

Mr Jihad Dib  
Minister for Emergency Services  
Via online form

2 November 2023

Dear Minister

I write regarding Planning Proposal 2022-658, Lourdes Retirement Village, 95-97 Stanhope Rd, Killara.

In February 2023, the RFS advised the Department of Planning that it had no objection to this proposal which seeks to intensively redevelop a retirement village on bushfire prone land in Killara. The RFS' advice was based on advice from the proponent's bushfire consultant, BlackAsh. The BlackAsh advice contains numerous errors and relies on decade old data. Meanwhile, Ku-ring-gai Council's up to date modelling and detailed analysis – on the basis of which Council concluded the proposal must not proceed as it will put lives at risk – appears to have been ignored.

On 13 June 2023, I wrote to both you and the RFS Commissioner, expressing Friends of Ku-ring-gai Environment's, FOKE's deep concern about the RFS position, asking a number of questions about how the position was reached, and calling on the Commissioner to reconsider it. More than four months later, the Commissioner has replied on your behalf. (The Commissioner's letter is undated but was emailed to me on 30 October 2023.) He advises that he stands by the RFS' February 2023 advice to the Department of Planning – i.e. that the RFS does not object to the proposal.

I am compelled to write to you again as the Commissioner's response is inadequate and deeply concerning. While I appreciate that your office will be preoccupied with operational matters at present, the many fires burning across the State underscore the importance of ensuring an appropriate and evidence-based response to this planning proposal. Allowing the RFS position to stand will put the lives of vulnerable elderly at grave risk, particularly as climate change impacts worsen.

In his response, the Commissioner asserts that the RFS "carefully reviewed and considered the Bushfire Assessment developed by the proponent's bushfire consultants, BlackAsh, and also took account of the Ku-ring-gai Council submission before providing comment back to DPE". We are unable to accept this assertion as fact given that, in response to our GIPA application (which specifically sought evidence of how the RFS dealt with Council's submission), no evidence was provided to show that the RFS had considered the submission. Indeed, the RFS' February 2023 advice to the Department of Planning is described as being "based on" the proponent's analysis alone, without any reference to the Council submission. The RFS Executive Briefing released in response to our GIPA application also fails to mention the Council submission.

If the RFS did take account of the Council submission, as the Commissioner asserts, it is unclear how the RFS could have based its advice on the highly problematic BlackAsh addendum. Indeed, the degree to which the Council submission contradicts the BlackAsh addendum suggests that the RFS' February 2023 advice was legally unreasonable (because it failed to take into account relevant considerations, i.e. the Council submission). It is also concerning that, if RFS staff did take account

of the Council submission, there was no analysis, communication or indeed any documentation to indicate that this occurred (at least none that was released in response to our GIPA Application which expressly sought this material).

If the RFS had given the Council submission due consideration, we submit that it could not reasonably conclude – “based on” the BlackAsh addendum – that the planning proposal could progress. This is because the up to date analysis in the Council submission contradicts the outdated analysis on which BlackAsh relies. Whereas as BlackAsh asserts that the site is low risk and “never likely to experience” significant fire, Council commissioned expert modelling shows that the bushfire risk is high (see attached table at end of letter). With such material before it, the RFS’ decision not to object to the proposal appears legally unreasonable. As Council concludes, approving the proposal would be negligent.

Minister, I appreciate that this material is detailed but there is a critical need for you to engage with the detail and intervene in this matter. The RFS will no doubt seek to assure you, as the Commissioner did in his letter to me, that no approval has yet been given under s100B of the *Rural Fires Act*. We well understand that such approvals are only given at the subsequent development application (DA) stage, not the current planning proposal stage. However we are also aware that, under the RFS’ *Planning for Bushfire Protection 2019* (PBP 2019), the RFS must assess bushfire risks in detail at the planning proposal stage as well as at the DA stage. This is required so an evidence-based decision can be made as to whether it is appropriate to change the LEP and allow a doubling of the resident population on this high risk site. Under PBP 2019, if it is not expected that a s100B approval will be given at the DA stage, then the planning proposal should not proceed.

The proponent has not undertaken the detailed analysis that is required by PBP 2019. However, Council has undertaken this analysis. Based on this, it concludes that the proposal fails to protect lives and thus fails to comply with PBP 2019, meaning it should not proceed. Notwithstanding the Commissioner’s assertion that the RFS took account of the Council submission, it appears that the submission has in fact been ignored. Alternatively, if the Council submission was taken into account, the RFS position appears legally unreasonable. (Under administrative law, a decision maker must make a decision that is reasonable having regard to all the relevant material before it.) I note the Commissioner’s comment that the Sydney North Planning Panel will be informed by all submissions and comments. This is disingenuous: in relation to bushfire risks, the RFS position will likely be seen as determinative. As such it is imperative that the RFS consider the Council submission in detail and explain why it was able to base its advice on BlackAsh analysis which is flawed and contradicted by Council’s more recent modelling. If the RFS cannot explain this, then it should change its advice. (My letter of June 2023 specifically asked why the RFS relied on decade old analysis in preference to Council’s 2022 modelling and analysis. This question was not answered.)

Minister, the Commissioner of the RFS is subject to your direction and control and as such you will ultimately be held responsible for the position taken in relation to this planning proposal. You will be held to account at any future coronial inquiry if lives are lost as a result of this proposal and the terrible precedent it will create.

I look forward to your engagement with this matter, and your reply.

Yours sincerely,

*Kathy Cowley*

Kathy Cowley  
PRESIDENT  
Encl.

Inconsistencies between BlackAsh Addendum (on which RFS advice is based) and Ku-ring-gai Council submission

<b>BlackAsh Addendum</b>	<b>Ku-ring-gai Council Submission</b>
the subject land is “in a locality that has not had widespread wildfire (nothing within two kilometres of the site)” (p11)	“the <b>site was impacted, and engulfed, by fire in the 1950’s</b> ” (p80)
<p>The site is “never likely to experience this [widespread wildfire] as the vegetation is confined to relatively narrow pathways in directions that are not exposed to widespread and major bushfires (i.e. a bushfire attack from the northeast to southeast).” (p11)</p> <p>“given the relatively <b>low bushfire risk</b> to the site” and “the site is only exposed to a relatively <b>low bushfire risk</b>” (both p16)</p> <p>“The site is not exposed to what is considered a ‘landscape level’ bushfire risk, with any fires only within the isolated and restricted bushland areas” (p10)</p> <p>“The worst-case bushfire scenarios are expected to be isolated, quickly identified and of <b>limited run and potential</b>. Fires impacting the site would not be significant such as that expected in a high-risk area” (p11)</p> <p>“Fire would be burning from the southeast, east or northeast under typically cooler and moisture laden winds” (p20)</p>	<p>“The analysis of fire behaviour provided within the Planning Proposal is <b>under-estimated</b>, not qualified by detailed risk assessment and <b>does not provide an accurate context</b> within which to assess the appropriateness of any increase in density on the site.” (p80)</p> <p>“the <b>bushfire risk is significant</b>” (p80)</p> <p>“there is <b>high potential for both long and short fire runs</b> to impact the Lourdes site” (p86)</p> <p>“<b>potentially intense</b> bushfire attack” (p86)</p> <p>“there is <b>significant risk of fast-moving fire</b> approaching the site” (p89)</p> <p>“the bushfire hazard context on bushlands immediately adjoining the Planning Proposal site are generally <b>moderate to high</b> level” (p149)</p> <p>“The Blackash Bushfire Assessment mentions in its Introduction that “any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind”. It is <b>not clear how this conclusion has been reached</b> from the Bushfire Threat Assessment and <b>what evidence underpins this statement.</b>” (p80)</p> <p>And see excerpt from p86 below table.</p>
The performance-based approach accepted by the RFS satisfies all bushfire safety requirements	<p>“The <b>Proposal in its current form is not compliant</b> with Planning for Bush Fire Protection 2019 and would likely not achieve a Bush Fire Safety Authority” [ie the approval given under s100B of the Rural Fires Act at the DA stage] (p63)</p> <p>“The Planning Proposal in its current form is <b>not consistent with the Aim and Objectives</b> of PBP 2019 and the Objectives applied to Special Fire Protection Purpose development. It is not clear how any future development will be compliant with the Aim and Objectives of PBP 2019.” (p97)</p> <p>Note: all developments on bushfire prone land must comply with the Aims and Objectives of PBP 2019. If a development does not, it should not proceed.</p>
“the unique layout and construction of the site will provide for radiant heat	“The profile of the site exacerbates this situation in that <b>buildings at the southern outer edge of</b>

<p>protection” (p15)</p>	<p><b>the site would provide little to no protection</b> to development within the site due to their elevation being lower than buildings in the inner northern edge of the site.” (p92)  Note: this is clear in figure 6 of FPD's <i>Draft Site Specific Development Controls</i> document.</p>
<p>“there is <b>no evidence</b> to suggest the Lourdes site or broader Stanhope Road area has any significant bushfire evacuation risk” (p19, and again on p22)  “Given the ARUP review and depth of analysis previously undertaken by KMC and others, <b>all of which do not identify any evacuation issues associated with the Lourdes Village</b> or Stanhope Road, no further analysis is required as part of the Planning Proposal.” (p345)</p>	<p>“The substantial intensification of a use, being a special fire protection purpose under the Rural Fires Act, <b>within an area that already exceeds the recommended number of dwellings for the one exit road</b>, is of concern as increasing the number of residents will <b>only make evacuation more difficult</b> in the event of a bushfire, and place not only the residents on site at risk, but also residents outside the site in dwellings on Stanhope Road.” (p57)  “Given the acknowledged <b>high bushfire risk</b> profile of the Lourdes Retirement Village site at a Strategic Level, and the very limited evacuation data and analysis presented in evidence of the Planning Proposal, <b>satisfactory ‘unassisted’ on-site evacuation has not been demonstrated to be feasible.</b>” (p149)  See also the Bushfire Evacuation Risk Assessment at pp158-170 of the Council submission.</p>
<p>“residential development is proposed on the interface where occupants are more able bodied and capable of utilising the emergency management and evacuation redundancies that have been built into the proposal. This layered approach provides resilience within the site, to occupants and to emergency service personnel. This is a significant bushfire net improvement from the existing homes on the site.” (p11)  “a Bushfire Protection, Operations and Maintenance Plan will be developed which will include the Emergency Management and Evacuation Plan and ongoing maintenance and certification of <b>the essential bushfire protection measures (i.e., APZ)</b>” (p15, emphasis added)  BlackAsh repeatedly seeks to give the impression that the redevelopment will include APZ. For example, the Design and Compliance Strategy says at p3 that “APZ are maximised wherever possible consistent with</p>	<p>“Whilst it is proposed that the buildings closest to the hazard vegetation within the illustrated Master Plan provided are residential in nature rather than SFPP, there is <b>no mechanism to secure this</b> and it is <b>possible/likely that the entire site will remain SFPP but at a higher density than existing.</b>” (p92)  Currently, there is “a very small asset protection zone (APZ) around the buildings at the hazard vegetation interface. The APZ is typically approximately 11m, in some places as small as 8m.” (p87) By contrast, the amended draft DCP proposes a <b>rear townhouse setback of only 3m</b> (which is half the current Ku-ring-gai DCP townhouse setback control of 6m: see p221).  If approved, the <b>proposed redevelopment will place townhouses in the flame zone, much closer to the fire hazard than buildings currently on site.</b> This will <b>provide no defensible space</b> in which firefighters can work.  “An increase in density on the site would require a much larger asset protection zone (APZ) to provide a defensible space and a space within which firefighters and other response personnel can move around the building assisting with evacuation and undertaking active firefighting. This would be an <b>imperative requirement from</b></p>

<p>PBP 2019”. In an email to RFS, BlackAsh stated: “The site can support appropriate APZ .” (p177, and again on 178),  The reality is different: the draft Development Control Plan exhibited with the planning proposal specified a minimum <b>setback of only 4m</b> – less than half the narrowest gap between current buildings on site and the vegetation hazard.  The amended DCP (December 2022) reduces this further: the proposed rear building setback (minimum) to bushland interface <b>is only 3m</b> (see FPD, <i>Draft Site Specific Development Controls</i>, 23 December 2022, p12).  This document was released to FOKE by the RFS – meaning it was available to RFS staff before the February 2023 advice was provided to the Department of Planning.</p>	<p><b>a life-safety perspective.”</b> (p88)  “It is not clear how this relates to the APZ requirements of PBP 2019 and how an appropriate separation between the hazard and buildings or a defensible space can be provided.” (p87)  “despite potential built form solutions, the lack of APZ and potential proximity of buildings places <b>firefighter safety at risk.</b>” (p92)  “The Planning Proposal focusses heavily on built form solutions but <b>does not consider the protection of life</b> through over-development which does not allow for separation from the hazard and provision of defensible space. <b>Sound management of the site is impossible given the lack of defensible space provided.</b>” (p96)  The proposed setback “is not considered to be appropriate separation between buildings and hazard vegetation and <b>does not meet the Aim and Objectives of Planning for Bush Fire Protection 2019</b>, particularly relating to Special Fire Protection Purpose development.” (p216)  [Note the APZ for a SFPP development such as a retirement village should normally be <b>100m, not 3m.</b>]  “A Court ruling found that whilst there may be a management plan to evacuate residents safely, the <b>safety of firefighters was equally important</b> and led to a refusal.” (p174)  Council’s Submission suggests that all development should be moved further away from the vegetation line, within First Ave: p87. The RFS makes no mention of this, or indeed any Council recommendation.</p>
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Excerpt from page 86 of Council submission:

“There is significant fire potential to the north-east and south-east/south of the site within forested vegetation. There is a north-easterly fire aspect and **a topographic exposure of the subject land to north/north-easterly approaching wildfires** (Ku-ring-gai Council SBS). Late afternoon north-easterly winds were a feature of fire behaviour during the Black Summer fires in 2019/2020 and they can be known to be some of the higher intensity and more destructive fires. **The north/north-easterly aspect is therefore relevant and has not been considered within the Planning Proposal.**

Further to this, the **risk from the southerly bushfire aspect has been significantly underplayed.** Whilst any fire originating from the east/south-east would be fuelled by cooler winds, a fire originating in the north/north-east which is then subject to a southerly wind change would redirect a **potentially intense bushfire attack** towards the subject site from a south/ south-easterly direction. This is a common feature of NSW weather conditions and has occurred within multiple destructive fire events including Black Saturday (Victoria 2009), Tathra (NSW 2018) and multiple locations during Black Summer (NSW 2019/2020). The fire potential at the site has been modelled by Ku-ring-gai Council and RedEye modelling using Phoenix RapidFire fire intensity modelling.

Their work confirms that **there is high potential for both long and short fire runs to impact the Lourdes site** which would largely be driven by north/north-westerly or easterly winds and a potential southerly wind change.

Illustrative Figures within the Ku-ring-gai Council Strategic Bushfire Study show that the eastern and south-eastern boundary of the subject site would be **most intensely impacted by higher fireline intensities**. The eastern sector of the subject land is considered least appropriate for any density increase.

Potential fire activity in the area could be fuelled by spot fires impacting the landscape immediately surrounding the site. The origins of any spot fires could be fires within the wider landscape to the north/north-east of the subject site (RedEye Simulated Wildfire Modelling, 2022).

There is evidence that under a climate change future, fire events will become hotter and more intense under increased fuel loads, increased temperatures and increased drought conditions. There is also a greater likelihood of ignition in the landscape due to a potential increase in lightning strikes. A re-zoning such as that proposed requires a strategic assessment of potential fire behaviour over the lifetime of any likely future development. Climate change is a relevant consideration for this Planning Proposal and should be included within any Strategic Bushfire Study prepared.”