

**Submission
No 94**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

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*Submission to Inquiry into the planning system and
the impacts of climate change on the environment and communities*

Catherine Brady BA LLB LLM

Introduction

Thank you for the opportunity to make a submission. I write as a concerned citizen with a background in environmental law and more than 20 years' experience in the NSW public service – including in the Land and Environment Court and Department of Planning. I am prompted to write out of concern that the current planning system is overly biased in favour of developers and their short term profit maximisation goals. Access to justice provisions that once made the *Environmental Planning and Assessment Act 1979* a model piece of legislation have been substantially eroded over the years. The planning system is also substantially weakened by provisions that excuse non-compliance with government policies, including those designed to manage climate change impacts. While ever these systemic issues remain unaddressed, the planning system's ability to sensibly manage climate change impacts will be significantly compromised, and the potential benefits of any reforms proposed by this Inquiry will be limited.

To address this, both general and targeted reforms are required to the planning framework. Adequate resourcing of regulatory authorities is also required so staff have sufficient time and knowledge to understand and manage the detail of complex projects. If resourcing is inadequate, regulatory authorities will continue to rely too heavily on proponents for analysis of submissions etc. This will prevent them from acting as truly independent and objective decision makers, capable of delivering balanced outcomes in the public interest.

My concern about such issues has grown in the course of responding to a planning proposal (2022-658) relating to Lourdes Retirement Village (95-97 Stanhope Rd, Killara) where my father lives. I have used this as a case study to illustrate the shortcomings of the current planning system, particularly in relation to bushfire risks.

Lourdes Retirement Village Planning Proposal – a case study

The site of Lourdes Retirement Village is designated as bushfire prone land. It sits atop a ridge, is surrounded by bushland on three sides, and is at the end of a narrow cul de sac. The village operator has sought approval to redevelop the site since 2017 and bushfire risks have been a key reason why approval has not yet been granted. The initial proposal to amend the relevant Local Environmental Plan (Ku-ring-gai LEP 2015) was rejected by Ku-ring-gai Council in 2018, including due to Council's significant concern about bushfire risks. The developer then sought a rezoning review by the Sydney North Planning Panel (SNPP). A history of the proposal is available on the Ku-ring-gai Council planning proposal tracker [here](#).

“If at first you don't succeed”: planning system supports developers but not residents

In November 2018, the SNPP supported the proposal to progress to Gateway, subject to conditions (including the need to obtain Rural Fire Service - RFS - concurrence before the proposal could be publicly exhibited). Discussions regarding bushfire risks continued for nearly two years. In August 2020, a Department of Planning officer phoned to inform my father that the RFS could not support the proposal and the Department would not be forwarding it to Gateway – the proposal was “at an end”. In response to proponent pressure, however, the Department then changed its position, giving the proponent until the end of the year to come up with an approach that would be acceptable. While the proponent was given until December 2020 to develop an acceptable approach, the revised planning proposal was not submitted until August 2022. (I understand the Department of Planning is currently finalising its post-exhibition assessment report for consideration by the SNPP.)

The current proposal seeks to increase permissible building heights by 130% (from 9.5m to 22m) and increase the floor space ratio (FSR) by 150%. These changes are designed to allow a doubling of the site's resident population. In addition to rebuilding the current retirement village in vertical form (in buildings up to 6 storeys tall), the latest iteration of the proposal includes 63 non-seniors townhouses on the site's southern perimeter, adjacent to steeply sloping bushland and within the flame zone. This has reduced the amount of seniors' housing in the proposed redevelopment and created additional risks for all residents, and emergency personnel.

The length of time the process has been on foot (at least 6 years) has caused enormous uncertainty, stress and anxiety for elderly residents. The current planning system gives developers recourse to rezoning reviews when they are knocked back, and to assistance from the Planning Delivery Unit within the Department of Planning. (It is tasked with helping to progress proposals that are "stuck" in the system.) However, there is no equivalent process or team to protect the interests of residents who have to endure seemingly endless development proposal processes. This is grossly unfair. At some point, proposals that lack merit or are unsafe should be rejected outright.

Evident pressure on planning authorities to approve proposals

Even more concerning is the evident pressure on planning authorities to allow this proposal to proceed, purportedly on the basis that it will contribute to addressing the housing crisis. The Lourdes proposal will not solve the housing crisis. The latest iteration will actually reduce the number of dwellings on the site. But even if it did boost dwelling numbers, it should never be acceptable to locate 63 townhouses in the flame zone (as is currently proposed), with a minimum setback of just 3m from the fire hazard.

Retirement village developments should normally include a 100m asset protection zone – APZ – to protect vulnerable residents. Given this is an existing use site, and there is insufficient room for a 100m APZ, an alternative approach is permissible. However, a 3m APZ on this high risk site is laughable. It is even less than the setback included in the draft development control plan (DCP) that was exhibited with the planning proposal. If approved, this proposal will put residents and emergency personnel in harm's way, particularly given the lack of a defensible space to enable firefighters to protect property and residents. In addition, it would create a terrible precedent that developers elsewhere would seek to follow.

Pressure to approve the proposal is evident in correspondence published with the planning proposal (which is available on the planning portal [here](#)), and in documents made available in response to GIPA applications. Appendix M to the Planning Proposal sets out correspondence between the Department of Planning and the Chair of the SNPP, Mr Peter Debnam.¹ (In 2018, the SNPP had included a requirement that "the concurrence of the RFS be received in relation to the proposal prior to exhibition".) In April 2021, Mr Debnam stated:

"I can see our words three years ago would have made it a little difficult for the RFS. Consequently, I agree the latest RFS advice of "no objection to the Planning Proposal" satisfies our point 1 words regarding "concurrence of the RFS" with the detail to be assessed at the DA stage and final concurrence provided by the RFS at that time."

This is concerning. It appears to reveal a willingness to water down previous conditions in order to facilitate progression of the planning proposal. It also shows a lack of understanding of the process that the RFS should follow with respect to planning proposals. In accordance with the RFS document, *Planning for Bushfire Protection 2019* (PBP 2019), the RFS is required to assess proposals in detail at both the strategic planning phase (i.e. the current planning proposal stage) *and* at the development

¹ See "Appendix M – Bushfire Correspondence – Email Panel Chair" which is available on the planning portal under the "documents" tab.

application (DA) stage. It is wrong to suggest, as Mr Debnam did, that detail need only be assessed at the DA stage.

Worryingly, email correspondence between the Department of Planning and the RFS reveals a similar lack of understanding by RFS staff of this two stage process (see “Appendix M – Bushfire Correspondence – Rural Fire Service” on the planning portal). This highlights the need to ensure staff are adequately trained and resourced to administer government policy in an appropriately robust way.

Further evidence of pressure to progress the proposal is evident in correspondence made available in response to a GIPA Application to the RFS by Friends of Ku-ring-gai Environment Inc. (FOKE). Emails between Planning and RFS staff in January 2023 include comments such as “sorry to be persistent, but the pressure is coming from above the food chain”.

Developers have access, meetings; residents, community groups are being ignored

While there is evident pressure to progress the proposal as quickly as possible, there is no corresponding pressure to respond to residents’ concerns. Indeed, my father and I – along with several residents and community groups - have written numerous letters to the Minister for Planning without receiving any response. (Even the local MP, who has made representations on our behalf, has received no response to his letters.) Letters have also been sent to the Minister for Emergency Services and others. More than four months later, we are yet to receive a reply. This raises important questions about the accountability of decision makers and whether their decisions are striking the right balance between the competing interests of developers and the community.

While departmental doors seem to be always open to proponents, concerned residents or community groups are most often being ignored. So long as this pro-developer bias remains, decisions will continue to be made that privatise gains and socialise losses – both in the form of costs incurred by future governments (e.g. the financial cost of boosting emergency response capacity) and community members (e.g. economic cost of property damage or mitigation works, risk of injury or death due to climate driven natural disasters).

Failure to consider Ku-ring-gai Council submission

Of great concern is that the RFS appears to have ignored the 241 page submission by Ku-ring-gai Council which includes three expert reports on bush fire risks and evacuation issues, and concludes that it would be negligent to approve the proposal. (Council’s submission is available on the [planning portal](#) under the documents tab.)

In response to FOKE’s GIPA application, the RFS has released no documentation showing that it considered the Council submission. The documents that have been released make no mention of the submission, and the advice provided to the Department of Planning is expressed as being “based on” the proponent’s analysis alone. It appears the RFS has unquestioningly accepted the proponent’s analysis, which contains errors and relies on outdated data, and has ignored Council’s up to date and site specific modelling and analysis. This analysis contradicts the proponent’s analysis in many critical respects. Further detail is set out at Appendix A.

The RFS’ apparent failure to consider the Council submission constitutes a failure to consider relevant material, making the RFS position legally unreasonable and hence invalid as a matter of administrative law. We have sought to bring this to the attention of decision makers, so far without success. If the proposal is approved, it would appear that concerned residents’ only recourse will be to bring judicial review proceedings. This would be prohibitively expensive and is not a viable option.

Also concerning is that there are no minutes of RFS meetings with the proponent and its consultants. Such a culture is not well suited to produce decisions that, in the face of worsening climate change impacts, prioritise resident safety over the interests of developers.

We need better processes to ensure that decisions are evidence-based and balanced. Strengthening decision making frameworks must be part of your deliberations about how to improve the capacity of the planning system to manage climate change impacts.

Failure to consider climate change impacts

Several submissions in response to the Lourdes planning proposal expressed concern that climate change will increase bushfire risks. Submitters said it is inappropriate to double the population on a bushfire prone site (particularly when many of those residents will be vulnerable elderly), and to build 63 new townhouses on the very edge of the site, adjacent to the fire hazard. FOKE's submission also expressed concern that climate change was not considered in the bushfire risk analyses.

The proponent's planning consultant, FPD, has prepared a Response to Submissions. (The RFS released this in response to the FOKE GIPA Application. It can be made available to the Committee on request and will also be published on the planning portal in due course.)

Addressing concerns regarding climate change, the Response to Submissions states:

The Bushfire Consultant, Blackash, has advised the following:

The site is not considered a high bushfire risk area.² The site is in a locality that has not had widespread wildfire (nothing within 2km of the site)³ and is never likely to experience this⁴ 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).

Development will be designed and engineered to provide outcomes well above current regulations and standards. The design can adequately protect against fires up to Fire Danger Index (FDI) 100, consistent with current regulations which do not design for fires above FDI 100. **Therefore, any increase in fire weather because of Climate Change is not a consideration of the regulative (sic.) framework or fire fighting /emergency management practices.** (FPD Planning, *Response to submissions, Lourdes Retirement Village*, 23 December 2022, p42 and repeated on p71. Emphasis added.)

The Response to Submissions does not mention the Council submission's discussion of climate change. The Council submission notes the importance of taking a long term view as part of strategic planning decisions, stating:

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.

There is a particular challenge in planning emergency response strategies around vulnerable members of the community under the climate change scenario of hotter and more intense fire behaviour. ... The opportunity exists within the redevelopment on site to respond to climate change by creating a more adaptive and resilient future community.

² Council's submission refutes this assertion and characterises the site as high risk. See Appendix A.

³ This statement is wrong and is refuted by Council's submission: refer Appendix A.

⁴ This assertion is not supported by evidence and is contradicted by the Council modelling and analysis: see Appendix A. It is a surprising statement given that, during the Black Summer Fires, places burned that have never burnt before, and that records continue to be broken as climate change impacts worsen.

Climate change is a relevant consideration for this Planning Proposal and should be included within any Strategic Bushfire Study prepared. (From pp83-84 of Council submission PDF)

Given that decision makers are required to consider all submissions, and that several submissions raise climate change concerns, climate change is a factor that needs to be considered. However it is notable that the RFS document, *Planning for Bushfire Protection 2019*, does not mention climate change. This should be remedied and PBP 2019 should adopt recommendations of the Royal Commission into National Natural Disaster Arrangements. I urge the Inquiry to address this aspect of PBP 2019 as part of your recommendations.

The Royal Commission recommended: “state, territory and local governments should be required to consider present and future natural disaster risk when making land-use planning decisions for new developments” (Recommendation 19.3). The Commission also noted: “Good land-use planning decisions can mitigate future risks. Decisions about new developments should be based on the best information available on current and future risks.” (para 19.60)

It appears that, in the case of the Lourdes planning proposal, these recommendations have not been followed: the RFS position with respect to the proposal has been based on decade old data, rather than the up to date and site specific modelling commissioned by Council, and consideration of future climate change risks has been rebuffed by BlackAsh by reference to PBP 2019.

Department, not just proponent, must assess submissions

The cursory way in which the proponent’s Response to Submissions deals with the Council submission makes clear that the Response is inadequate. Yet, based on the outcome of various GIPA Applications, the Response to Submissions appears to be a key document that will inform the post-exhibition report being prepared by the Department of Planning. This is most concerning.

The Response to Submissions has been prepared by a consultant engaged by the proponent. This is not an independent party who can be expected to prepare an even handed and thorough assessment of submissions. For example, the response to submissions deals only briefly with the Council submission. It does not mention any of the detailed recommendations in the submission, nor Council’s conclusion that it would be negligent to approve the proposal. The conflict of interest is clear.

Set out at Appendix B is a table showing, with respect to just one issue, how the Response to Submissions is circular and self-serving, simply reiterating statements made by the proponent’s bushfire consultant and failing to grapple with conflicting evidence in submissions. This highlights the importance of ensuring that the Department of Planning is adequately resourced to conduct its own detailed and impartial analysis of submissions. (Documents released in response to GIPA applications suggest the Department had not undertaken such analysis, at least at the time the application was processed.)

While it is appropriate for proponents to be able to respond to submissions, the proponent’s Response to Submissions should not be the “source of truth” when it comes to preparing advice for a planning authority such as the SNPP. The Department must review all submissions in detail and reconcile conflicting material (such as that provided by the Council and BlackAsh: see Appendix A).

Provisions that excuse non-compliance weaken the planning system

There are many provisions in the planning framework (and other regulatory frameworks) that are designed to protect decisions from challenge on the basis of technical non-compliance. While preserving flexibility is a valid objective, such provisions can fundamentally weaken regulatory frameworks, including those designed to manage climate change impacts such as bushfire risks.

Two examples that have come to light in connection with the Lourdes proposal are the final clause of *Ministerial Direction 4.3, Planning for Bushfire Protection*, and s9.1(5) of the EP&A Act.

Ministerial Direction 4.3 sets out requirements for planning proposals relating to bushfire prone land. These include the provision of appropriate asset protection zones (APZ), or other performance-based measures designed to protect residents. For “special fire protection purpose” (SFPP) developments such as retirement villages, the Ministerial Direction states that APZ requirements must be complied with and that performance-based alternatives are not acceptable. (This is because SFPP developments accommodate vulnerable residents and hence appropriate APZ are essential to mitigate fire risks and enable safe evacuation.)

However, the final clause of the Direction allows a proposal to be inconsistent with the terms of the Direction if the RFS Commissioner advises that the RFS does not object to progression of the proposal. In the case of the Lourdes proposal, this clause has been relied on to enable the proposal to proceed notwithstanding its failure to include an appropriate APZ. (For SFPP developments on a high risk site such as Lourdes, an APZ of 100m would normally be required. The current proposal proposes a setback of only 3m between the proposed townhouses and the vegetation/fire hazard. This allows no defensible space and will put residents and emergency personnel at grave risk.)

Similarly, section 9.1(5) of the EP&A Act states:

A local environmental plan (or any planning proposal or purported plan) cannot in any court proceedings be challenged, reviewed, called into question, prevented from being made or otherwise affected on the basis of anything in a direction under subsection (1) or (2).

The effect of this provision is to undermine the requirements imposed by Ministerial Directions. This section was referenced by the Commissioner of the RFS in responding to stakeholder concerns that the RFS had failed to comply with Ministerial Direction 4.3. (In other words, while there may have been non-compliance with the Direction, such non-compliance is excused because of s9.1(5).)

Such provisions should be removed or heavily qualified to ensure that departures from requirements in Ministerial Directions or similar documents are:

- only permissible where absolutely necessary,
- minimised as far as possible,
- fully justified by reference to clear evidence, and
- achieve equivalent or better outcomes

Left unchanged, such provisions will continue to erode the rigour of the planning system and thwart efforts to improve management of climate change risks.

Conclusion

As I watch the fire season unfold with strong and erratic winds, record breaking temperatures, and emergency resources stretched across large numbers of uncontrolled fires, it seems unthinkable that the Lourdes planning proposal will be approved. If approved, the redeveloped village will be in place for decades and climate change impacts, which are already evident, will only get worse. Yet approval of the project is what appears likely to happen based on the experience of the last 5 years, and the information made available in response to various GIPA applications.

If we are going to make sound, evidence-based decisions to mitigate climate driven risks, we must ensure that the public interest, and the interests of residents impacted by planning proposals, are given due weight in the planning process. Currently, the process is stacked in favour of developers. When they don't like a decision, they can seek a review, get more time etc. When a resident or community group doesn't like a decision, it has few if any options. This needs to change.

We also need to ensure that the public service is resourced to discharge its duties to stakeholders in a robust and impartial manner. Over the past 20 years, there has been a gradual erosion of public service capability and capacity, and increasing reliance on analysis by proponents with strong vested interests. This must also be addressed.

Provisions that excuse non-compliance with policy requirements must also be amended so that departures from regulatory requirements are minimised rather than routinely allowed.

Finally, targeted reforms are needed to ensure that the framework governing the management of bushfire risk, including PBP 2019, grapples with the challenge of climate change and adopts a precautionary approach to future bushfire risks.

Please don't hesitate to contact me should you require clarification or further information.

I wish you well with your deliberations.

Sincerely,

Catherine Brady BA LLB LLM

Inconsistencies between BlackAsh Addendum and Ku-ring-gai Council submission

This table has been prepared to highlight how problematic it is that the RFS based its advice to the Department of Planning on the proponent's advice while ignoring the Ku-ring-gai Council modelling and analysis. While decisions such as this continue to be made, no amount of reform to climate change policies will protect the public interest. Decision making frameworks must be strengthened to ensure that decisions are sound and evidence-based.

BlackAsh Addendum	Ku-ring-gai Council Submission
<p>the subject land is “in a locality that has not had widespread wildfire (nothing within two kilometres of the site)” (p11)</p>	<p>“the site was impacted, and engulfed, by fire in the 1950’s” (p80)</p>
<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 low bushfire risk to the site” and “the site is only exposed to a relatively low bushfire risk” (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 limited run and potential. 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 under-estimated, not qualified by detailed risk assessment and does not provide an accurate context within which to assess the appropriateness of any increase in density on the site.” (p80)</p> <p>“the bushfire risk is significant” (p80)</p> <p>“there is high potential for both long and short fire runs to impact the Lourdes site” (p86)</p> <p>“potentially intense bushfire attack” (p86)</p> <p>“there is significant risk of fast-moving fire approaching the site” (p89)</p> <p>“the bushfire hazard context on bushlands immediately adjoining the Planning Proposal site are generally moderate to high 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 not clear how this conclusion has been reached from the Bushfire Threat Assessment and what evidence underpins this statement.” (p80)</p> <p>And see also p86 of the Council submission PDF.</p>
<p>The performance-based approach accepted by the RFS satisfies all bushfire safety requirements</p>	<p>“The Proposal in its current form is not compliant 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 not consistent with the Aim and Objectives 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</p>

	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 protection” (p15)</p>	<p>“The profile of the site exacerbates this situation in that buildings at the southern outer edge of the site would provide little to no protection to development within the site due to their elevation being lower than buildings in the inner northern edge of the site.” (p92)</p> <p>Note: this is clear in figure 6 of FPD's <i>Draft Site Specific Development Controls</i> document.</p>
<p>“there is no evidence to suggest the Lourdes site or broader Stanhope Road area has any significant bushfire evacuation risk” (p19, and again on p22)</p> <p>“Given the ARUP review and depth of analysis previously undertaken by KMC and others, all of which do not identify any evacuation issues associated with the Lourdes Village 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, within an area that already exceeds the recommended number of dwellings for the one exit road, is of concern as increasing the number of residents will only make evacuation more difficult 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)</p> <p>“Given the acknowledged high bushfire risk 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, satisfactory ‘unassisted’ on-site evacuation has not been demonstrated to be feasible.” (p149)</p> <p>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)</p> <p>“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 the essential bushfire protection measures (i.e., APZ)” (p15, emphasis added)</p> <p>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 PBP 2019”. In an email to RFS, BlackAsh stated: “The site can</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 no mechanism to secure this and it is possible/likely that the entire site will remain SFPP but at a higher density than existing.” (p92)</p> <p>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 rear townhouse setback of only 3m (which is half the current Ku-ring-gai DCP townhouse setback control of 6m: see p221).</p> <p>If approved, the proposed redevelopment will place townhouses in the flame zone, much closer to the fire hazard than buildings currently on site. This will provide no defensible space in which firefighters can work.</p> <p>“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 imperative</p>

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 **setback of only 4m** – 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 **is only 3m** (see FPD, *Draft Site Specific Development Controls*, 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.

requirement from a life-safety perspective." (p88)

"despite potential built form solutions, the lack of APZ and potential proximity of buildings places **firefighter safety at risk.**" (p92)

"The Planning Proposal focusses heavily on built form solutions but **does not consider the protection of life** through over-development which does not allow for separation from the hazard and provision of defensible space. **Sound management of the site is impossible given the lack of defensible space provided.**" (p96)

The proposed setback "is not considered to be appropriate separation between buildings and hazard vegetation and **does not meet the Aim and Objectives of Planning for Bush Fire Protection 2019**, particularly relating to Special Fire Protection Purpose development." (p216) [Note the APZ for a SFPP development such as a retirement village should normally be **100m, not 3m.**]

"A Court ruling found that whilst there may be a management plan to evacuate residents safely, the **safety of firefighters was equally important** 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.

Comments on proponent's Response to Submissions

The table below is designed to show, with respect to just one issue, that the proponent's Response to Submissions is circular and self-serving. It does not grapple with the many points of inconsistency between the BlackAsh advice and the Council submission: it simply repeats the BlackAsh advice. This does not advance deliberations and is no basis on which to prepare advice for planning authorities.

This highlights the importance of ensuring that the Department of Planning is adequately resourced to examine all submissions in detail and provide even handed advice to planning authorities. While ever advice to planning authorities is shaped by material such as the FPD Response to Submissions, efforts to manage climate change impacts will likely be suboptimal. This is because the profit maximising objectives of developers (which will underpin documents such as the Response to Submissions) are unlikely to align with efforts to manage climate change impacts on the community, in both the short and long term.

BlackAsh Addendum	Council Submission	FPD Response to submissions
the subject land is "in a locality that has not had widespread wildfire (nothing within two kilometres of the site)" (p11)	"the site was impacted, and engulfed, by fire in the 1950's" (p80) See also SMH extract below.	"The site is in a locality that has not had widespread wildfire (nothing within 2km of the site)" (p42)
<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 low bushfire risk to the site" and "the site is only exposed to a relatively low bushfire risk" (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 limited run and potential. Fires impacting the site would not be significant such as that expected in a high-risk area (p11)</p>	<p>"The analysis of fire behaviour provided within the Planning Proposal is under-estimated, not qualified by detailed risk assessment and does not provide an accurate context within which to assess the appropriateness of any increase in density on the site." (p80)</p> <p>"the bushfire risk is significant" (p80)</p> <p>"there is high potential for both long and short fire runs to impact the Lourdes site" (p86)</p> <p>"potentially intense bushfire attack" (p86)</p> <p>"there is significant risk of fast-moving fire approaching the site" (p89)</p> <p>"the bushfire hazard context on bushlands immediately adjoining the Planning Proposal site are generally moderate to high level" (p149)</p> <p>And see also p86 of submission.</p>	<p>The site is not considered a high bushfire risk area.... and 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). (p42)</p> <p>This statement is repeated (in full or in large part) on pages 46, 62, 66, 67, 68 of the FPD document.</p> <p>"the worst-case bushfire scenarios are expected to be isolated, quickly identified and of limited run and potential. Fires impacting the site would not be significant such as that expected in a high-risk area." (p67)</p>