

12 March 2025

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Dear Tia

SSD 28363729 – Rhodes East Mixed Use Seniors Housing Development – Site Isolation of 31 Blaxland Road – Submission by way of objection

We refer to our previous correspondence in relation to the development at 15-17 and 25-27 Blaxland Road and 440-442 Concord Road, Rhodes (**Site Causing Isolation**). The Site Causing Isolation is the subject of SSD-68363729 (**SSDA**) for mixed use seniors housing development.

As you are aware, numbered paragraph 3 in the industry specific Secretary's Environmental Assessment Requirements (**SEARs**) letter sent to Ecove Group Pty Ltd (**Ecove**) on 26 March 2023 required Ecove in preparing the SSDA to:

'Demonstrate that the proposal has considered the potential isolation and future development potential of 31 Blaxland Road to achieve a coherent built form outcome for the block as envisaged by the Rhodes Place Strategy for the Station Gateway East Precinct. This should have regard to the Land and Environment Court (LEC) Planning Principle for Redevelopment, expressed in Karavellas...'

We act for the owners of 31 Blaxland Road, Rhodes (**Isolated Site**) which will be isolated if the SSDA is granted without amalgamation of the Isolated Site into the Site Causing Isolation, in contravention of the legal requirements set out in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251.

In this regard, on behalf of our clients, we submit the **attached** town planning report from Haskew de Chalain town planners dated 11 March 2025 by way of objection to the SSDA by our clients (**Town Planning Objection**).

As required under the *Environmental Planning and Assessment Act 1979* and principles of administrative law, we ask the Department to consider the Town Planning Objection in detail along with other relevant information held by the Department in relation to the Isolated Site.

Our client's objection to the EIS's position on the second limb of *Karavellas* is exhaustively set out in the Town Planning Objection and is not addressed in this letter. In relation to the first limb of *Karavellas*, by way of objection to the SSDA on behalf of our clients, and in addition to the details set out in the Town Planning Objection, we make the following comments about the information on page 55 row 2 and part 6.2.3 of the EIS lodged in support of the SSDA.

1. Comment 1 – objection to indication in EIS that amalgamation is not required

Part 6.2.3 of the EIS states that:

‘With respect to the first aspect of Karavellas, there is no minimum lot size control applicable to the site or No 31 Blaxland Road under LEP 2013 or the site-specific provisions at Part K of the CB DCP. Nor is there any explicit requirement under these planning controls to amalgamate these sites. As such, the remaining aspects of the first site isolation question do not assist.’

In this regard, various decisions of the Court have found that the Karavellas test applies where there is no minimum lot size requirement. These cannot be ignored. Part G2.2 of the DCP, which applies to land in the MU1 zone, imposes a requirement to consider isolation and amalgamation issues, clearly stating that *‘New development is to ... avoid creating isolated sites.’*

Even if a development control plan does not have a specific site isolation consideration requirement, it is relevant for a consent authority to consider whether a development application would result in isolation of an adjoining site.

It is clear that in real terms, failure to amalgamate could result in a brick residential house remaining on a prominent street between two large towers. The Secretary has therefore aptly requested information on isolation in the SEARs.

2. Comment 2 – objection to information in EIS stating that the owners of 31 Blaxland Road are ‘unwilling to sell’

Part 6.2.3 of the EIS states that:

‘... the Applicant has made several attempts to acquire No 31. Blaxland Road over the past four years. Due to the commercial in confidence nature of commercial offers, evidence of negotiation and valuations can be provided under separate cover. To date, the owner of No 31. Blaxland Road has been unwilling to sell at a reasonable sale price.’

It is not correct that our clients have been ‘unwilling to sell’ at a reasonable price. As set out in the Town Planning Objection, the offer prices provided to our client have remained essentially the same before and after rezoning of the area and are therefore clearly not reasonable in the *Karavellas* sense.

Further, there have been several communications on behalf of our client indicating that they are willing to sell at a reasonable price. In this regard, following Ecove’s rejection of a reasonable offer from our client for the purchase of their property made on 20 May 2024:

- (a) On 17 July 2024 we wrote on behalf of our client to Ecove’s representatives stating amongst other things that *‘...our clients are open to continuing negotiations to ensure that amalgamation can occur within these applicable legal parameters in Karavellas’* and reiterating our client’s offer so as to *‘continue negotiations in a situation where amalgamation is feasible at a reasonable offer’*.
- (b) On 2 August 2024, we wrote on behalf of our client to Ecove’s representatives stating amongst other things that:
 - (i) *‘... a sale of the Subject Property remains feasible, and that our clients are committed to negotiations with Ecove for a reasonable offer for purchase of the Subject Property, as required by the principles in Karavellas’;*

- (ii) *'In relation to the first requirement of Karavellas which is whether it is feasible for the Subject Property to be amalgamated into the Ecove site, our clients maintain that subject to the provision of a reasonable offer based on the most advantageous use of the Subject Property i.e. its highest and best use at a 6:1 FSR as an amalgam with the Ecove site, that amalgamation is and remains feasible' and that our clients consider – consistently with applicable legal principles – that the offer the subject of your letter dated 3 July 2024 does not represent a reasonable offer within the requirements of Karavellas.'*
- (iii) *'Until Ecove engages with our clients' offer based on accurate legal, planning and valuation principles and is able to make a 'reasonable offer' in line with Karavellas, our clients' position is that sale of the Subject Property to Ecove remains feasible in the manner understood by Karavellas.'*
- (iv) *'Our clients therefore invite and await a 'reasonable offer' from Ecove in this regard, to avoid the isolation of the Subject Property and its deleterious impact of isolation on the planning outcomes for the precinct.'*
- (c) On 10 September 2024, we wrote on behalf of our client to Ecove's representatives stating amongst other things that:
 - (i) *'... the price which your client Ecove has offered for the Isolated Property does not reflect the highest and best use of the Isolated Property. That highest and best use would be based on the floor space ratio contribution from the Isolated Property to the overall development of the Ecove site. As such, your client's offer does not constitute a 'reasonable' offer which is supported by a valuation report, as required under Karavellas.'*
 - (i) *'... our clients remain committed to selling the Isolated Property to Ecove to achieve the amalgamation requirements of the Canada Bay DCP and the town planning and urban design outcomes sought under the Rhodes Place Strategy, as well as to achieve the orderly and economic development of the site in a manner that is in the public interest. Please let us know your available times to meet, so that current discussions as to the sale of the Isolated Property, which remains feasible, can continue.'*

It remains the case that our client is willing to sell at a reasonable price. Until our client is presented with a reasonable sale price, any rejection of non-reasonable sale prices by our clients cannot legally be relied on by the consent authority as evidence of the first 'limb' of *Karavellas* being satisfied.

We **attach** a letter from our clients with general town planning comments by way of objection.

Yours sincerely



Holding Redlich