

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 17 October 2023 11:58 PM  
**To:** Brendon Roberts  
**Cc:** [REDACTED]  
**Subject:** Re: Lourdes retirement village - grounds for reviewing RFS advice

Many thanks Brendon, I do appreciate you considering my email and forwarding it to the RFS.

Just one final note about the FPD response which I want to bring to your attention so that your advice to the SNPP does not incorporate flawed material.

I am concerned that the FPD response (among other things!) fails to mention the suggestion to move the development away from the bushfire hazard, back to First Ave, so as to provide a decent defensible space and mitigate the risk of fire spread (see p88 of the Ku-ring-gai Council submission). This recommendation is not even mentioned in the high level FPD response but including a defensible space is critical to the safety of both emergency personnel and residents. Please consider this recommendation, even though FPD did not.

I am also concerned that the FPD response seeks to give the impression that the Lourdes site is low risk (on the alleged basis that it won't be impacted by intense fires and because significant firefighting resources will be available). This is central to the question of whether it is appropriate to approve the planning proposal. Please be aware that the assertion that Lourdes is low risk lacks an evidence base and is contradicted by Council modelling.

From the documents I have seen, the advice first appears in Corey Shackleton's 16 November 2021 email to DPE and RFS. He says:

While not part of the assessment criteria, given its location, **any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind and considerable fire brigade intervention** would likely see significant firefighting resources available at the site.

Mathew Smith then repeats the phrase in his 18 January 2022 email to DPE. (He attributes the advice to Mark Sugden of the RFS even though it is clear it comes from BlackAsh.)

Whilst not part of the formal assessment criteria, in consultation with Hornsby Ku-Ring-Gai District Manager, Superintendent Mark Sugden, **any bush fires impacting the site would be burning under an easterly/south easterly influence (typically cooler temperature)**. As the site is within Fire District and adjacent to Rural Fire District, the site would experience a **significant weight of attack from FRNSW/NSW RFS** (ground based and potentially airborne assets), which would minimise fire behaviour.

The BlackAsh Bushfire Assessment dated 14 June 2022 states at p5:

While not part of the assessment criteria, given its location, **any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind and considerable fire brigade intervention** would likely see significant firefighting resources available at the site.

However the Council submission notes that this statement lacks an evidentiary base. It says at page 80:

No conclusion is reached within the Blackash Bushfire Threat Assessment regarding the potential bushfire behaviour anticipated to impact the site. 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.**

And at p62 of the Council submission:

The assessment of the fire behaviour risk carried out within this review, and the parallel assessment undertaken by RedEye fire modelling engaged by Ku-ring-gai Council, are **inconsistent with the Planning**

**Proposal which states that “any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind”.**

Despite this, the FPD response to submissions just keeps repeating the same BlackAsh assertion that the site is low risk. It fails to acknowledge that Council's modelling contradicts this advice, nor does it acknowledge Council's comment that the BlackAsh advice lacks an evidence base. Importantly, FPD attributes the advice to Mark Sugden and the RFS. See p46 of the FPD document which states:

The bushfire consultant, Blackash, has advised the following: The site is not considered a high bushfire risk area. The **comments provided on 18 January 2022 by Fire Control Officer, Superintendent Mark Sugden** confirm this.... The **comments about fires impacting the site was provided by the NSW RFS on 18 January 2022** and stated: “Whilst not part of the formal assessment criteria, in consultation with Hornsby Ku-Ring-Gai District Manager, Superintendent Mark Sugden, **any bush fires impacting the site would be burning under an easterly/south easterly influence** (typically cooler temperature). As the site is within Fire District and adjacent to Rural Fire District, the site would experience a **significant weight of attack** from FRNSW/ NSW RFS (ground based and potentially airborne assets), which would minimise fire behaviour.”

While FPD is seeking to characterise this advice as coming from the RFS, it is important to recognise that *the source of the advice is in fact BlackAsh*. It is also important to acknowledge Council's concern that this statement lacks an evidence base, and finally that this assessment is contradicted by Council's detailed modelling and analysis (see table in earlier email).

I trust that your advice to the SNPP will give an accurate assessment of the degree of fire risk associated with the Lourdes site, and not simply rely on the FPD response.

Sincere thanks once again for considering the above as you finalise your advice to the SNPP.

Regards,

Katy

On Tue, Oct 17, 2023 at 3:08 PM Brendon Roberts <[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)> wrote:

Hi Katy

Many thanks for your email.

We'll consider the points that you have raised and I've shared your email with the NSW RFS.

Kind regards

Hi Brendon

Thank you for your email. I think the points I have been trying to make have been misunderstood and I think they are significant enough that, if the SNPP approves the proposal, its decision will be open to challenge. Much more importantly, lives will be put at risk. I have sought to clarify matters below.

*Please ensure that your advice to the SNPP gives proper consideration to the Ku-ring-gai Council analysis. So far, the Council submission has been ignored by BlackAsh and the RFS, and only dealt with in a most cursory way by FPD. It should be carefully examined by Departmental staff - it is not good enough to rely on the proponent's consultants to respond to it.*

**Consideration of Ku-ring-gai Council submission:**

You assure me "that the NSW RFS were provided with the proponent's full Response to Submissions (dated 23 December 2022), which included consideration of Council's submission on bushfire (at section 6.3)."

I have read both the Council submission and the FPD response to submissions. I can attest that the FPD response simply reiterates BlackAsh's views and fails to acknowledge that the Council submission contradicts BlackAsh in critical respects (see table below). In addition, it deals only with the most high level recommendations in the Council submission. This is not surprising: like BlackAsh, FPD is engaged by the proponent. As such I would not expect FPD to discuss the Council analysis in detail since that analysis does not support the proponent's development objectives. On the contrary, the **Council submission says twice that it would be negligent to approve the proposal. FPD omits to mention this.**

The table below seeks to show (with respect to just one issue) how the FPD response simply restates BlackAsh advice and fails to deal with the fact that the Council submission contradicts that advice. (This table is an extract from the one included in my email to you of 29 September, 3.16am. I am really glad to hear you are looking at this material. I took the trouble to prepare it because the FPD response failed to do what needs to happen: ie examine the submissions in detail and highlight areas where BlackAsh's advice is contradicted by Council.) **These inconsistencies must be considered so that the Department can provide legally reasonable and hence valid advice to the SNPP**, noting that failure to consider relevant material can render a decision invalid.

BlackAsh Addendum (on which RFS Feb '23 advice is based)	Ku-ring-gai 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)  SMH extracts included in various other submissions also contradict BlackAsh's assertion.	"The site is in a locality that has not had widespread wildfire (nothing within 2km of the site)" (p42)
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)  "given the relatively low bushfire risk to the site" and "the site is only exposed to a relatively low bushfire risk" (both p16)	"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)  "the bushfire risk is significant" (p80)	"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>"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>"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 excerpt from p86 below table.</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>
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While FPD, BlackAsh and the RFS have chosen not to acknowledge or deal with Council's modelling and analysis, **the Department cannot ignore this material**. Considering the Council material in detail means you cannot simply accept assertions made by the proponent's consultants when those assertions lack an evidentiary base and are contradicted by Council's detailed, site-specific and up to date modelling.

Council is an independent entity. The proponent's consultants are not. Council sent a copy of its submission to the RFS in October 2022. **Even if the RFS has failed to closely examine the Council submission, the Department must do so in order to prepare sound advice to the SNPP**. You have a duty of care to the public and cannot simply rely on circular, self-reinforcing advice from the proponent's bushfire and planning consultants. **Please ensure that the Council analysis and conclusions are properly reflected in your advice to the SNPP**. It is wholly inadequate to rely on the FPD response to the Council submission.

#### **Delegation by the RFS Commissioner:**

You note that I will need to ask the NSW RFS to confirm their specific agency delegations. While I have also written to the RFS regarding this issue, the point is not whether there is an appropriate delegation in place. Rather, the wording of Ministerial Direction 4.3 is such that the Commissioner cannot delegate his role under this clause and must personally sign off on non-compliant proposals.

Brennan CJ states "the duty of a court is to give the words of a statutory provision the meaning that the legislative is taken to have intended them to have": *Project Blue Sky v ABA* [1998] HCA 28; 194 CLR 355, at [78]. The drafters of Ministerial Direction 4.3 turned their minds to the question of delegation. They expressly conferred on the Planning Secretary (previously the Director General of Planning) the ability to delegate his or her role but did not confer the same right on the RFS Commissioner. To ignore this and assume that the Commissioner can nonetheless delegate his role would be to ignore the drafter's clear decision to enable only the Planning Secretary to delegate his or her role.

As such, it is not a question of whether the RFS has appropriate delegations in place: rather, the point is that the Commissioner cannot delegate this function. The advice from Mr Mark Sugden does not comply with the Ministerial Direction and as such the Department should not accept it. (In addition to the fact that the advice was not signed by the Commissioner, it also fails to acknowledge that the proposal is non-compliant. This is another reason why the advice fails to comply with the Direction which requires the advice to be "*to the effect that, notwithstanding the non-compliance, the NSW Rural Fire Service does not object to the progression of the planning proposal*".)

#### **Publishing documents on the portal:**

You note that "the Department will publish the post-exhibition report, together with all the submissions and proponent's Response to Submissions, in advance of the Panel meeting".

In its 4 September 2023 decision on FOKE's GIPA application, the RFS said: "other documents (eg. 6A-2 [FPD response to submissions], 6A-3 [View Analysis], 6A-5 [Bushfire advice], 6A-7 [Traffic advice]) will, *on the advice of DPE, imminently be made available on the Planning Portal* website for the Lourdes Retirement Village Planning Proposal".

*Please publish these documents now.* This planning proposal has been plagued by inadequate information prior to public exhibition. There should be no reason to delay publication of these documents on the portal. Publishing them just ahead of the SNPP meeting precludes proper scrutiny (particularly given the amount of material). I hope and trust that this is not the Department's intention and urge the Department to do now what it told the RFS was "imminent" more than 6 weeks ago.

#### **Proposal will reduce both total dwellings and seniors housing**

One final thing. When we spoke on 27 September, you commented that the NCAT decision (about which I emailed on 17 August) was not relevant to the planning proposal. However I have just realised that it is directly relevant to the issue of whether the proposal will increase the number of dwellings on the site.

The May 2022 **Gateway Determination Report** says on page 12 that the proposal will deliver "an additional number of 27 aged care beds and 47 dwellings than currently exists (sic) on the site". The latter **statement is wrong**. While it is true that the proposal will boost aged care beds by 27 it is not true that there will be an extra 47 dwellings on the site. In fact there will be a net reduction of 2 dwellings. This is because the report fails to include in its calculations the 49 units in the serviced apartment building.

As at May 2022 when the Gateway Determination Report was written, the serviced apartment building was closed. However since then, NCAT found that the decision to close the building breached several provisions in the Retirement Village Act and ordered Levande to repair and reinstate the building. That process is now underway. As such, the Gateway Determination Report is incorrect to suggest that the proposal will add 47 dwellings. In fact, there will be a **net reduction of two dwellings**. I trust that this will be reflected in your advice to the SNPP.

I also trust that you will not repeat the SNPP's 2018 finding that the proposal has strategic merit due to "expanded and improved aged care facilities in an existing village". This no longer holds: the current **proposal leads to a net reduction in seniors accommodation and removes one level of care** (ie the serviced apartments).

It is notable that, in the FPD response, Levande does not dispute submitters' complaints that the proposal leads to a reduction in seniors housing: Levande simply states that the proposal will "renew" the existing village. See page 53: in response to concern that "the proposal reduces the number of non-Residential Aged Care seniors housing dwellings by 10%", Levande states: "The proposal seeks to renew ageing independent living with modern housing which better meet emerging seniors housing market." See also p56 where, again, Levande does not dispute the criticism that the proposal will reduce seniors housing and simply states it will renew the village. Given that the **proposal will reduce both seniors housing and total dwelling numbers on site**, it is unclear what strategic merit this proposal now has.

This proposal will put residents and emergency personnel in grave danger, solely for the sake of developer profits. To reiterate Council's assessment, it would be **negligent to approve this proposal**.

Many thanks for considering the above. Please don't hesitate to contact me if you require any clarification.

Sincerely,



**Lourdes Retirement Village Planning Proposal**  
**Notes following discussion with Brendon Roberts – 27 September 2023**

**RFS advice should not be accepted**

While the RFS has provided its February 2023 advice to you, there are several reasons why the Department should not accept this advice. In short:

- It is not signed by the Commissioner as required by clause 7 of Ministerial Direction 4.3.
- It does not acknowledge that the proposal fails to comply with the Ministerial Direction (as required by clause 7)
- It is legally unreasonable (and hence invalid) because it fails to consider all relevant material (in particular, the detailed analysis provided by Ku-ring-gai Council which contradicts the BlackAsh addendum on which the RFS advice is based).

Commissioner himself must sign

While the Commissioner has a general ability to delegate under s14 of the Rural Fires Act, the wording of clause 7 is specific in that it contemplates that the DG of Planning may delegate his or her role under clause 7, but includes no equivalent permission for the Commissioner to delegate his or her role. The intent is clear: the Commissioner personally must sign off on non-compliant proposals.

To ignore this and simply rely on the general delegation power in s14 would be to ignore the clear intention of the drafters of a legal instrument which is binding on public authorities under s9.1 of the EP&A Act. This means that the general power of delegation is not available in this instance. (The decision of the NCAT Appeal Panel in *Levande v Brady* has useful information re statutory interpretation.)

Commissioner must acknowledge the non-compliance

Clause 7 requires the Commissioner to provide written advice “to the effect that, notwithstanding the non-compliance, the NSW Rural Fires Service does not object to the progression of the planning proposal”. In other words, the approval must acknowledge the fact that the proposal is non-compliant. The RFS advice of February 2023 does not do this and this is another ground on which to say that it fails to comply with clause 7 of Ministerial Direction 4.3. As such, it would be unlawful for the Department and the SNPP to rely on this advice.

RFS advice fails to consider relevant material and hence is legally unreasonable

Under administrative law, failure to take into consideration all relevant factors can make a decision legally unreasonable and hence invalid. The February 2023 advice from Mr Sugden is described as being ‘based on’ the December 2022 BlackAsh addendum. No material other than the Addendum is referenced. The Addendum contains numerous errors and relies on old Council analysis from 2012 and 2015 which is currently being updated. The Addendum makes several factually incorrect statements and is directly contradicted by the Ku-ring-gai Council submission (see table below).

Council’s submission is not mentioned in either the BlackAsh Addendum or the RFS advice. Failure to take into account the information in the Ku-ring-gai Council submission renders the RFS advice legally unreasonable and hence invalid. Even if the RFS did consider Council’s submission before providing its advice, the advice it has given is arguably not legally reasonable.

While I encourage DPE staff to read the whole Council submission, a good place to start is the Peer Review by CR Bushfire – see in particular the Exec Summary at pages 62-63, analysis of fire risks on p77, 80, 81 (fire run map), 83, 85 (BAL map), 86, 88 (which includes the RFS endorsed suggestion to move all development back to First Ave), 90. (Note all page references are to the Council submission PDF as a whole, noting it comprises many individual documents within it.)

Inconsistencies between the BlackAsh Addendum and Council submission are outlined below (note this is far from comprehensive).

<b>BlackAsh Addendum</b>	<b>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 site was impacted, and engulfed, by fire in the 1950’s” (p80) See also SMH extract below.
<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 excerpt from p86 below table.</p>
The performance-based approach accepted by the RFS satisfies all bushfire safety requirements	<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. (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>
“the unique layout and construction of the site will provide for radiant heat protection” (p15)	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

	<p>northern edge of the site. (p92)</p> <p>This is clear in figure 5 of the FPD response to submissions document.</p>
<p>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)</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, <b>satisfactory ‘unassisted’ on-site evacuation has not been demonstrated to be feasible.</b> (p149)</p> <p>See also the Bushfire Evacuation Risk Assessment at pp158-170.</p>

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.

The above table illustrates that BlackAsh (and now FPD in its response to submissions) are seeking to ignore the detailed concerns in the Council submission. This is not surprising. Both act for the proponent. However **Council's analysis cannot be ignored** - either legally or, I hope, morally. As Council says, it would be negligent to approve this proposal given the risks to residents and emergency personnel.

#### **FPD response to submissions cannot be relied on**

Having reviewed the GIPA-ed documents, I am very concerned that the **FPD Response to submissions is grossly inadequate and contains errors.** For example, in "responding" to the Ku-ring-gai Council submission, the FPD document deals only with the high level recommendations made and ignores more detailed recommendations (eg there is no mention of the suggestion in the Council submission that development should stop at First Avenue in order to provide a defensible space: see p88 of the Council submission).

The FPD document's key messages re bushfire (based on BlackAsh advice) are:

- the site has not been impacted by widespread fire before (wrong: see above)
- the bushfire risk is low (Council's experts disagree)
- the proposal satisfies all bushfire safety requirements (Council's experts disagree)

The FPD document repeatedly downplays the degree of fire risk – which is a central question in considering the planning proposal. For example, on p42 of FPD's Response to submissions, BlackAsh is quoted as saying:

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

This statement is repeated (in full or in large part) on pages 46, 62, 66, 67, 68 of the FPD document. Page 67 further states:

4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

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**From:** [REDACTED]  
**Sent:** Friday, 29 September 2023 5:16 PM  
**To:** Brendon Roberts <[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)>; Brendan Metcalfe  
<[Brendan.Metcalfe@planning.nsw.gov.au](mailto:Brendan.Metcalfe@planning.nsw.gov.au)>  
**Subject:** Re: Lourdes retirement village - grounds for reviewing RFS advice

Apologies - one more thing. The RFS notice of decision on the GIPA request states that DPE has advised that a number of documents will shortly be uploaded to the planning portal.

I have just checked and this has still not occurred. I urge you to upload the FPD documents etc as soon as possible so that stakeholders can see how their submissions have been responded to. This is particularly important given the paucity of information made available as part of the public exhibition process. Much of this additional material (view analysis etc etc) should have been available to inform the exhibition process but was not provided by the proponent.

I hope that you will facilitate a more transparent process going forward by uploading the documents as soon as possible.

Many thanks and have a good weekend.

Regards

[REDACTED]

On Fri, Sep 29, 2023 at 5:00 PM [REDACTED] wrote:

Hi again Brendon and Brendan

Thinking on this further, I realise that the GIPA-ed documents from the RFS show that **there was no consideration by RFS staff of the Ku-ring-gai Council submission at all**. (I am happy to provide a link to the documents that were released if you would like to look at them yourselves.)

The GIPA request was specifically seeking this, hence targeting the period between October 2022 (when the Council submission was made) and February 2023 (when the final RFS advice was provided to the Department). **No documentation was provided indicating that there was any RFS consideration of, or discussion about, the Council submission**. This is consistent with the February 2023 advice being described as "based on" the BlackAsh addendum alone.

This is a major failing and, as I said, I believe it makes the RFS advice legally unreasonable. In my email below, I said I thought it "highly problematic" for the Department of Planning to accept the RFS advice. I now realise that "highly problematic" is not strong enough because, rather than just hypothesising about what was in the minds of RFS staff, we can now see from the records that they did not consider or discuss the Council submission. Thus, they have failed to consider relevant material which contradicts the material on which they did rely.

Given that you are now aware of the errors in the BlackAsh analysis, and the many instances where the Council's detailed submission contradicts the BlackAsh assertions, the Department cannot and must not accept and rely on this flawed RFS advice. It must make further enquiries and ensure that appropriately informed RFS advice is obtained that complies with Ministerial Direction 4.3.

Regards

[REDACTED]

On Fri, Sep 29, 2023 at 10:55 AM Brendon Roberts <[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)> wrote:

I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

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**From:** [REDACTED]  
**Sent:** Friday, 29 September 2023 3:16 AM  
**To:** Brendon Roberts <[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)>  
**Cc:** Brendan Metcalfe <[Brendan.Metcalfe@planning.nsw.gov.au](mailto:Brendan.Metcalfe@planning.nsw.gov.au)>  
**Subject:** Lourdes retirement village - grounds for reviewing RFS advice

Dear Brendon

Many thanks for your time on Wednesday afternoon. By way of follow up, please find attached notes re some of the matters we discussed. (Apologies for the delay – covid has slowed me right down.)

My main concerns are that:

- the RFS advice is legally unreasonable and should not be accepted (relying as it does on advice from BlackAsh that contains errors and/or lacks an evidentiary base), and
- that the FPD response to submissions is inadequate and cannot be relied on.

Both the RFS and FPD have failed to adequately consider the critically important Ku-ring-gai Council submission and its analysis of fire risks.

I implore you to consider this material further before finalising your post-exhibition report. There are several grounds on which to question the RFS advice and I urge you to do so. Accepting the RFS advice, given the material before you, is highly problematic.

Many thanks for reading the attached. I hope it is helpful.

Best regards

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 17 August 2023 2:37 PM

[REDACTED]  
[REDACTED]  
**Cc:**  
**Subject:** PP 2022-658 Lourdes retirement village: outcome of Levande appeal and concern re latest BlackAsh analysis, RFS position

Dear Brendan, Brendon and Renee,

I am writing on behalf of my father Frank Brady, who is currently unwell, to give you an update regarding legal proceedings relating to Lourdes Retirement Village (which is the focus of PP 2022-658). We also wish to express our grave concern about the latest BlackAsh bushfire analysis, and the RFS advice based on this analysis.

**NCAT finds that Levande breached conditions of consent and several RV Act requirements, orders repair and reinstatement of serviced apartment building**

Brendan I think you are aware that my father lodged an application with the NSW Civil and Administrative Tribunal (NCAT) in March last year when the Lourdes village operator suddenly closed the serviced apartment building,

purportedly because the building had suffered termite and water damage and was no longer habitable. I represented him at the hearing as dad was not well enough to participate.

We were successful at first instance, with NCAT finding that Levande had breached several provisions of the Retirement Villages Act as well as the terms of the consent conditions imposed by Ku-ring-gai Council in 1982. The Tribunal ordered that a vote of residents take place and that, if residents did not vote in support of the building's closure, that the building be reinstated by 31 January 2023. The Tribunal also found that the operator had engaged in tactics of "deliberate delay" and that "the owner gave redevelopment a higher priority than maintenance and did not let accuracy get in the way of the redevelopment objective".

The required 75% of residents did not vote in favour of closure but, rather than reinstate the serviced apartment building as per the NCAT order, Levande appealed. This appeal has now been dismissed and Levande has been given until 17 November 2022 to repair and reinstate the building. You can find the decision of the Appeal Panel here: <https://www.caselaw.nsw.gov.au/decision/189625786e87bd977fe5d76c>

### Concerns re latest BlackAsh analysis and RFS position

We also want to express our concern about the latest BlackAsh advice (which was completed in December 2022 but, concerningly, only published on the planning portal in early June), and the RFS' February 2023 advice which is expressed to be "based on the additional work and documentation provided by BlackAsh Bushfire Consulting" (ie the "Addendum" of December 2022).

There are many errors in the BlackAsh Addendum which compound our concerns with the so called "design and compliance strategy" – please see further comments in the attached.

In short, BlackAsh relies on old Ku-ring-gai Council modelling (which is currently being updated) to support its argument that the proposal can safely proceed. It completely ignores the more recent analysis done by Council in 2022 and significantly downplays the fire risks that can be expected to impact the Lourdes site. The Addendum wrongly states that the locality "has not had widespread wildfire" and makes the bold claim that the Lourdes site is "never likely to experience" 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)." This is directly contradicted by CR Bushfire's peer review of the planning proposal which is included in Council's submission. It is also a highly imprudent thing to say given that climate change is driving more rapid, intense, record-breaking fires across Australia and around the globe.

The Addendum refers to local firefighting resources as including Killara RFB (see p10 of the Addendum) even though this fire station is *yet to be built*. It also states (p345):

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.

This is just wrong. The KMC submission highlighted many serious evacuation issues associated with the Lourdes village, including independent expert analysis of same. As such, **it is wrong and highly inappropriate to suggest that there are no evacuation issues and that further analysis is not required.**

The RFS has apparently ignored the up to date analysis in the Council submission and states that it has based its February 2023 advice on the latest information from BlackAsh. This constitutes a failure to consider all relevant material and hence, as a matter of administrative law, renders the advice unlawful. (If the RFS did consider material other than the BlackAsh material, there is no evidence of this. The site specific and up to date analysis provided by Council contradicts the BlackAsh addendum which relies on decade old data. As such, it is not reasonably open to

the RFS to accept the BlackAsh analysis without addressing the many ways in which that analysis is contradicted by more recent data and modelling.)

We call on you to reject the RFS advice, and planning proposal 202-658. We note that Levande could redevelop the site now based on the existing LEP controls, together with the Housing SEPP's bonus height and FSR provisions for seniors housing. This would obviate the need to amend the LEP and prepare a new DCP.

The planning proposal puts lives at risk. Please prioritise resident and emergency personnel safety ahead of profit and reject this proposal. In a coronial inquest, Departmental staff and the Minister for Planning will be held to account if this proposal is approved and lives are lost.

We thank you for your time and look forward to your reply.

Regards,

[Redacted signature]

Dear Mr Metcalfe,

**PP-2022-658 / Lourdes Killara**

Additional material relating to this matter, uploaded 7 June 2023 (post-exhibition) to NSW Planning's portal included:

- a)** Bushfire-related Blackash Consultancy material, authored by Corey Shackleton at the behest of proponent Levande (EQT Infrastructure), and dated 22 December 2022.
- b)** Revised (2-page) NSW Rural Fire Service (RFS) input, authored by Mark Sugden, RFS, and dated 8 February 2023.

Pleased to receive a response from you to each of the following:

- 1) What accounts for the marked time lapse between the authoring of such material and its public availability via the Planning portal?
- 2) Was the above RFS-authored material at the behest of NSW Planning?
- 3) Has NSW Planning instructed the RFS to similarly provide input on other key material, such as the peer-reviewed research and output by CR Bushfire (dated 24 October 2022, and commissioned by Ku-ring-gai Council)?
- 4) Has NSW Planning instructed the RFS to undertake an independent site analysis of Lourdes and its surrounding bushland context?
- 5) Have you or anyone at NSW Planning seen fit to have the RFS to review and similarly respond to other material, including the above CR Bushfire material of 24 Oct. 2022? If 'no', why not?

Within an identified bushfire-risk context, the proponent seeks (among other measures):

- A change of rezoning from R2 Low Density Residential to R3 Medium Density Residential.
- A greater than a doubling of floor-space ratios, from 0.3:1 to 0.75:1.
- A change of building heights, from 9.5 metres to 22 metres.
- A marked increase in the number of buildings.
- A dramatic increase in the number (and types) of residents, staff & support/ancillary services.
- Clearing of natural bushland, impacting flora & fauna, habitat, and biodiversity.

Such most recent output by the RFS, in a seeming change of stance, now seemingly condones the Blackash output and the above-listed measures.

The Blackash material appears, notably, to characterise the RFS as having provided a go-ahead on Ministerial direction 9.1 in relation to the proposal.

By contrast, the CR Bushfire study highlights procedural and methodological shortcomings of Blackash's site study (undertaken back in 2020), and draws attention to any go-ahead or



approval for Ministerial 9.1 as inappropriate. It also highlights the unsuitability of the site and its makeup as inappropriate for the proponent's hoped-for outcomes.

With global warming and climate unpredictability irrefutable givens, and with the focus on the confluence of the bush, bushfires, and habitation, the question of how the risks - tabled by the proponent and Blackash as 'reasonably foreseeable' - have managed to become so debased.

The Blackash written assertion the Lourdes site is 'never likely to experience a significant bushfire impact' (Corey Shakleton, 'Addressing NSW RFS Comments', P.11, 22 Dec. 2022) appears, at the least, misguided.

Similarly relevant is how a performance, rather than evidence-based approach appears to have taken hold of the bushfire risk assessment associated with the proposal.

The residential community at large is aware of the risks associated with Levande's hoped-for outcomes, and has voiced its concerns via a petition, recently submitted to NSW Planning. Pleased if you could confirm having sighted and read such.

In the event that NSW Planning were to approve the rezoning and go-aheads the proponent seeks - resetting parameters and creating a precedent - a key question arises: would you and or NSW Planning be comfortable with a potential charge of criminal negligence given the already-documented risks inhabiting PP-2022-658?

Kind regards,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

With my email to you of Tuesday this week, the reference to the EHG Advice 'of 22 September 2022' should naturally have read '27 September 2022' (the '22' a typo, accidentally materialising from 2022).

Since dispatch, the inclusive Cc: email address for Planning's Lousie McMahon was found, by virtue of an auto-reply, to be out. If her correct email address is able to be communicated, pleased to receive.

Kind regards,



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**From:** [Redacted]  
**Sent:** Tuesday, 29 November 2022 3:59 PM  
**To:** Shruthi Sriram <[shruthi.sriram@dpie.nsw.gov.au](mailto:shruthi.sriram@dpie.nsw.gov.au)>  
**Cc:** Brendon Roberts <[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)>; [office@roberts.minister.nsw.gov.au](mailto:office@roberts.minister.nsw.gov.au) <[office@roberts.minister.nsw.gov.au](mailto:office@roberts.minister.nsw.gov.au)>; [David.McNamara@planning.nsw.gov.au](mailto:David.McNamara@planning.nsw.gov.au) <[David.McNamara@planning.nsw.gov.au](mailto:David.McNamara@planning.nsw.gov.au)>; Bec Smythe <[Rebecca.Smythe@planning.nsw.gov.au](mailto:Rebecca.Smythe@planning.nsw.gov.au)>; [Louise.McMahon@planning.nsw.gov.au](mailto:Louise.McMahon@planning.nsw.gov.au) <[Louise.McMahon@planning.nsw.gov.au](mailto:Louise.McMahon@planning.nsw.gov.au)>; [metrocentralnorth@dpie.nsw.gov.au](mailto:metrocentralnorth@dpie.nsw.gov.au) <[metrocentralnorth@dpie.nsw.gov.au](mailto:metrocentralnorth@dpie.nsw.gov.au)>; [office@roberts.minister.nsw.gov.au](mailto:office@roberts.minister.nsw.gov.au) <[office@roberts.minister.nsw.gov.au](mailto:office@roberts.minister.nsw.gov.au)>; [angela.taylor@environment.nsw.gov.au](mailto:angela.taylor@environment.nsw.gov.au) <[angela.taylor@environment.nsw.gov.au](mailto:angela.taylor@environment.nsw.gov.au)>  
**Subject:** Lourdes Retirement Village Planning Proposal PP-2022-658

Hi Shruthi,

**PP-2022-658 / Lourdes, Killara**

With your 21 November advice about the RFS submission having recently been uploaded to the planning portal, subsequently acknowledged, it has become apparent additional documentation has similarly been uploaded to same, consistent with your advice regards other agency submissions being published.

Such looks to include (among other material) the EHG Advice of 22 September 2022, with cover letter by Susan Harrison (Senior Team Leader, Planning - Greater Sydney Branch / Biodiversity and Conservation), highlighting multiple shortcomings on PP-2022-658 (and initiatives to redevelop the site) from such a perspective.

Such material coming to light post-exhibition (i.e. after 27 Sept.) and following the advertised window for public-response submissions, the question (at least) of whether such exhibition and allied processes are/were in any way possibly seen to be compromised arises.

If you or colleagues have any response on such, pleased to receive.

[REDACTED]

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**From:** [REDACTED]  
**Sent:** Saturday, 24 June 2023 5:34 PM  
**To:** Louise McMahon  
**Cc:** Kelly McKellar; Brendon Roberts; Brendan Metcalfe; Renee Ezzy  
**Subject:** Re: Queries / PP-2022-658 (Lourdes)

Hi Louise,

**Queries / PP-2022-658 (Lourdes)**

Thank you for your email of 22 June, in reply to the questions sent 20 June to Brendan Metcalfe.

Also, for the Planning personnel update, which follows the earlier staffing-change advice of 16 December 2022 from Brendon Roberts.

You state the December-2022 BlackAsh addendum material and the February-2023 RFS material uploaded to the Planning portal this month were by virtue of 'a specific request from a community member' (singular).

Brendon Roberts had advised, on 13 June and in his general reply to similar questions, such had been 'in response to requests from the local community' (plural), however.

Why the uploading of such material - in tandem with a proposal seeking to alter the Ku-ring-gai LEP, zoning, building heights, floor ratios, population densities and the like, coupled with dispensation of the usually-required APZ - needs such request (or requests) from the community to enable its public accessibility is one thing.

How any member of the community would be aware of such material's existence prior to such uploading, seemingly a prerequisite for such request and subsequent public availability, is another.

Related concerns encompass various issues on which I am seeking independent input.

Kind regards,

[REDACTED]

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**From:** Louise McMahon <louise.mcmahon@dpie.nsw.gov.au>

**Sent:** Thursday, 22 June 2023 8:28 AM

**Cc:** Kelly McKellar <kelly.mckellar@dpie.nsw.gov.au>; Brendon Roberts <brendon.roberts@planning.nsw.gov.au>; Brendan Metcalfe <Brendan.Metcalfe@planning.nsw.gov.au>; Renee Ezzy <renee.ezzy@dpie.nsw.gov.au>

**Subject:** Queries / PP-2022-658 (Lourdes)

<[metrocentralnorth@dpie.nsw.gov.au](mailto:metrocentralnorth@dpie.nsw.gov.au)>; Louise McMahon <[louise.mcmahon@dpie.nsw.gov.au](mailto:louise.mcmahon@dpie.nsw.gov.au)>;  
Renee Ezzy <[renee.ezzy@dpie.nsw.gov.au](mailto:renee.ezzy@dpie.nsw.gov.au)>; Jonathan Saavedra (Planning)  
<[jonathan.saavedra@planning.nsw.gov.au](mailto:jonathan.saavedra@planning.nsw.gov.au)>; Shruthi Sriram <[shruthi.sriram@dpie.nsw.gov.au](mailto:shruthi.sriram@dpie.nsw.gov.au)>;  
[mckee@krp.nsw.gov.au](mailto:mckee@krp.nsw.gov.au); [davidson@parliament.nsw.gov.au](mailto:davidson@parliament.nsw.gov.au)  
**Subject:** Queries / PP-2022-658 (Lourdes)



**PP-2022-658 (Lourdes, Killara)**

Pleased if you would personally respond to the following queries:

**1)** Why was the following material made available on 7 June 2023 when such could (and arguably should) have been made available earlier and in response to demonstrated public interest, by way of inclusion in the public exhibition?

a) Blackash Consultancy material on behalf of Levande, authored by Corey Shackleton, 22 December 2022.

b) RFS material authored by Mark Sugden, 8 February 2023.

**2)** Was the above RFS 'review' output at the behest of NSW Planning?

**3)** Has NSW Planning instructed the RFS to similarly respond to the peer-reviewed 24 October 2022 output by CR Bushfire and Australian Bushfire Protection Planners - and or the KRG Submission of October 2022 of which it forms a part - which alongside markedly different findings, highlights multiple shortcomings with Blackash methodology and outcomes?

**4)** Has NSW Planning instructed the RFS to undertake any Lourdes site/context study of its own? If not, why not?

**5)** Has all PP-2022-658-related material and correspondence (including that between the RFS, Blackash, Levande, NSW Planning, and other relevant domains) been uploaded to the NSW Planning portal?

**6)** What accounts for PP-2022-658 having progressed to the point it has when such dispenses with what is the standard prerequisite in such context as this, under Ministerial Direction 4.3, of an appropriate Asset Protection Zone (APZ) - instead opting for an unmodelled and untested performance-based approach to bushfire management in what is a limited-access, bush-flanked, fire-prone site?

**7)** Has NSW Planning acknowledged and or examined available material highlighting the lack of site-specific and strategic merit of PP-2022-658, as outlined in various key analyses to date? If yes, what were its findings and conclusions?

**8)** In the case where the proponent's hoped-for outcomes saw approval, who would take responsibility for any charge of negligence arising out of any bushfire-related event

where residents, firefighters, evacuation personnel, ancillary staff, etc. were subject to injury or death?

I look forward to hearing from you by this week's close of business (Friday, 23 June, 2023).

Kind regards,

[Redacted signature block]

[Redacted signature block]

**To:** [Brendon Roberts](#)  
**Cc:** [Brendan Metcalfe](#); [frankbrady954](#)  
**Subject:** Re: URGENT: Re PP-22-658 Lourdes Retirement Village - grave concern re bushfire risks  
**Date:** Tuesday, 6 June 2023 2:42:47 PM  
**Attachments:** [image001.png](#)  
[image020.png](#)  
[image021.png](#)  
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[image007.png](#)

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Dear Brendon and Brendan

I am sending this email on behalf of my father, [REDACTED] in relation to the proposed redevelopment of the Lourdes Retirement Village. Please note that he has a new email address (to which this email is copied). Could you please send all future correspondence to this new email address (and copy to me).

We understand that the meeting of the Sydney North Planning Panel is expected to occur very soon. Can you please confirm the timing of this meeting and whether there will be a public meeting prior to the Panel making a decision?

We are concerned to see that the RFS advice dated 8 February 2032 (which you provided in your email below, dated 6 March) is not available on the planning portal. Nor is the Blackash Addendum to which the advice refers.

The RFS position appears to have shifted markedly on the basis of this addendum and the fact that neither document is available for public scrutiny is a matter of great concern.

Can you please make both documents available as a matter of urgency - both by email and by posting these documents on the portal. Please also advise re the timing of the Panel meeting and whether it will be preceded by a public meeting.

Regards





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**From:** [REDACTED]

**Sent:** Friday, 11 November 2022 11:00 AM

**To:** Shruthi Sriram <[shruthi.sriram@dpic.nsw.gov.au](mailto:shruthi.sriram@dpic.nsw.gov.au)>; Brendon Roberts  
<[brendon.roberts@planning.nsw.gov.au](mailto:brendon.roberts@planning.nsw.gov.au)>

**Cc:** Brendan Metcalfe <[Brendan.Metcalfe@planning.nsw.gov.au](mailto:Brendan.Metcalfe@planning.nsw.gov.au)>; Frank Brady  
[REDACTED]

**Subject:** URGENT: Re PP-22-658 Lourdes Retirement Village - grave concern re bushfire risks

Dear Shruthi and Brendon

(I am sending this email on behalf of my 94 year old father, [REDACTED], who is currently having problems with his email account.)

I am writing to express my grave concern regarding the above planning proposal (to amend controls applicable to Lourdes Retirement Village, Killara, where I live) and to ask you to advise the Sydney North Planning Panel (SNPP) to reject this proposal.

I have already made a submission to the SNPP outlining my concerns relating to bushfire safety, and my concern that progression of the proposal was not objected to by the RFS. However, I was very sick in the lead up to the submission closing date (I had my gall bladder removed in emergency surgery) and was not able to consider the planning proposal in full. I have now had the opportunity to do so and have also been reading the submission to the SNPP by Ku-ring-gai Council. I therefore hope that you will take into account the following comments, in addition to my submission.

The Ku-ring-gai Council submission outlines all the same concerns I have regarding the planning proposal and is backed up by expert assessments which highlight the risk of significantly increasing the number of occupants on this site and not providing appropriate asset protection zones. Those reports make clear that the proposed redevelopment of the site could have tragic consequences. I call on you to prevent such an outcome by recommending that the proposal be refused on fire safety grounds.

I was heartened to see the following statement in the Ku-ring-gai Council submission (p54 of PDF document or 1st page of section titled "Part 3 Bushfire Assessment"): "NSW RFS confirmed that they have neither endorsed nor expressed support for the Planning Proposal, only support for the exhibition of the Planning Proposal." This statement differs from the way that the RFS position is described elsewhere - eg "The NSW RFS is satisfied that the proposed performance -based approach is appropriate to satisfy the 9.1 Direction."

The analysis included in the Ku-ring-gai Council submission makes clear that the performance based approach adopted in the planning proposal is not adequate to protect the lives of residents and firefighters, and that insufficient bushfire risk assessment has been undertaken to enable a lawful decision on the planning proposal to be made.

I also note that the position expressed by RFS in September and November 2020 (that the RFS did not object to progression of the planning proposal) could not have been based on the current iteration of the planning proposal. This is because **the current proposal**, including 63 townhouses (which would house up to 183 residents - based on 2.9 residents per townhouse: Elton demand study, p24), **was not in existence when the email exchange between RFS and DPIE staff took place in late 2020**. This means that **any RFS support** given in 2020 to progression of the planning proposal **was not effective**, pursuant to Ministerial Direction 4.3 clause 7, as it did not relate to the same planning proposal that is to be determined by the SNPP.



As Ku-ring-gai Council's submission notes, climate change is fuelling more intense, fast moving and unpredictable fires. The strategy proposed to manage such risks at Lourdes involves being able to move hundreds of elderly residents, many of whom have limited mobility, out of buildings sited in what should be an asset protection zone (APZ). Critically, this strategy assumes that all fire risks can be predicted and residents moved in time.

Even if it were possible to move this number of frail residents in the time required (and when power outages are also likely to impact the village), this strategy ignores the reality that **not all fire risks can be predicted** (eg lightning strike, arson). As such, this strategy will put into harm's way hundreds of vulnerable elderly - the very people that should be protected by the stringent APZ requirements applicable to special fire protection purpose (SFPP) developments. Such intensification of the site will also put local residents and emergency personnel at grave risk. The black summer fires should have taught us that we cannot predict all fire behaviour and that emergency resources can be stretched beyond capacity.

I call on you to reject this proposal which could have tragic consequences and would create a terrible precedent for other developments in NSW. The safety of residents and firefighters depends on the position you now take in relation to this proposal.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

[REDACTED]

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**Sent:** Friday, 14 July 2023 10:50 AM  
**To:** Brendan Metcalfe; Brendon Roberts  
**Cc:** [REDACTED]  
**Subject:** Proposed Medium High Density Development for Lourdes Village

Hi Brendon,

Thank you for your email – my apologies for not replying earlier.

I note your comment that the RFS and BlackAsh documents were published on the portal following a specific request from a community member to make them public. I am glad to hear that the Department is being responsive to such requests and look forward to you publishing the one page summary of the Ku-ring-gai Council submission, per my request to you on 11 June 2023. I also request that you publish correspondence and details of any meetings between DPIE and the RFS in relation to this proposal, consistent with Appendix M to the Planning Proposal.

Finally, I request that you publish the Department's post-exhibition report and related materials (eg the proponent's response to submissions) as soon as they are available. It is common practice to publish such reports just before the scheduled planning panel meeting, meaning residents have little time to review new material. In this case, given the seriousness of the issues, the level of concern and the potential for this material to be substantial (similar to the 345 page BlackAsh Addendum), it is important that the Department support a transparent process and negate the need for further GIPA requests.

I note that Brendan Metcalfe supported a transparent approach - ie requesting you to publish the RFS advice on the portal - in his email to you of 6 March, and I trust that the Department will be happy to publish this additional information as soon as it is available. This will help restore residents' confidence in a process that appears to be heavily skewed in favour of the proponent.

I appreciate that the Department may be under considerable pressure from various sources to approve this spot medium—high density re-zoning in a bush fire zone with very limited access and insufficient infrastructure to support it. However, I urge you to adopt a precautionary approach and put resident safety ahead of developer profits. As Ku-ring-gai Council has pointed out, the proposal does not comply with bushfire safety requirements designed to protect the lives of residents and emergency personnel. Based on detailed expert analysis, Council submits that **approving the proposal would be negligent**.

Climate change means it is a question of when, not whether, fires will impact the Lourdes site. Those who are involved in approving such proposals will be held to account in a coronial inquest if lives are lost.

Regards

[REDACTED]

**From:** Phil Killen <phil.killen@cpkconsulting.com.au>  
**Sent:** Sunday, 11 June 2023 11:31 PM  
**To:** Brendon Roberts; Brendan Metcalfe  
**Cc:** kathy Brady  
**Subject:** FW: Proposed Medium High Density Development for Lourdes Village

Hi Brendan,

I hope this email finds you well.

I have just learned that further Blackash analysis prepared in December 2022 has only this past week been published on the planning portal (on 6 June), along with the RFS response to that analysis, again prepared months ago in February 2023. This is most concerning.

The issue of bushfire risk is a key concern with this proposal and it is vital that all analysis of this kind be made public expeditiously. Indeed, analysis of the capacity of the site to accommodate an increased population is central to considering the planning proposal. It should have been prepared and available to inform the public exhibition process. The fact that this did not occur raises questions about whether the consultation process was effective.

I note that the Department's report to the SNPP is not yet available on the portal, contrary to your advice to me that it would be made public. Nor is the one page summary of the Ku-ring-gai Council submission. Given the detailed analysis included in the Council submission (which runs to 241 pages), and its advice that approving the proposal would be **negligent**, it is most concerning to know that this extensive work has been reduced to a single page summary. It is important that the public have visibility of the material now before the Panel. There should be no reason not to publish such materials, particularly given that they can be accessed via GIPA if need be. I note that, based on the information provided to me under my previous GIPA, it would appear that the recommendations up to December 2022 by the Department to the SNPP are based on acceptance of the proponents statements / claims on face value.

Given the public interest in this matter, and residents' and agencies' grave concerns about the analysis (or lack thereof) underpinning the recommendations made, I request that you immediately publish the following on the portal:

- the latest DPE report for SNPP prepared following the public exhibition process,
- the one page summary of the Ku-ring-gai Council submission provided to the SNPP
- correspondence and minutes of meetings between the RFS and Blackash. The Blackash addendum refers to such dealings but does not include any evidence regarding them. Such discussions should be made public, consistent with the approach to the correspondence published with the planning proposal at Appendix M. Failure to make this information public raises serious concerns about the propriety of the relationship between the RFS and Blackash, particularly given that Blackash staff previously worked at the RFS, and that the RFS appears to have ignored up to date and site specific analysis in the Ku-ring-gai Council submission in favour of decade old and outdated analysis relied on by Blackash.

I look forward to your prompt reply.

Regards

Phil Killen

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]  
**Sent:** Tuesday, 17 October 2023 3:46 PM

[REDACTED]  
**Subject:** Lourdes

Hi Brendan

I gather that I won't be getting a call back from you. I was hoping to have a chat as I remain very concerned that the Agile Planning Team is simply going to accept the RFS advice without question because they feel duty bound to do so. (That is the strong impression I got after a long conversation with Brendon on 27 September.) I strongly disagree with this and I hope that Brendon and his colleagues will discuss the Lourdes proposal with their colleagues in Legal, if they have not already done so, so they can consider how best to deal with conflicting material from the proponent and Ku-ring-gai Council.

**DPE must review all the evidence - not just rely on FPD response**

I hope that the Department will not accept the proponent's repeated assertions that the Lourdes site is low risk without first considering the *actual evidence* from Council. (For example, in his email of 3 November 2022 to Mathew Smith and David Boverman, Corey Shackleton says: "For what its work [sic], in my opinion, its not a high-risk site." This is expressed to be his opinion. It does not acknowledge or address all the evidence from Ku-ring-gai Council - which was by then available - which shows based on up to date modelling that the site is subject to significant fire risk.)

So far, there is no sign that Council's modelling and analysis has been examined in detail and this is very worrying given that the advice to the SNPP is close to being finalised. The Department cannot simply refer submissions to the proponent for review and comment, and then rely on the proponent's response. DPE must assess the material itself, consistent with the Local Environmental Plan Making Guideline, p55 of which states:

The PPA must consider all submissions and the proponent's response, and report this in finalising the plan or submitting to the Department for finalisation.... The PPA reviews the planning proposal following public exhibition and addresses any community, agency or other objections and responses by the proponent.

For example, the Department should consider the Council submission's suggestion that development needs to stop at First Ave so as to provide a decent defensible space. This

recommendation is not even mentioned in the high level FPD response.

### **Lourdes site is not low risk**

It is telling that the same phrase keeps getting repeated, with a view to creating an impression that the Lourdes site is low risk (because it won't be subject to intense fires and because significant fire fighting resources will be available). It is important to know that this advice lacks an evidence base and is contradicted by Council modelling.

From the documents I have seen, the advice first appears in Corey Shackleton's 16 November 2021 email to DPE and RFS. He says:

While not part of the assessment criteria, given its location, **any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind and considerable fire brigade intervention** would likely see significant firefighting resources available at the site.

Mathew Smith then repeats the phrase in his 18 January 2022 email to DPE. (He attributes the advice to Mark Sugden of the RFS even though it is clear it comes from BlackAsh.)

Whilst not part of the formal assessment criteria, in consultation with Hornsby Ku-Ring-Gai District Manager, Superintendent Mark Sugden, **any bush fires impacting the site would be burning under an easterly/south easterly influence (typically cooler temperature)**. As the site is within Fire District and adjacent to Rural Fire District, the site would experience a **significant weight of attack from FRNSW/NSW RFS** (ground based and potentially airborne assets), which would minimise fire behaviour.

The Bushfire Assessment dated 14 June 2022 states at p5:

While not part of the assessment criteria, given its location, **any bushfires impacting the site would be burning under what is typically a cooler easterly or south-easterly wind and considerable fire brigade intervention** would likely see significant firefighting resources available at the site.

However the Council submission notes that this statement lacks an evidentiary base. It says at page 80:

No conclusion is reached within the Blackash Bushfire Threat Assessment regarding the potential bushfire behaviour anticipated to impact the site. 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.**

And at p62 of the Council submission:

The assessment of the fire behaviour risk carried out within this review, and the parallel assessment undertaken by RedEye fire modelling engaged by Ku-ring-gai Council, are **inconsistent with the Planning Proposal which states that “any bushfires impacting the**

**site would be burning under what is typically a cooler easterly or south-easterly wind”.**

Despite this, the FPD response to submissions just keeps repeating the same BlackAsh assertion that the site is low risk. It fails to acknowledge that Council's modelling contradicts this advice, nor does it acknowledge Council's comment that the BlackAsh advice lacks an evidence base. Importantly, FPD attributes the advice to Mark Sugden and the RFS. See p46 of the FPD document which states:

The bushfire consultant, Blackash, has advised the following: The site is not considered a high bushfire risk area. The **comments provided on 18 January 2022 by Fire Control Officer, Superintendent Mark Sugden** confirm this.... The **comments about fires impacting the site was provided by the NSW RFS on 18 January 2022** and stated: “Whilst not part of the formal assessment criteria, in consultation with Hornsby Ku-Ring-Gai District Manager, Superintendent Mark Sugden, **any bush fires impacting the site would be burning under an easterly/south easterly influence** (typically cooler temperature). As the site is within Fire District and adjacent to Rural Fire District, the site would experience a **significant weight of attack** from FRNSW/ NSW RFS (ground based and potentially airborne assets), which would minimise fire behaviour.”

While FPD is seeking to characterise this advice as coming from the RFS, it is important to recognise that *the source of the advice is in fact BlackAsh*. It is also important to acknowledge Council's concern that this statement lacks an evidence base.

*A quick note about me:*

I know I have written numerous emails and that can be difficult to deal with. I want to assure you that I am not crazy, just very concerned that Council's warning is not being heeded. My dad (now 95) is unlikely to be around to live in the redeveloped village but we remain extremely concerned for other residents and for emergency personnel. So this is not a case of nimbyism - we are acting out of concern for others.

My background is in environmental law. I have worked for a judge in the LEC, worked for several years at the EPA (where I assessed many proposed projects) before being appointed as a director in DIPNR, as it then was. I know what it is like to be a public servant under pressure from the big end of town, and under-resourced. (This is why I have sought to be constructive and helpful - e.g. sitting up for hours comparing and contrasting the BlackAsh advice, Council submission, and FPD response. I really hope this material is being considered. The latest email from Brendon makes me think I had been misunderstood on many fronts.)

I would be very grateful if you would please read the email I sent early this morning (as well as my earlier emails of 29 September). Even if the Agile Planning team recommends to the SNPP that the proposal be approved, you will ultimately need to consider if this is appropriate. The Council submission is long and the FPD response to it is wholly inadequate. Council's submission remains a critically important document to consider in detail.

Please know that I am writing in good faith and, as always, I am happy to chat if you have time

for a quick call.

Regards

[REDACTED]  
[REDACTED]