail outlets to raise income.”

We respond as follows:

- Members of Friends of Crowle Home largely fall within Achieve's *own* definition of stakeholders, their being in one or more of those groups. In other words, Achieve recognises those people as stakeholders. They are no less stakeholders because they are members of Friends of Crowle Home. Indeed, on one view, the body of the membership of Friends of Crowle Home has very considerable personal experience and expertise to offer Achieve if Achieve was "consulting" with its members within the meaning of the Department's *Guidelines for Major Project Community Consultation*
- It is self-serving for Achieve to deny that Friends of Crowle Home represents Crowle Home residents given its own definition of stakeholders
- Achieve is under *more* pressure to consult with Friends of Crowle Home if it concedes Friends of Crowle Home is representative of Crowle Home stakeholders, and so as a question of strategy it is convenient for Achieve not to admit that
- Members of Friends of Crowle have a combined total of *hundreds of years* of personal involvement with Crowle Home and residents in Crowle Home
- Friends of Crowle Home represents, among others, very elderly parents of residents at Crowle Home
- Friends of Crowle Home has almost no money in terms of assets and definitely insufficient funds to put up a website. There are, for example, insufficient funds to arrange for a printed letterhead. Penklis Lawyers, Dr Judy Stubbs & Associates, Mr Harvey Sanders of Design Collaborative Pty Ltd, and Ashurst (formerly Blake Dawson) provide their services and out-of-pocket expenses pro bono; that is, at no cost to Friends of Crowle Home. (Achieve by comparison has an income of millions of dollars and has financial muscle to engage, for example, public relations consultants to send a person to assist Achieve's CEO at the John Alexander meeting)
- Assuming Friends of Crowle Home had funds to maintain a website (which it doesn't), how many organisations publish a list of members on their website for the public to scrutinise. They don't. To suggest Friends of Crowle Home is different is unfair because it isn't different by comparison with standard Australian practice.

### *Methodology*

The Elton Review refers to many documents and draws conclusions in Achieve's favour. Yet these documents, or at least relevant extracts, are not made available so that the Department may objectively make an assessment of the material for itself. There are problems with this approach including that:

- the Department cannot independently verify the information and make an assessment based on information the developer Achieve declines to show it
- the developer's determination (or more accurately the developer's consultant's determination) in those circumstances substitutes for the Department's because the Department must rely on the developer's conclusions in the absence of the information on which the conclusion is based
- it is wholly self-serving

- there is no opportunity for third parties affected by the Concept Plan Application (for example, Friends of Crowle Home, its experts and consultants) to assess the information, and
- all this is in circumstances in which, as the Elton Review states (at page 8), “redevelopment of Crowle Home will generate a cash bonus for Achieve Australia.” The proposal currently, as we understand it, is for a maximum of 470 residential dwellings. In other words, this project is generating millions of dollars for Achieve if the Planning Assessment Commission approves the Concept Plan Application. There is objectively significant commercial incentive for Achieve to relocate residents of Crowle Home and redevelop the Crowle Home Site.

This statement appearing at page 8 of the Elton Review, for example, characterises in our opinion deficiency in its methodology:

“[i]n our opinion there is evidence that AA carefully considered the alternative of building a larger cluster home to replace Crowle Home. They arrived at their decision to pursue group homes based on independent research, due internal process and with the support of Government. Although there was limited direct consultation with residents and their families about the rejection of the larger cluster option, it is AA’s stated policy to allow people choice over their future living options. Their proposal for a number of off-site smaller scale cluster homes may satisfy the concerns raised by the Friends of Crowle Home.”

We make these comments by way of illustrating our criticism of methodology:

- What is the evidence referred to so that the veracity of the assertion may be verified?
- What is this “independent research”?
- What is meant by “due internal process” in this context?
- What support from Government?
- Is it suggested Government is driving relocation of residents of Crowle Home and redeveloping the Crowle Home Site?
- Note the admission “there was limited direct consultation with residents and their families about the rejection of the larger cluster option”
- That admission contradicts the statement on page 31, “[w]e therefore do not agree with the view that there have been ‘serious deficiencies with consultation in general, and in relation to the Relocation strategy in particular’ ”
- If “... it is AA’s stated policy to allow people choice over their future living options ...”, then follow the policy
- The proposal for a number of off-site smaller scale cluster homes does not satisfy the concerns raised by the Friends of Crowle Home.

Two further examples taken at random are:

- The Elton Review is characterised by self-serving statements often prefaced by phrases such as “[i]n our opinion” without setting out the evidence so that the reader (and in particular the Department) may formulate his or her conclusion based on evaluating material evidence. For example, the Elton Review states at page 3 “[i]t is our opinion that the social impacts of the re-location of residents from Crowle Home to an off-site community setting will be largely positive”
- Conceding that there are “negative impacts” (see page 3), these are not identified so that the Department may assess them and there is the glib guarantee that “our review of AA’s internal documentation identifies mitigation strategies” without providing opportunity for independent and impartial assessment of these strategies and their adequacy whether by the Department or objectors. Further, Dr Judy Stubbs recommended Achieve adopt certain mitigation measures in her report (see our letter dated 30 September 2011 to the Director-General at page 17) and the Elton Review and Response to Submissions and Preferred Project Report does not address these.

#### *Response to Submissions and Preferred Project Report*

We wish to respond specifically to the Response to Submissions and Preferred Project Report. We may have made a particular comment earlier in this letter and repeated ourselves under this heading but from our point of view it is better that we avoid a misunderstanding about whether or not we have addressed this document. We do not have time and resources to address every point and our failing to do so is not an admission we agree with it. If the Department wishes us to address any specific point, would it please ask us to do so.

As to section 3.1 (Social Impact Assessment) in the document, we do not agree that Achieve has provided “detailed response to the social impact review undertaken by Judith Stubbs and Associates” as the Department required in the letter dated 9 November 2011, and the Response to Submissions and Preferred Project Report and the Elton Review do not provide adequate response to issues raised.

Further, we are informed (at page 5):

“Elton Consulting has reviewed internal and external documents including transition plans and Achieve Australia’s Housing Plan (January 2012). These are internal management documents not available in the public domain.”

Again, there is no transparency; no opportunity for the Department or objectors including their experts and consultants to carry out independent and impartial assessment of the content of these documents.

As to section 4.2 (Ryde Council submission dated 15 February 2012), we do not consider Achieve has addressed Council’s resolutions set out in its letter dated 8 February 2012 to the Department. This statement “[t]he relocation of the residents is a process that has been occurring since 1991” is on our instructions not the whole story for the reason that (as we stated above) we are instructed that the former board of The Crowle Foundation gave parents



a commitment when moving residents into the community that they could move back into Crowle Home if their needs became high and their living in the community did not meet those needs. That is very different from Achieve relocating residents. With The Crowle Foundation, the person came back to Crowle Home as needs dictated; with Achieve no one moves back once relocated.

For the record, Friends of Crowle Home supports Council's resolutions.

Further, Achieve apparently wrote to Council responding to Council's letter dated 10 January 2011 stating in part, "Judith Stubbs' Social Impact Assessment was carried out without any involvement of Achieve Australia and that a number of inaccurate claims have been made": see Council's letter dated 8 February 2012 to the Department at page 2. In response to Achieve's involvement or lack of involvement, we refer the Department to Dr Judith Stubbs' report (that is, *Proposed Redevelopment of Crowle Home, Meadowbank: Review of Social Impacts and Consultation*) at page 2:

"It is noted that JSA staff had previously sought an interview with senior staff of Achieve Australia on several occasions, through which staff would have also sought to gain access to the site. However, this was not granted."

Footnote 19 at the bottom of page 2 of the report refers to four instances when Achieve's co-operation was sought and refused. Based on that extract from Dr Stubbs report, Achieve refused to co-operate with Dr Stubbs and her staff, and declined to address Dr Stubbs' concerns and communicate with her and her staff.

Indeed, Achieve's lack of transparency attracted specific adverse comment in Dr Stubbs' report under the heading "5.3.4 Reduced Transparency in Management" at pages 63-64, and we refer the Department to that:

"The reported lack of transparency described above has impacted upon family members' perception of Achieve Australia, contributing to the anxiety that many of the interviewees reported and clearly expressed during the interviews. The lack of communication can be attributed to a management structure that is vastly different to that which many of the older respondents – who were previously members of The Crowle Foundation – had been involved with in the past. This could be viewed as a substantial contributing factor influencing the current perception of Achieve Australia and the proposal generally. It is also likely to contribute to higher than necessary levels of anxiety, stress and ultimately ill health for residents and their families. Again, this has not been addressed in the SIA or the EA, despite the current and potential adverse impacts upon these vulnerable groups."

In short, Dr Stubbs found consultation was not what it should be.

Further, Achieve asserted to Council "that a number of inaccurate claims have been made [in Dr Stubbs' report]". If that is the case, would Achieve please identify them so they are addressed. This is in everyone's interest. The report was prepared in September 2011 and

Achieve has had nine months in which to take up those issues directly with Dr Stubbs or ourselves, and point them out to the Department. That has not occurred.

We refer to the statement, "Elton Consulting's Social Impact Review has documented Achieve Australia's strategy for the relocation of residents (refer page 16 of the Social Impact Review)": see page 26 of the Response to Submissions and Preferred Project Report. Turning to page 16 of the Elton Review, with respect to the author, we find the information skinny in the sense it is not a sufficiently detailed response.

As to section 5 (Public Submissions), there is this statement:

"The submission prepared by Penklis Lawyers has already been discussed as part of the DP&I's key issues and is not rediscussed in this section. A presentation was provided to the Meadowbank West Ryde Progress Association and their comments are addressed separately from the remainder of the public submissions."

In response we say we do not consider Achieve has adequately and properly in terms of detail addressed the issues raised in our letter dated 30 September 2011 to the Director-General either as part of its response to the key issues raised in the Department's letter dated 9 November 2011 or at all.

As to section 5.2 (Public submissions (objections)), the assertion the "26 submissions were pro forma letters/emails" is incorrect. They were not. We did not provide a pro forma letter to Friends of Crowle or anyone else, and as far as we know, no one else did. The letters may have shared common grounds but that is because the authors share common concerns, experiences and objectives.

As to Table 5 (Other Public Submissions),

Issue	Our response to Achieve's comment
Insufficient information provided to the community	Consultation is inadequate and does not comply with the Department's <i>Guidelines for Major Project Community Consultation</i> (October 2007)
Land should be used for people with disability	(1) Inadequate detail; (2) inadequate commitment in absence of legally effective and enforceable agreement; (3) inadequate consultation about this with stakeholders (as Achieve defines them, see above at page 14); (4) does not accommodate former and existing residents of Crowle Home; (5) does not honour Bed Bonds; (6) rules out cluster housing on the Crowle Home Site
Residents of Crowle Home not consulted	Consultation with residents and their families inadequate (see above in this letter); consultation does not comply with the Department's <i>Guidelines for Major Project Community Consultation</i> (October 2007)

Impact on well-being of existing Crowle residents	See Dr Stubbs's report under the heading "5.3.4 Reduced Transparency in Management" at pages 63-64, an extract from which is set out in this letter above at page 18
10% of adaptable housing does not guarantee accommodation for existing Crowle residents	(1) Inadequate detail; (2) inadequate commitment in absence of legally effective and enforceable agreement; (3) inadequate consultation about this with stakeholders (as Achieve defines them, see above at page 14); (4) does not accommodate former and existing residents of Crowle Home; (5) does not honour Bed Bonds; (6) rules out cluster housing on the Crowle Home Site
Alternative arrangements for suitable accommodation and care for existing Crowle residents is required	(1) Inadequate detail; (2) inadequate commitment in absence of legally effective and enforceable agreement; (3) inadequate consultation about this with stakeholders (as Achieve defines them, see above at page 14); (4) does not accommodate former and existing residents of Crowle Home; (5) does not honour Bed Bonds; (6) rules out cluster housing on the Crowle Home Site
Other means of devolution in terms of development options	(1) Analysis of different forms of community living glossed over; (2) does not give sufficient weight to long-term Crowle Home residents in the context of Crowle Home's unique history; (3) Achieve's decision presented as <i>fait accompli</i> ; (4) Inadequate consultation with stakeholders and especially families of Crowle Home residents, existing and former; (5) Elton Consulting states at page 31: "The 2010 Economic Appraisal report favoured off-site community living, rather than a cluster home, and this was agreed by Achieve Australia management and ratified by ADHC. From this point onwards, the type of community living to be adopted <i>has not</i> been open to consultation ..." [emphasis added]
History of origins of Crowle through to Achieve Australia. Proposal is approved contrary to wishes of Crowle members	Note Achieve states "they would have been aware" as distinct from, for example, "Achieve notified members of The Crowle Foundation of its strategy for de-institutionalisation by its letter dated [insert date of letter]"
Questions regarding social impact ...	Achieve states "[t]he rehousing of existing clients is an operational issue that falls outside the Concept Plan application." That's inconsistent with DGR 18 (Impact on

	existing and future residents/tenants) which states this is an issue Achieve must address as part of its Concept Plan Application
Achieve has not lived up to promise at the time of the merger to honour earlier board decisions that the southern 1/3 <sup>rd</sup> of the site would be sold to finance purpose built cluster housing	Achieve responds "[t]his is a matter which lies outside of the Concept Plan application." We say in response to that: (1) Refer to Mr Harvey Sanders report attached to our letter dated 30 September 2011 to the Director-General proposing cluster housing as first part of development on Crowle Home Site (and Achieve should address this); (2) We ask the Department to obtain details of the promise from Achieve
Achieve Australia did not notify family members of the Concept Plan exhibition	Consultation did not in our opinion satisfy the Department's <i>Guidelines for Major Project Community Consultation</i> (October 2007)
Concept Plan reduces the stock of residential accommodation and day time facilities for intellectually and physically disabled persons in the Ryde area and Sydney	As for residential accommodation in the Ryde area, closing down Crowle Home reduces community-owned bed stock for intellectually disabled people with moderate to high support needs in the Ryde local government area. Achieve does not identify location of replacement accommodation and in particular in the Ryde local government area.

*"From institutional to community living"*

The Elton Review sets out (see at page 3) the heading "[f]rom institutional to community living". *Mindful of Government policy*, we wish to make a general point based on personal experience of working for parents and relatives of Crowle Home residents, former residents and former users of its day care facilities. (We say "former users of its day care facilities" because of course Achieve has closed down day care facilities at Crowle Home). The comment is made repeatedly to us that it is incorrect to assert a Crowle Home resident is, or was, *not* engaged in community living. Based on what is said to us, these people recognise that a person's level of participation in the community varies depending on level of disability and availability of staff to provide supervision and care including transport. Many people tell us it is misleading in their experience to assert that a Crowle Home resident is not living in the community and they proceed to give practical examples of what a resident (or former resident) has done within the wider community beyond the boundaries of the Crowle Home Site. Because they recognise that participation in the wider community depends on availability of staff (as outlined above) they question sincerely whether moving residents into group homes or individual homes means automatically there is greater interaction with the community, and in that sense enhanced community living. Dr Stubbs suggests (at page 65) residents in group homes or individual homes may be more isolated than at Crowle Home.

We are instructed that residents access (or accessed) the wider community beyond Crowle Home: for example, to attend jobs, activities including social and sporting events and so on. So, for example, the heading "[f]rom institutional to community living" (see at page 3) and much of the material appearing beneath it, in the opinion of some parents and relatives is a misrepresentation to the extent it suggests that a Crowle Home resident does *not*, (or did not) live in the community.

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Yours faithfully

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