

5 November 2018

Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Our ref: AQB/37426373

Dear Sirs

Planning Proposal, Ralston Avenue, Belrose

We act for the Metropolitan Local Aboriginal Land Council (**MLALC**) and Matthews Civil Pty Limited (**Matthews Civil**).

MLALC and Matthews Civil together, are the proponents of a proposal to develop the site located at Lot 1 DP 139826 (**Site**) into 156 residential lots, a public open space and asset protection zones (**APZs**) managed under community title (**Proposal**). The Proposal is presently the subject of a review by the Independent Planning Commission (**Commission**).

The Commission engaged the Australian Bushfire Assessment Consultants (**ABAC**) to review the bushfire component of the Proposal. In doing so, the Commission provided a brief to the ABAC (**Brief**) and the ABAC issued a report dated 12 October 2018 (**ABAC Report**).

The Commission has invited the proponents to respond to the ABAC Report.

1. Executive Summary

- (a) The ABAC Report provides that it is presently unable to support the Proposal. The proponents disagree. In taking that position, their submissions are threefold.
- (b) *First*, the ABAC Report mostly, correctly identifies the relevant legal tests required to formulate conclusions regarding the Proposal. In particular, the ABAC acknowledges that the Proposal will be appropriate in circumstances where there is mitigation of bushfire risk to an acceptable level. It does not however, properly apply that methodology to the information that it had to hand.
- (c) *Second*, and notwithstanding the above, the Brief provided for the purposes of the ABAC Report was inadequate. The Brief did not include critical information and documents that should have been taken into account in the ABAC's assessment.
- (d) *Third*, and following the above, the application of the correct methodology to the appropriate documents and information necessarily leads to the conclusion that all potential bushfire risks have been mitigated or lessened to an acceptable level to permit the Proposal.

- (e) Importantly, the ABAC's conclusion is not definitive. It provides that the Proposal cannot be supported unless and until all potential risks are mitigated to an acceptable level.
- (f) Accordingly, the respective positions of the ABAC and the proponents are not mutually exclusive. Rather, the proponents take the view that if and when the ABAC is properly apprised of relevant critical information, it must be supportive of the Proposal.

2. Methodology

- (a) Whilst the Site is located in bushfire prone land for the purposes of section 146 *Environmental Planning and Assessment Act 1979*, that classification does not prohibit development. Rather, it adds an additional layer of requirements under section 117(2) (now section 9.1) Direction 4.4 Planning for Bushfire Protection (**Direction**) and the Planning for Bush Fire Protection 2006 (**PBP**). If these technical requirements are met (such that there are appropriate controls to mitigate risks of bushfire), the Proposal should be supported.
- (b) It is apparent that the ABAC has largely adopted this approach.
- (c) *First*, the ABAC Report helpfully and appropriately identifies the relevance of the planning principles for rezoning to residential land in section 2.3 of the PBP (**Section 2.3**), the specific objectives for subdivisions in section 4.1.2 of PBP (**Section 4.1.2**) and the provisions of the Direction.
- (d) *Second*, in its application and assessment of the PBP and the Direction, the ABAC acknowledges that:
 - i. residential development is not necessarily an incompatible land use in bushfire prone areas;
 - ii. the Direction requires that a planning proposal must introduce controls that avoid placing inappropriate developments in hazardous areas; and
 - iii. residential development is appropriate when controls are adequate to mitigate risks arising from adjoining bushfire prone lands.
- (e) *Third*, the ABAC Report addresses each component of Section 2.3, Section 4.1.2 and the Direction with reference to aspects of the Proposal.
- (f) Notwithstanding the above, there are some comments in the ABAC Report which indicate that emphasis may also be placed on other less clear considerations outside of the technical requirements of the PBP and Direction. For example, reference is made to a 'broader consideration' of the 'appropriateness or otherwise' of the Proposal relative to the risks associated with the surrounding bushfire prone area. To the extent that the ABAC has arrived at its conclusions beyond the purview of the relevant legal instruments, it has erred.
- (g) Further, it is apparent that critical documents such as the Fuel Management Plan have not been appropriately considered. This is addressed in more detail in Schedule 1.

3. Brief inadequacies

- (a) Further to the above, the ABAC has been unable to apply the above principles to the appropriate information. The Brief was inadequate.
- (b) Despite the lengthy history in respect of the Proposal and the numerous documents prepared for the Council and the Commission, the Brief only included the proponents' bushfire report prepared by Travers bushfire and ecology dated 28 April 2017 (**Travers Report**), Council's bushfire report prepared by Blackash dated 28 April 2016 (**Blackash Report**) and submissions made by NSW Rural Fire Service (**RFS**) to the Northern Beaches Council dated 18 October 2017 (**RFS Report**).
- (c) The Brief does not but should have included:


- i. a further submission prepared by the proponents and its experts dated 8 March 2018 (**Further Submission**). The Further Submission included an extensive analysis of the way in which the Direction and PBP requirements are met (in accordance with ABAC's methodology referred to above) as well as detailed additional survey reports; and
 - ii. without limiting the generality of the above, all documents that were made available to the Council and the Commission during the Proposal's history.
- (d) In the proponents' view, the absence of the above documents from the Brief has led to the ABAC arriving at erroneous conclusions.

4. **Appropriate conclusions**

- (a) On the assumption that the appropriate methodology is applied to all relevant information, the conclusions must accord with the support of the Proposal.
- (b) That exercise has been undertaken in the **enclosed** schedule. We invite the Commission and if deemed appropriate, the ABAC to review this submission and the schedules.

Should you wish to discuss the matter, please do not hesitate to contact us.

Yours sincerely,



Ben Allen
Partner
Dentons Australia