

Executive Summary for prospective JRPP Report

The contributions consent condition contains the correct total figure at the time it was issued however the component amounts that make up that total have been mis-ordered against the categories of contributions. Once the ordering is corrected, the contribution will accurately reflect the adopted and in-effect **Ku-ring-gai Contributions Plan 2010**.

It should be noted that this reordering will not update the contributions to the current quarter. A revised condition could be regenerated from the current information in the Property and Rating System to provide a figure to the current June Quarter 2016.

The developer seeks to defer payments and pay on a different schedule to every other developer in Ku-ring-gai in order to assist their viability. Ku-ring-gai Council regards this as, effectively, a request to be the beneficiary of a pecuniary advantage and does not support this request.

Concerning the request to apply a relative weighting to some works in the works schedule, the Contributions Plan does not allow for this. Nor is it reasonable that it should. The applicant is effectively suggesting that every development site should have its own contributions plan drafted and individually weighted. The applicant has also argued that works further from their site should be discounted without arguing that works closer to their site should be more heavily weighted to allow other developments to benefit from commensurate discounts based on distance – in the same manner as this developer seeks to benefit. The effect on total contributions would be essentially the same with considerable additional complexity and uncertainty.

The works required to improve the local centre of Turramurra – being the closest retail, commercial, civic, community and public transport hub to the subject development – are an integrated whole, with the traffic and transport works in particular, working together to facilitate vehicular and pedestrian movement in and around the centre. It should also be noted that the Roads and Maritime Authority (RMS) continues to support the current package of traffic and transport works designed to support the Turramurra Local Centre and incorporated within the current Contributions Plan. Planning for the delivery of traffic, transport, community and civic, parkland and townscape works in the Turramurra Local centre are well advanced and a destabilisation of cash-flow at this point in time would have the effect of delaying this major project.

Detailed Commentary

Council is in receipt of a request for modification of the Development Consent DA0173/14 located at 1189-1197 Pacific Highway and 1-1A Womerah Street Turramurra.

Key issues raised by the submission

The modification seeks to permit staged payments of the development contributions with the total amount payable prior to the issue of a construction certificate for the ground floor of the development. There are to be two construction certificates. The first will be for the installation of piling, basement, excavation and retaining walls. The second will be for the ground floor and tower building.

The modification also seeks to substantially modify the contributions by reducing them by over \$1 million dollars. The Applicant seeks to reduce the amount listed against the category Local Roads, Local bus facilities & Local drainage facilities from \$1,048,247 to \$19,284.

Introductory comments

While the individual arguments put forward by the applicant will be considered in detail in the following sections, there is one issue that needs to be acknowledged at the outset because of the effect it has on the quantum of the contributions contested. The contribution total contained in condition 43 is correct, as are the four individual dollar components, but these have been transcribed incorrectly against the given categories from the Contributions Plan in the condition. As such, the arguments against the Local roads contributions of \$1,048,247 should actually have been made against a much lower amount. The largest given figure is actually the contribution total for open space and parks. This figure involves the cost of land acquisition which is why it is the highest amount.

The applicant has lodged a s96 modification to alter the contribution condition firstly to reflect to reflect the adopted contributions plan and, thence, further contesting the contribution for local roads. The first correction, therefore, needs to be to the correct ordering of the categories of contributions to bring the written condition into accordance with the Contributions Plan.

Contribution Condition Category order

As noted above, a transcription error has been identified in the ordering of the condition.

While the contributions totals are correctly calculated, they have been mis-transcribed against the category names during the translation from the mainframe-based calculation to the consent condition.

The condition should read as follows which is how it appears in the mainframe-based Property and Rating calculation system:

Development Contributions Plan 2010

Infrastructure Type	Total
LGA Wide Local Recreational & Cultural	\$135,054.73
Turramurra TC New Roads & Road Modifications	\$232,668.86
Turramurra TC Local Parks & Sporting Facilities	\$1,048,247.35
Turramurra TC Townscape Transport & Pedestrian Facilities	\$707,638.31

Development Contributions Total

\$2,123,609.25

However, this is how it appears in the issued development consent:

Key Community Infrastructure	Amount
Local parks and local sporting facilities	\$135,054.73
Local recreation and cultural facilities; Local social facilities	\$232,668.86
Local roads, local bus facilities & local drainage facilities (new roads and road modifications)	\$1,048,247.35
Local roads, local bus facilities & local drainage facilities (townscape, transport & pedestrian facilities)	\$707,638.31
Total:	\$2,123,609.25

The calculation system has less space for descriptive terms, hence the expansion of the categories in the written condition to clarify the purpose of the contribution for the recipient. In this case, however, the transcription is out of order. This needs to be corrected in order to accurately reflect the contributions plan.

In the corrected order, the largest contribution amount is for local open space acquisition and embellishment because this involves the highest amount of land acquisition which is a significant component of infrastructure costs.

It should be noted that the two local roads categories are not the same as each shows in their subheading identifying the purposes as primarily the traffic carriageway environment or the pedestrian footpath environment. They are both located in the public domain of the road environment and therefore part of the same category of key community infrastructure known as Local Roads, local bus facilities & local drainage, however they appear separately because they are calculated differently; new roads and road modifications are based on vehicular traffic generation by land use. Townscape and pedestrian facilities, like parks and community facilities are based on people and the consequent demand caused by the new population.

Justification for the proposed modification

Contributions amounts for roads and road modifications

Comment by the consultant for the applicant

"The contribution amount for 'roads and road modifications' however has been significantly overestimated by about \$800,000. We have calculated the amount to be \$236,269 (although this relies on our own assumptions of the plan's indexed rates and thus would need to be checked by Council's officers)."

Response by Council

In point of fact, there is no real dispute on the correct monetary contributions for 'roads and road modifications'. Reference to the correctly ordered condition shows the contribution for 'roads and road modifications' to be \$232,668.86 (a difference of 1.8%). The figure of \$1,048,247.35 actually relates to the acquisition of land for new parks as opposed to the \$135,054.73 that is shown. This issue arises from a typographical error in the translation of the categories to the consent condition.

Individual components of the roads contribution

The applicant further argues that the figure of \$236,269 should be further reduced on the basis of geographic nexus and these arguments are addressed here.

Traffic Signals and Intersections

Turramurra Avenue & Pacific Highway – New traffic signals (25%)

Rohini Street & Pacific Highway – Remove signals and modify intersection (25%)

The applicant argues that these works are not required to access the development but are generated by the development east of the station.

Ray Street and Pacific Highway - Road widening / modifications to intersection (25%)

Ray Street to William Street – Widening to three lanes and turn bays (12.5%)

The applicant argues that the need for the works is generated by the Turramurra core redevelopment and that there is limited nexus between the development and the required works.

Kissing Point Road & Pacific Highway – Intersection modifications (0%)

The applicant argues that the need for these works is generated by future development south of the Pacific Highway and west of the railway line.

New Streets

Gilroy Road to Turramurra Avenue link road (0%)

The applicant argues that the need for these works is generated by the Turramurra redevelopment area east of the station and to create a more permeable street network.

Stonex Street – Duff Street to Kissing Point Road (0%)

The applicant argues that the need for these works is generated by the future development south of the Pacific Highway in the vicinity of Duff Street and Kissing Point Road.

Road Modifications

Turramurra Pedestrian Rail Bridge Modifications (100%)

Rohini Street – modification to roadway / footpath widening (50%)

The applicant argues that these works are remote from the subject development.

Gilroy Lane – Improvements to Lane (0%)

The applicant argues that because there is already an existing lane the function of the land will be no different after the improvement works so there is no link between the upgrade works and the subject development.

Forbes Lane – widening, kiss & ride, taxi rank (0%)

The applicant argues that because the works are on the western side of the railway line and the purpose of the works are to improve the streetscape for the new mixed use and residential development to face the lane there is no link with the subject development.

Road Modifications – Stormwater Treatment and Detention

Stonex Street, Rohini Street, Gilroy Road & Gilroy Lane – stormwater detention (0%)

Brentwood Avenue, Womerah Street & Duff Street – GPTs (0%)

The applicant argues that none of the proposed stormwater management facilities in the contributions plan will intercept runoff from the proposed development and therefore there is no nexus between the development and the infrastructure.

Council's response

The subject development does not stand as an island off the Pacific Highway. It will be occupied by new residents who will work, shop, travel and live in the wider community. The applicant's nexus arguments rely heavily on access directly to and from the development, whereas the Local Environmental Plan, the Development Control Plan and the Contributions Plan have been constructed to give consideration to development in the location in which that development is situated, being a core planning purpose in the redevelopment of Ku-ring-gai. The works proposed for Turramurra relate to the provision of access and circulation – both pedestrian and vehicular (including cycles) – to and through the Turramurra local centre and to Turramurra Railway Station and bus interchange; to the shops, civic spaces, community facilities and transport that make Turramurra an attractive place to live – and to develop so that more people may live there in accordance with the recent rezoning.

The argument that the development is remote from Turramurra – despite Turramurra being the closest local centre – could be construed as an argument by the developer that the site should not have been rezoned for higher density development, that there should have remained islands of single residences along the Pacific Highway and northern railway corridor between centres. This is illogical as well as inaccurate.

The development is not in fact, in any practical sense, remote from the local centre of Turramurra. Residents of the subject site will walk passed only five allotments (four developed with a total of four unit blocks) if they walk to the Turramurra Local Centre where the commercial centre begins just one street block to the north-west of the subject site on the other side of Ku-ring-gai Avenue. Turramurra is the local community, retail and transport hub for this development. Residents of the development will drive their cars to the Turramurra Local Centre to do their shopping and transport goods back to the development. It is the local centre for the residents of this development. Turramurra is the local centre to which they will walk as pedestrians, or drive for regular shopping. In this context it should be noted that a reasonable walking distance is generally accepted to be

within a ten minute walk of railway stations which is 800 metres and 5 minutes or 400 metres from local shops. The subject site is just over 300 metres from the start of the retail/commercial area and just under 600 metres from the pedestrian entrance to Turrumurra Railway Station. This is well within a reasonable walking distance.

The traffic, pedestrian and transport works proposed for Turrumurra Local Centre and supported by Roads and Maritime Services (RMS) at the time of planning for rezoning, are an integrated design from which no item is severable. The concept that individual developments should have some works discounted must be mirrored by the concomitant argument that other works should be inflated on the same basis of proximity or otherwise – since that argument could be made for every development site that benefits from the rezoning to higher density development that renders the integrated package of road improvements essential. It is noted that the arguments in this case that some works should be discounted do not also suggest that the fair proportion of other works should be inflated in order that development on the opposite side of the centre should have these works discounted by the same argument of proximity – this is the logical outcome if the argument is pursued that development surrounding Turrumurra is to be weighted in two or four or more zones; some works would be discounted, others would be inflated, relative to a zone smaller than the local centre as a whole. The Contributions Plan is, however, already in catchments as each of the six Local Centres is a catchment: Turrumurra, St Ives, Pymble, Gordon-Killara, Killara-Lindfield and Roseville. The subject development is in the Turrumurra Local Centre.

In fact, **Ku-ring-gai Contributions Plan 2010** is constructed so that all development that gives rise to the need for improvements to the local network, contributes towards that improvement proportionally on the basis of their traffic generation. This is a reasonable approach. Each development has access to the network – facilitating direct access to the local centre and its public transport hub, facilities and services – and to the wider network. Weighting each and every potential development site individually to achieve the same income from contributions in order to deliver the works required would be an exercise in complexity and risk beyond the scope of reasonableness and the cost would be directly attributable to the Contributions Plan.

Justice Moore of the Land and Environment Court of NSW has recently rejected a similar argument made by an applicant in relation to facilities to be provided under the contributions plan for the Gordon Town Centre. In *The Lawson Clinic Pty Ltd v Ku-ring-gai Council* [2016] NSWLEC 36 the Court found at paragraph 56 that the traffic management system for the Gordon town centre was designed as an integrated scheme and that the implementation of the totality of the scheme was essential to achieve the traffic management outcomes expected to be achieved by the contributions plan. The same can be said for the traffic management system for the Turrumurra town centre.

In the *Lawson Clinic* case the applicant made a similar argument to the applicant for the subject development. Lawson Clinic argued that that in determining the section 94 contributions payable under the contributions plan the consent authority must assess whether the development generated a demand for each individual works item specified in the contributions plan. The Court rejected this approach at paragraph 66 of the judgment.

The applicant argues that in respect of the intersections of Rohini Street/Pacific Highway and Turrumurra Avenue/Pacific Highway – where the argument is made that the removal of the signals and intersections modifications should be reduced to 25% because these works are not required to access the development directly but are generated by the development east of the station – is, perhaps, the item most indicative of the demonstrable lack of understanding of the integrated

system that is required as a consequence of cumulative intensive redevelopment as well as the rather parochial nature of the argument.

The relocation of the signals from Rohini Street to Turramurra Avenue facilitates an extra lane on the Pacific Highway and, thus, the removal of tidal flow on the Pacific Highway, significantly improving traffic flow, road safety, pedestrian safety and air quality both along the Pacific Highway (which the subject development directly fronts), but also on the local road network.

Many other works are directly related to the integrated improvement of the local centre that is Turramurra including Forbes Lane which is part of the integrated development site that will delivery to Turramurra Community Hub – in the main local retail area that serves the development.

It is noteworthy that of 26 suburbs ranked for liveability in Ku-ring-gai and Hornsby in a recent Domain survey, Turramurra ranked 26th ...

26. Turramurra (Overall rank: 336)

It's a testament to the upper north shore's relatively high standards of liveability that [Turramurra](#) is at the bottom of the table for its region despite receiving decent scores in most categories. Its strongest results are in telecommunications coverage, tree cover, topographic variation and low crime. The lowest scores are for main road congestion and a lack of cafes and restaurants.

The works which the development seeks to exempt itself from are precisely those that will raise its standing in the area – and from which the residents of the development will directly benefit. The developer would do well to utilise the works funded by the Contributions Plan as part of its marketing campaign.

Brownfield redevelopment areas

While not specifically articulated in this particular submission, an earlier submission argued that the developer found the quantum of contributions for this development surprising for an established area. Ku-ring-gai is undergoing intensive redevelopment that is effectively converting small scale suburban centres to high density urban centres. This brings with it significant additional infrastructure demands. The nexus between this development and the infrastructure required is demonstrated within **Ku-ring-gai Contributions Plan 2010** which has been freely accessible on Council's website since 2010. The case for exemption from the s94E Direction was also comprehensively – and successfully – argued at the time it was proposed as it pertains to the intensive redevelopment around the centres.

With all due respect, if the developer made certain assumptions about the quantum of contributions without contacting Council for a quotation – as many other developers have done – this is not a matter for which the community should subsequently be expected to compensate that developer by a reduction in the contributions available for an active programme of infrastructure delivery.

Infrastructure Delivery

Ku-ring-gai is actively delivering infrastructure in accordance with **Ku-ring-gai Contributions Plan 2010**. Much of this information is online in the Development Contributions pages and in regular (twice yearly) update-reports to Council.

More information can be found at:

http://www.kmc.nsw.gov.au/Plans_regulations/Building_and_development/Development_Contributions

The Contributions Pages also include links to major projects pages including to the **Activate Turrumurra** pages which relate to infrastructure delivery for Turrumurra here:

http://www.kmc.nsw.gov.au/Current_projects_priorities/Key_priorities/Activate_Turrumurra

Reference to **Activate Lindfield**, which is further advanced due to earlier development occurring around that centre, will also provide the reader with a vision and process of the proposed infrastructure delivery for Turrumurra:

http://www.kmc.nsw.gov.au/Current_projects_priorities/Key_priorities/Activate_Lindfield

Council is also delivering Cameron Park Turrumurra which will double its size, and a new park at Duff Street Turrumurra is in the community consultation stages.

http://www.kmc.nsw.gov.au/Current_projects_priorities/Current_works_and_upgrades/Park_and_facility_upgrades/Cameron_Park_extension_-_Gilroy_Road_Turrumurra

If this matter is to return to the JRPP for determination, then the JRPP should be very cautious about arbitrarily discounting contributions lawfully applied (once the order is corrected) under a contributions plan that has been operating for nearly six years. Funding that is progressively funding the rolling delivery of major infrastructure in Turrumurra, which is committed within Council's Long Term Financial Plan – much of it, in fact, in the short term, either currently underway or prior to 2022.

Timing of Payment

Comment by the consultant for the applicant

“The developer seeks the payment of half of the contributions to be made closer to the time when the demand for the public amenities and services will actually be incurred, so as to assist with the cash flow in the development.”

“While the requirement is in accordance with Council’s payment policy in its contributions plan, the developer considered the requirement to be unreasonably onerous. This is particularly so when one considers that the demand for the facilities that will be funded by the section 94 contributions will occur only when the development is occupied.”

“The developer is proposing a slightly less onerous payment timing. That is, 50% of the full amount be paid before the first construction certificate for the development, and the remaining 50% to be paid before the issue of the construction certificate for construction of the ground floor and tower building.”

“The proposed modification is reasonable in that it will greatly assist the development’s viability and will not disadvantage the Council as the amount will be paid well before the construction of those elements of the development that generate infrastructure demands.”

“Section 1.20 of the contributions plan provides that while the Council acknowledges the financial necessities for deferring large contribution amount to reflect staging of the development, such staging (or ‘deferred’ payments) are only able to be imposed as a condition of consent if such is sought as part of the original DA.”

“The applicant was not aware of this requirement when the DA was lodged. In any event there appears to be no valid reason why a staged/deferred payment arrangement cannot be considered and determined by the JRPP as part of a section 96 application”

Response by Council

The applicant should have been aware of the provisions of a contributions plan that has been on Council's website since it came into effect in 2010. The Statement of Environmental Effects for the development is dated 14 May 2014 and, while referencing LEPs and DCPs, makes no reference to the only development contributions plan then active in the area.

The applicant refers to 1.20 of the Contributions Plan relating to when payments are due and payable. The applicant relies heavily on the note on page 45 which reads “If staged²⁹ development is foreshadowed, then payment of contributions at release of individual Construction Certificates will only be permitted where there are staged Development Applications or where the initial Development Application separately identified each stage and the applicant made a written request as part of their initial application that separate development contributions conditions be calculated for each stage of the development consent.”

Footnote 29 is not quoted by the applicant but is presented below:

²⁹ The term ‘stage’ in this context means a building or group of buildings. It does not mean part of a building such as car parking levels or podiums.”

The provision for separate contributions consent conditions for distinct buildings exists to facilitate development where there may be multiple separate buildings across a large site with the potential for on-sale by a large developer who has prepared the site and obtained the development consent to more than one building company for delivery thus resulting in each builder bearing the cost of one building and delivering to their own timing as occurs on large redevelopment sites like Victoria Park in Zetland, the former Children's Hospital Site in Camperdown or, in Ku-ring-gai, sites of the type of Avon Road Pymble (which features four large wholly separate buildings) and the DHA redevelopment of the former UTS.

What the applicant is requesting is not a staged development in the context of the Contributions Plan, but a deferred payment. Deferred or Periodic Payments are in 1.23 of the Contributions Plan, not 1.20.

This section permits a different payment schedule only in the case of either 1) the delivery of works in the Contributions Plan under a Planning Agreement (which is not the case here) or 2) in the case of financial hardship.

With respect to financial hardship, the applicant needs to submit documentary evidence of a hardship which is both severe and sufficiently unique to distinguish the applicant from any other applicant, where Council must also determine whether deferral will prejudice the delivery of the works programme.

This section of the Contributions Plan goes on further to state: “It should be noted with respect to the second category above that is essential for any local government authority to treat all applicants and developers equally by the same criteria and, given there is the potential for a pecuniary advantage for one applicant or developer in the context of a deferral of payment which, if extended to all, would prejudice the timing of the works programme, such an application without unique and severe extenuating circumstances is unlikely to succeed.”

The applicant openly states that the purpose of the deferred payment is to assist with cash flow and to greatly assist the development's viability while acknowledging that the current timing of payment is in accordance with the Contributions Plan. Ku-ring-gai requires all developers to pay their contributions in accordance with the schedule in the Contributions Plan. To date all developers have done so. This particular developer is seeking to be treated differently to every other developer in a manner that will assist their cash-flow and viability without distinguishing their financial circumstances from that any other developer in Ku-ring-gai over the past six years. This is, effectively, a request for the granting of a pecuniary advantage for this one developer over all others. Ku-ring-gai Council does not support this request.

While seeking to enhance their own cash-flow, the applicant makes a number of assumptions about 'no disadvantage' to Council's cash-flow and capacity to deliver substantial community assets parallel to the subject development's completion without adequate lead time.

The rolling works programme for Turramurra, already well underway, has been discussed in the preceding sections – including the current delivery of a new park doubling the size of Cameron Park and wholly remodelling it; this is a current cash-flow matter. Planning for the Turramurra Community Hub including community facilities, civic parkland, townscape, road and pedestrian improvements, is also well advanced. This major project has been active since 2014/2015 with documents including a probity plan, property analysis, feasibility analysis and peer review, QS report, concept design, traffic scenario testing, liaison with Coles, Masterplanning documents, planning proposals, and exhibitions. The timeline for the delivery of this multi-million dollar project sees Ku-ring-gai Council tendering for a development partner in 2017 with construction underway in 2019-2020. The timeline is published on Council's website under **Activate Turramurra**.

In summary, Council is well underway in a major programme of delivery and cash-flow is essential to the effective and timely delivery of this infrastructure. The precedent granted by allowing any or all developers to delay payments beyond the clearly stated policy in the contributions plan, would threaten Council's cash-flow in supporting this delivery programme.

Lastly, it is also noted that the development contributions under s94 have been part of the Environmental Planning and Assessment Act since its inception in 1979. **Ku-ring-gai Contributions Plan 2010** has been on Council's website for nearly six years. Ku-ring-gai Council's website includes separate detailed catchment maps of all the local centres on which individual properties are clearly identifiable. Ku-ring-gai Council responds to requests for quotations both site-specifically and for different centres on a regular basis. It is difficult to understand how the applicant could have been unaware of the provisions of this document as it related to such a substantial development proposal prior to its lodgement.

While it is understood this situation may place the applicant in a position of some financial stress, with all due respect this is not of the community's making nor does it justify why this developer alone should receive preferential treatment in being permitted to defer payments that cannot be made available to all developers without compromising a substantial works programme. It is made clear in the Contributions Plan itself, that the developer is effectively seeking a pecuniary advantage over other developers.

Conclusion

Recommendations

The contribution condition should be corrected to accurately reflect **Ku-ring-gai Contributions Plan 2010** by placing the given dollar amounts against the correct categories as stated in the Contributions Plan and as already reflected in Council's Property and Rating System.

The request for a discount in the contributions for Local Roads category of contributions from \$232,668.86 (in the corrected condition) to \$19,284.12 should be refused for the reasons outlined in the foregoing report.

The request for a deferred payment on financial – but not specific hardship – grounds should be refused on the basis that this effectively constitutes a pecuniary advantage for one developer which cannot be supported. Further, that if such a precedent were permitted, the resultant outcome of multiple deferrals would have a severe impact on Council's cash-flow at a time when it is delivering three multi-million dollar projects between 2017 and 2022 including one in Turramurra.



