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Executive Director, Planning Policy
Department of Planning, Industry and Environment
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Dear Sir / Madam

Ku-ring-gai Council Submission on the exhibition of proposed improvements to the Infrastructure Contributions System

Ku-ring-gai Council thanks the Minister for Planning for the opportunity to make a submission on the proposed changes to the development contributions system.

We note that the following documents are on exhibition:

- Improving the review of local infrastructure contributions plans – Discussion Paper – April 2020
- Criteria to request a higher s7.12 percentage – Discussion Paper – April 2020
- Planning agreements practice note – Exhibition Draft – April 2020
- Special Infrastructure Contributions Guidelines – Draft – April 2020
- Environmental Planning and Assessment Regulation 2000 proposed amendments – Policy Paper – April 2020
- Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2019 – public consultation draft

We note that the following document does not appear to be formally on exhibition but is an essential integrated supporting document for the review procedure for local infrastructure contributions plans:

- Practice Note – Local Infrastructure Contributions January 2019

Ku-ring-gai Council currently has a partially grandfathered s7.11 contributions plan wherein the intensively redeveloping local centres are exempt from the “cap” and from the essential works list by virtue of Schedule One of the current Ministerial Direction. The areas outside these defined centres are subject to the \$20,000 “cap” leading to a contributions plan that is effectively under a split-system. Ku-ring-gai Council also has a s7.12 contributions plan which is mutually exclusive to the main s7.11 contributions plan, levying different development and funding different infrastructure.

Ku-ring-gai Council has, to date, made relatively limited use of Planning Agreements for the purposes of direct infrastructure funding, primarily as the uncapped contribution rates in the local centres are raising adequate cumulative income for the staged delivery of major essential infrastructure including community floorspace. Planning Agreements have been entered into primarily to document the technical requirements for the delivery of works-in-kind and for the dedication of narrow strips of land

for carriageway realignment and footpath widening along secondary development frontages. The use of Planning Agreements for value capture has not been a key feature of the contributions system in the Ku-ring-gai Local Government Area. However, Planning Agreements are considered a key mechanism for transparently documenting the voluntary agreement of multiple parties for the delivery of local infrastructure and should be supported in that on-going potential with clear guidelines.

Ku-ring-gai Council supports the proposed increase in the threshold from the original figure of \$20,000 (in established areas) that was instigated in 2009 and has, to date, not been inflated. Of the three outlined, option three, to implement one single threshold or “cap” of \$45,000 is preferred by Ku-ring-gai Council.

The principle of establishing a process for regular inflation of a future threshold is supported. It is noted that establishing a single inflation mechanism for the state in an environment where there are different mixes of land and works in every contributions plan, will be a challenge and it is likely that on-going management systems will be required to allow the option of a hard cap to be applied where the maximum threshold is exceeded solely by differential inflation mechanisms.

Ku-ring-gai supports initiatives to reduce the time that elapses during the IPART assessment process and notes opportunities for further streamlining the process. The on-going omission of community facilities and high-density urban standards for baseline infrastructure from the essential works list is a continuing concern and one that constitutes a barrier to IPART assessment for urban councils seeking to adequately fund the full range of essential community infrastructure in areas experiencing increased density.

A transition to more detailed reporting on infrastructure delivery is supported in principle however it is important that this reporting should provide meaningful information to both government and the general public without placing an onerous burden on local government. As such, it is suggested that reporting should not be retrospective and that future reporting should be project or programme based and provided by 30 September each year for the financial year in arrears. It is noted that further guidelines are to be developed and Ku-ring-gai Council would appreciate the opportunity to have input into this process, noting that many works in established areas are highly apportioned with only a small part of the total project budget deriving from the development contributions.

Most importantly, as the operator of a contributions plan that is partially “grandfathered” in the intensively redeveloping local centres but capped outside this narrowly defined geographic area, Ku-ring-gai Council welcomes the opportunity to open the essential dialogue with the department to establish a way forward for the review of this “split-system” plan while supporting the continuing delivery of the essential local community infrastructure it supports; concurrent with the strategic planning processes now underway with the Greater Sydney Commission.

Further, more detailed, commentary on these matters is found in the submission attached.

Should you require further information or clarification, please do not hesitate to contact me or Council’s Infrastructure Coordinator & Contributions Planner Kate Paterson on 02 942420785 or by email at kpaterson@kmc.nsw.gov.au.

Yours sincerely



Andrew Watson
Director Strategy and Environment

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Infrastructure Contributions Reform

Submission by Ku-ring-gai Council

Due Date: Friday 12 June 2020



Overview of Development and Contributions in Ku-ring-gai

Ku-ring-gai Council is an established Local Government Area of 85.4km² with a core urban area of 68.5km² surrounded by the three National Parks: Ku-ring-gai Chase National Park, Garigal National Park and Lane Cove National Park. The North Shore Railway Line through Ku-ring-gai opened in 1890 and thence the development of Victorian and Federation shops began around the railway stations. Large residential allotments with ample private open space were a feature of adjoining development, rather than multiple public parks. Further urban development took place in the post-war years of the 1950s to the 1970s and many of the community buildings, especially the libraries, were delivered during this period; these are now at the end of their economic life. The final suburban expansions of the 1980s were located on the periphery, bordering the three National Parks.

The outcome of this historic development profile is that there is limited local public open space in most of the areas that are now the focus of intensive redevelopment into high density local centres; a process commencing in 2006 and on-going. This legacy has necessitated a focus of strategic planning on the delivery of additional urban parks for intensive local use, in high value areas. This process has been guided by Ku-ring-gai Council's Award Winning **Open Space Acquisition Strategy 2006** (which has been recently reviewed) and funded by s7.11 contributions under **Ku-ring-gai Contributions Plan 2010**. Further intensification will continue to take place as part of the current phase of strategic planning under the Greater Sydney Commission which will trigger the review of all supporting documents and strategies including the contributions plans.

Under the current s7.11 contributions plan, Ku-ring-gai Council has already delivered two out of three planned road links now open as Beans Farm Road and Hanson Way (both in Gordon); and many new parks including Balcombe Park in Wahroonga, Curtilage Park in Warrawee, Greengate Park in Killara, Lapwing Reserve in St Ives, Cameron Park in Turramurra (eastern side of the Pacific Highway), and the newly completed Boyds Orchard Park in Turramurra (western side of the Pacific Highway) which opened in March 2020. Ku-ring-gai Council continues to seek new opportunities to consolidate sites for local parks in the areas of intensive redevelopment around the railway stations delivering an on-going "shovel-ready" works programme.

The latest project, Lindfield Village Green, located in the heart of Lindfield Village shopping area on the eastern side of Lindfield Station on a site formerly occupied by an at-grade car park, has recently commenced construction as of early May 2020. This project includes underground car parking, including commuter car parking supported by TfNSW, and a town square at ground level.

Several other Major Projects including the Lindfield Village Hub (located on the western side of the Pacific Highway in Lindfield) and the Turramurra Community Hub are well advanced. Lindfield Village Hub has been tendered and the submissions are under formal consideration. Turramurra Community Hub has been masterplanned with feasibility assessments and market testing expected to resume following further strategic planning for Turramurra currently being undertaken as part of the Greater Sydney Commission process. Both these major projects include new civic public open space and public domain works funded by development contributions, as well as community floorspace partially supported by development contributions, notwithstanding a substantial co-contribution apportioned to council on behalf of the existing population.

Ku-ring-gai Contributions Plan 2010 is a partially “grandfathered” contributions plan wherein the intensively redeveloping local centres are exempt from the “cap” and from the essential works list by virtue of Schedule One of the current Ministerial Direction. The areas outside these defined centres are subject to the \$20,000 “cap” leading to a contributions plan that is effectively under a split-system.

Ku-ring-gai Council perceives an opportunity in the present review of the thresholds and IPART review system to address the review of this contributions plan concurrent with the Greater Sydney Commission focus on delivering additional housing for the future. This submission supports a way forward for that process.

Ku-ring-gai Council is keen to work with the Department of Planning to progress a review of this s7.11 contributions plan in such a manner as to support the continuing rolling delivery of infrastructure supporting intensive redevelopment concurrent with the preparation and implementation of a suite of strategic documents under the auspices of the Greater Sydney Commission.

In this context, commentary on the discussion papers and the changes they outline are presented to the Department for their consideration.

Improving the review of local infrastructure contributions plans – Discussion Paper – April 2020

The current IPART review process

The current IPART review process is illustrated in Table 1 on Page 4 of the discussion paper. The indicative 12-18 month timeframe for review after submitting a draft contributions plan to IPART for review appears very lengthy and must act as a disincentive to keep such plans under regular review – 18 months being nearly one third of the ideal target of a 5 year cycle of review.

The option recommended by the working party of removing the third and final exhibition period at Step 6 is an important start in streamlining the process. It is agreed that a further public exhibition by a council that is constrained from responding to any submissions through amendments at this late stage of the proceedings is essentially an unproductive additional delay. It is also considered, however, that the present review of the IPART Terms of Reference provide an excellent opportunity to further streamline the earlier exhibitions. The outcome should be to support better drafted contributions plans being presented to IPART for formal review, thus requiring fewer amendments, and resulting in a further streamlined and faster review process.

The statutory exhibition of a draft contributions plan – at least in a redeveloping area – seems to rarely elicit substantial commentary and appears not to reach many of the members of the development industry who are active in the area and from whom councils most need to hear at an early stage of the process. The views of the development industry are best considered and responded to prior to finalisation of the draft contributions plan by a council, prior to submission to IPART. A key barrier to councils in proactively undertaking such consultation is ensuring such consultation is comprehensive rather than selective, or open to a perception of being selective.

It is appreciated that IPART would not want to give the impression of endorsing a contributions plan that had not yet been formally assessed, however, it would be beneficial for councils to be able to provide an exhibition link for a draft contributions plan on the IPART webpage to broaden the audience for that first exhibition (together with all the necessary disclaimers). If this process worked as intended in eliciting early comments from industry, that could then be addressed by the council, the second exhibition at Step 4 could become optional, further streamlining the post-submission process. This further refinement is submitted for consideration.

Contributions thresholds and triggers for IPART Review

The key discussion paper: **Improving the review of local infrastructure contributions plans** outlines three scenarios for the retention of a threshold with options for increases of the current threshold of \$20,000 in established areas and \$30,000 in greenfield areas. The paper also provides an overview of the options investigated to allow the new figure to be subject to consistent inflation reflecting the change in value in real terms over time for discussion purposes.

Commentary on the three revised threshold options

Option One – Index the existing \$20,000 and \$30,000 per lot/dwelling thresholds by the ABS Consumer Price Index – All Groups Sydney (CPI) from June 2010 to the latest available quarter.

This option is not the best outcome suggested by the investigations. The Consumer Price Index does not reflect the real change in the cost of acquiring land, especially in Sydney, over the past ten years and would yield a figure that would result in a much larger number of contributions plans needing to be approved via the IPART review process in order to accommodate changes in land acquisition costs that have already occurred. The IPART route should be considered the exception for development scenarios where higher contributions are justifiable rather than a standard process for most councils delivering standard local infrastructure.

Option Two – Increase the thresholds to \$35,000 per lot/dwelling and \$45,000 per lot/dwelling in greenfield (urban release areas).

The distinction of \$10,000 between brownfield and greenfield areas is arbitrary. Land acquisition costs are variable both in terms of the amount of land required and the per square metre cost of that land in different areas of Sydney. Small urban parks can be as expensive to acquire and to deliver as much larger greenfield parks, and must cater for more intensive use. Established areas need to obtain intensive per capita value from every square metre.

Differing inflation rates for land among different contributions plans are likely to result in even these new thresholds being exceeded relatively quickly and, as such, may not provide the sustained relief sought by the proposed update even if operating together with an inflation process.

Option Three – Implement one single threshold of \$45,000 for all IPART reviewed contributions plans.

Of the three options outlined, this is the preferred option. It is understood in this context that \$45,000 is the revised contribution rate threshold beyond which would be the trigger for the IPART review process.

Clarification is sought on two matters. It needs to be clearly stated whether the figure of \$45,000 per dwelling (or lot) is applicable to the nett additional contribution for each dwelling authorised by that development consent as a whole; or whether the figure is to apply to each of the individual contribution rates published in the relevant contributions plan. Clarification is also sought as to whether a council can elect to limit the contributions payable in respect of a consent that exceeds the threshold, at least as an interim management tool, given that inflation, especially of land acquisition rates, can be volatile in times of uncertainty and the review process is likely to remain quite lengthy. In short, whether the continuity of a “cap” is to be supported, if only as an interim management tool.

The need for clarification as to whether the threshold applies to the nett additional position of any given consent or to the contributions plan itself arises directly from the typical development scenario in brownfield redevelopment areas.

In redeveloping areas, it is typical that a number of contiguous existing dwelling houses are demolished to form a consolidated development site and are replaced by residential units or by a mixed use development. The statistical occupancy rates of larger single dwelling houses are higher than the statistical occupancy rates for individual units. This higher occupancy rate results in a higher nominal contribution rate on a per capita basis applying to single dwelling houses. That calculated contribution rate for dwelling houses in R3, R4 and mixed use zones, while appearing in the contributions plan, is never levied - only credited on demolition - to ensure that only the nett additional demand is subject to calculated nett additional development contributions.

In Ku-ring-gai, the differential between the contribution rate levied for a three bedroom unit and the rate at which demolished three bedroom houses are credited (based on statistical occupancy rates) averages around \$9,000-\$10,000. If it were to be essential to ensure that the credited figure for demolished houses as stated within the adopted contributions plan was also under \$45,000, then this would result in all contribution rates to be levied on new unit development having to remain under \$35,000 – which is significantly less than the proposed threshold and arguably not the intended outcome of the proposed reforms.

In context, the contributions rates at which demolished three bedroom dwelling houses are currently credited within the Schedule One exemption area, hover around the \$45,000 threshold, with some local centres under that figure and some just over it. As such Ku-ring-gai’s current contributions plan could be **immediately** impacted even by Option Three were the existing grandfathering currently applicable to the local centres under Schedule One to be abruptly withdrawn.

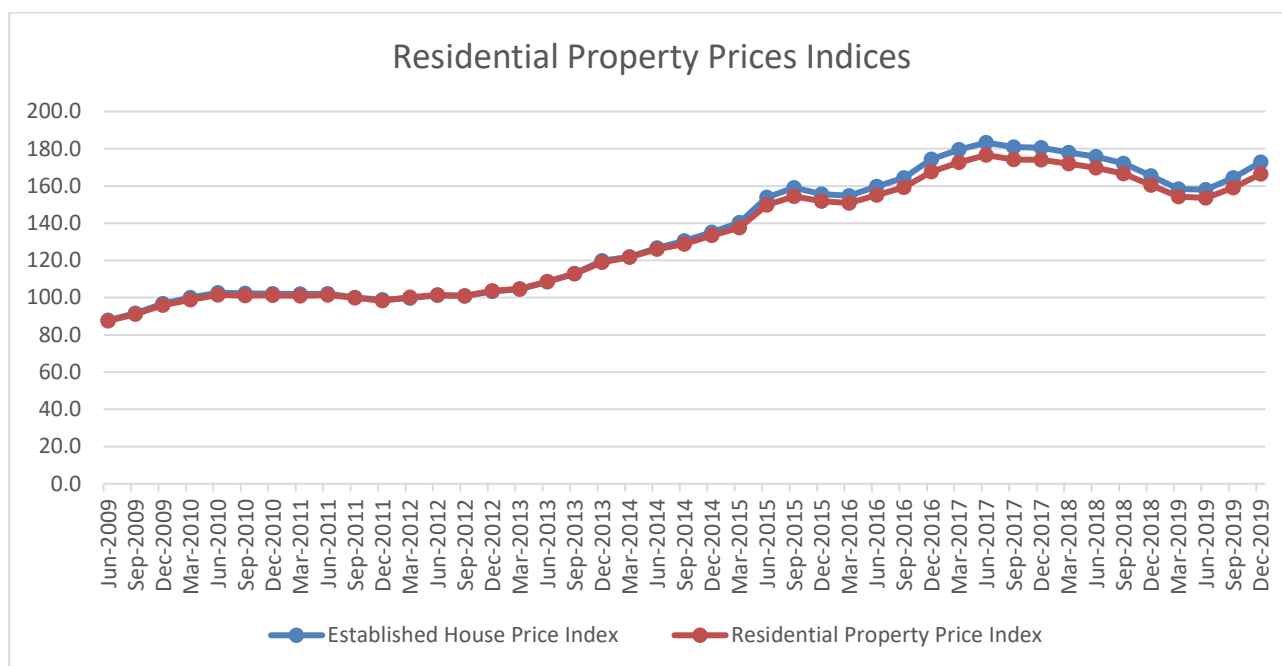
Ku-ring-gai Council would appreciate the opportunity to discuss this matter in more technical detail directly with the Department as it represents a significant management issue if the exemption is withdrawn before the contributions plan can be reviewed and, if necessary, referred to, and assessed by, IPART; a process that is currently inhibited by non-compliance with the essential works list particularly in terms of the inclusion of community floorspace and urban finishes to civic spaces in the public domain within in the contributions plan.

Indexing Options

Table 2 on page 8 of the discussion paper: **Improving the review of local infrastructure contributions plans** outlines options for inflating a new threshold, the options for which have been discussed above. The limitations of the CPI as an inflation factor where land acquisition is included were outlined above under Option One.

Ku-ring-gai's current s7.11 contributions plan utilises the CPI for the inflation of works costs but utilises the Established House Price Index for Sydney for the inflation of land acquisition costs.

In this context, it is noted that the comparison of the adjusted thresholds in Table 2 on page 8 to a single quarter, being the June 2019 quarter, unintentionally obscures the volatility in the Residential Property Prices Index. The benchmark of June 2019 that was selected for comparison purposes happens to have been at a low point in the recent cycle which has since rebounded as illustrated below. The inflated figure from the high point of June 2017 quarter, would actually have been closer to \$35,000 than \$30,000 and \$52,000 than \$45,000 respectively.



Source: ABS Residential Property Prices Index 6416.0 Tables 1 and 2.

In Ku-ring-gai, land purchases for open space and new road links have been benchmarked against these inflating contributions at time of purchase and these rates have been generally proven to be fair and reasonable reflections of actual costs. By comparison, use of the Consumer Price Index for the inflation of land acquisition costs would have led to considerable shortfalls. Accordingly, the CPI is not supported as an inflation mechanism for any contributions plan that seeks to acquire additional land for the delivery of public infrastructure.

The challenge for the department in maintaining an inflated threshold is that each council will have a contributions plan that features a different, locally appropriate, mix of land and works inflating at differential rates. With the inflation rates for land being quite different to the inflation rates for works, finding a balanced figure will be challenging.

Accordingly, it is recommended that the provisions to “cap” a total contribution within a consent, where rates in a contributions plan may inadvertently exceed the thresholds due to a period of volatility in one of the indices, should be retained as a short-term management tool. Contributions that are more broadly trending over the threshold will, quite reasonably, need to prepare for the IPART review process, however this process is lengthy and unable to react quickly in times of economic uncertainty reflected in quarterly land indices.

Intended outcome of the revised thresholds and review process

Ku-ring-gai Council appreciates that the intention of the revised IPART review process, updated and revised thresholds and inflation options, is to ultimately phase out all Schedule One exemptions and ensure that contributions are either under the threshold expressed in a future revised Ministerial Direction or reviewed by IPART. The option to apply any threshold to any given consent should be retained as an interim management tool.

In view of the complexities of intensive redevelopment and densification in an established brownfield context, Ku-ring-gai Council formally requests the opportunity to workshop with the department to find a way forward that will enable the current contributions plan to be reviewed and updated concurrent with the Greater Sydney Commission timeline, to continue to support the delivery of the current major projects that are in progress and to comply with the core philosophy of a reasonable contribution rate while providing fair and reasonable credit for the demolition of existing development.

The IPART Review Process and the Essential Works List

The process for a contributions plan to be reviewed by IPART and be approved for contributions above the “cap” is already established and iterated in **Practice Note – Local Infrastructure Contributions – January 2019**. It is acknowledged - with concern - that this Practice Note does not appear to be formally on exhibition and appears rather as supporting documentation to the exhibition of the discussion paper.

The requirements for an IPART reviewed plan are set down in 1.3 on page 10 of the practice note. The first requirement is that “IPART has reviewed the contributions plan (or a draft of the plan) in accordance with the assessment criteria set out in any applicable practice note, including whether the facilities to which the contributions plan relates are on any essential works list set out in the practice note.”

The Essential Works List appears in the practice note on page 14-15 as quoted below.

The following public amenities or public services are considered essential works:

- *land for open space (for example, parks and sporting facilities) including base level embellishment;*
- *land for community services (for example, childcare centres and libraries);*
- *land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking;*
- *land and facilities for stormwater management;*
- *the costs of plan preparation and administration.*

The essential works list is relevant only to those contributions plans that propose a contribution level above the relevant cap (unless otherwise directed by the Minister for Planning).

The essential works list does not apply to contributions plans currently below the relevant cap or to those contributions plans that are exempted from the relevant cap.

This section goes on to provide definitions and clarifications of the terms in this list including what is considered to constitute base level embellishment and the types of community facilities for which land contributions may be sought. Importantly this does not add these facilities to the essential works list, the words “and facilities” being absent from the reference to community services in the Essential Works List. Land, in this context, is not taken to mean floorspace or a stratum within a multi-purpose building and, as such, the list effectively excludes community facilities from development contributions, including from apportioned contributions (where council contributes the share of demand that arises from the existing population).

To date the majority of councils that have proceeded through the IPART assessment model are those in greenfield areas. If the option is to be utilised more broadly, then the Essential Works List is in need of an overhaul to allow a realistic appraisal of what is “baseline” in an urban context. Further the continued omission of floorspace for the provision of community services is not logical and risks drawing a raw distinction between contributions plans that are above and below the threshold, the latter being able to levy for community floorspace.

In summary, the Essential Works List, as it is currently drafted, operates as a primary barrier to more urban councils adopting this route and will be a barrier to assessment if contributions plans that do include community floorspace edge close to the threshold over time. The implicit greenfield bias in the wording of the essential works list is a matter that impacts all councils, including greenfield areas experiencing redevelopment in their main centres. As such, a review that acknowledges an urban “baseline” and adds the words “and facilities” to “land for community services” will facilitate consistency across contributions plans both above and below the threshold.

Baseline embellishment of open space, civic spaces and wide footpaths

In the practice note, “base level embellishment” of land acquired for open space is considered to be those works required to bring the open space up to a level where the site is suitable for passive or active recreation and may include site regrading, basic landscaping (turfing, asphalt and other synthetic playing surfaces, planting and paths), drainage and irrigation, basic park structures and equipment, security lighting and floodlighting and sports fields.

In urban redevelopment areas, the per capita provision of local parkland is typically well below the minimum square metres envisaged for greenfield subdivisions. Acquisition costs to increase the amount of parkland available are high and opportunities to consolidate parcels of land for usable new parks are relatively scarce. As such, urban open space in a redeveloping area must cater for intensifying usage – and this also applies to existing parks undergoing a complete reconstruction for much more intensive use as a direct result of the upzoning of surrounding areas, not only to newly acquired land. In this context, it is not clear if works arising directly from surrounding intensive urban redevelopment to existing landholdings are considered essential works.

In urban areas, open space is also provided in the form of civic spaces in areas with heavy pedestrian traffic, particularly in the urban centres around the railway stations which are the targeted areas for high density development. Other than structured garden beds, these areas are virtually 100% paved and asphalt would be considered well below baseline.

In urban areas there is also much less distinction between the roles of pavements as providing for pedestrian transport and their integration into civic spaces with sidewalk seating for eateries and shop displays. It is unclear from the essential works list as it is currently drafted, whether widened and paved footpaths would be considered an essential work if not solely for the provision for an increased volume of pedestrian movement.

Land “and facilities” for Community Services

Stand-alone, often remote, community facilities have not been a preferred design for community floorspace in dense urban areas for many years. Local centres are accessible by public transport and visits to libraries, for example, should be able to occur in conjunction with other trips. Many new community indoor spaces are delivered as stratum areas in larger buildings.

It is understood that the original rationale for the exclusion of facilities for community services was that floorspace could be funded by general revenue sourced from increased rate income. This argument is not reflective of the reality of increasing densification of existing residential areas, where the rate cap acts to limit the increase despite significant increases in population requiring recurrent services. Rate income, capped since 1977, is insufficient to provide for additional capital infrastructure and established area councils already struggle to fund the co-contributions required under the rules of fair apportionment often leading to extensive delays in construction. It is contrary to the core principle of development contributions that the incoming population should not contribute its fair share of the additional demand for the provision of capital infrastructure.

By way of example, over the last financial year Ku-ring-gai Council added 725 units which resulted in approximately \$390,000 of rate income based on the assumption that units are on minimum rates. Notwithstanding recent changes to the minimum rate, this increase is not in proportion to the increased costs of providing Council’s services in future years and does not sustainably support future growth in the provision of services. It certainly does not support the provision of capital additional community infrastructure.

It is reiterated that new community floorspace in established areas is already heavily apportioned with councils like Ku-ring-gai bearing a substantial co-contribution on behalf of the existing population. Should these contributions plans go before IPART, it is inevitable that the financial apportionment factors will be examined in forensic detail to ensure equity. That the proportion of these capital works that is supported by local infrastructure contributions is relatively small, does not negate their importance as part of the total project budget. Community floorspace must be considered essential.

Consequences of not revising the Essential Works List

Urban Parks, Civic Spaces and Public Domain Improvements

Extensive paving is more costly than swathes of grass and expanses of bitumen – but that level of finish is essential in areas with high pedestrian traffic. It is contrary to the principle of development contributions, refined by years of improving best practice, to deliberately include within a

contributions plan a work that is undercosted, at below baseline finish, in order to comply with an essential works list that does not adequately cater for the intensive usage experienced in densely redeveloping areas. To create an inevitable shortfall in the actual cost required to make the infrastructure robust and fit-for-purpose will inevitably lead to delays in delivery.

The potential for works-in-kind would also be inhibited by systemic undercosting. A contributions plan can only credit works-in-kind at the level of the budget set by the contributions plan; the rate at which it is levying to fund those works. To deliver a civic space or public domain upgrades to the public footpath in front of any given development as works-in-kind to the level of finish required, a developer would need to take on the additional cost of higher level finishing at their own cost without receiving any supplementary input from cumulative development contributions from adjoining development. While this may appear to reduce the published contribution rate, it represents an ad hoc cost shift of public infrastructure funding onto some new development rather than sharing it more broadly as contributions are designed to do. The alternative is that the project will be delayed until council can fund the additional cost to bring it up to baseline standard for the area and context. The quantum of co-contributions for many works have been a barrier to many councils in progressing the works programme, without limiting works funding to a baseline that is not fit for purpose in the urban context.

Twenty-first century community facilities as stratum floorspace within developments

The absence of floorspace for community facilities from the essential works list reduces the financial stake a council is in a position to contribute in a potential joint venture with a developer. It encourages the overuse of planning agreements for the provision of community infrastructure, while concurrently undercutting the negotiating position of the community through the council's reduced financial contribution to any joint venture. This is not considered an ideal outcome of the present reforms.

The effect of thresholds vs the essential works list

The proposed increase of the threshold below which contributions plans do not require IPART endorsement, is welcomed. The IPART process should be the exception rather than the rule.

However the distinction that the essential works list is binding on contributions plans that seek to levy over a certain threshold and non-binding on those below, creates management issues for contributions near the threshold should the threshold be progressively exceeded by plans that include "non-essential" works and are, therefore, debarred from the IPART process.

Further, the distinction has the potential to create inequity between communities in urban areas with high land acquisition costs whose councils elect not to supplement the provision of additional open space in order to stay below the cap and, as such, being exempt from the essential works list, can levy for the provision of community facilities.

There also seems to be an inherent disparity between the exclusion of community services floorspace for local infrastructure contributions and State Infrastructure Contributions (SICs) where allowable state infrastructure includes schools and health centres, not just the land for them.

In summary, it is strongly recommended that the words “and facilities” be added to the essential works list after the word “land” for community facilities, this being the only category where only land is listed and “facilities” are excluded. If not “facilities” then “floorspace” should be included to facilitate cost-effective solutions to the challenge of providing twenty-first century facilities in both greenfield and brownfield urban centres. Nothing about this small inclusion would obviate the necessity for a clear demonstration of nexus, nor evidence of strict adherence to the rules of apportionment (and, consequently, councils bearing the proportion of the cost that is attributable to the existing population), being clearly demonstrated in s7.11 contributions plans presented for IPART review.

Ku-ring-gai’s case for a continued Schedule One exemption in the short term

The “grandfathered” s7.11 contributions plan currently operating in Ku-ring-gai is **Ku-ring-gai Contributions Plan 2010** which was a consolidation of the two originally grandfathered contributions plans being **Ku-ring-gai s94 Contributions Plan 2004-2009** and **Ku-ring-gai Town Centres Contributions Plan 2008**, as directed by the then inquiry.

As previously stated, it is not the whole of the Ku-ring-gai Local Government Area that is listed in Schedule One of the Ministerial Direction; the exemption applying only within the intensively redeveloping areas along the Pacific Highway / Northern Railway Corridor and in St Ives. The remainder of the Ku-ring-gai Local Government Area within this same contributions plan is subject to the cap and this is duly applied where it is triggered. As contribution rates are lower outside the centres, these contributions generally sit around the level of the present cap. Generally speaking, as originally prepared, the exemption applied to all the areas zoned for higher density intensive redevelopment being the residential zones: R3 and R4, as well as mixed use and business zones. Lower density areas of R2 and the Environmentally zoned land E2 and E4, were located outside the areas exempted by Schedule One, notwithstanding the zoning instrument.

This split system, partly exempt and partly capped, has become a primary challenge confronting potential reviews of this older contributions plan. As LEPs have been reviewed and consolidated, and as Planning Proposals have altered the original edges of the higher density zones, there has been a mounting case to redefine the exempt areas to adhere to the original equity of higher density redevelopment contributing to the additional infrastructure required as a direct result of the intensification around the centres. Ku-ring-gai Council shares the reported concern of the Department and of Parliamentary Counsel, that the legal description of the exempt area has become dated as LEPs have been reviewed and consolidated. Until this inquiry presented an opportunity to develop a shared roadmap forward, the proactive instigation of discussions to refine these areas has been feared to constitute too high a financial risk to the income that supports the delivery of the Major Projects in Lindfield, Turrumurra, St Ives and Gordon.

The primary roadblock for Ku-ring-gai’s current contributions plan, or a revision thereof, to be assessed by IPART, which has resulted in a reliance on the current Schedule One exemption from the cap, is the absence of community facilities from the Essential Works List.

As expressed in the foregoing sections, it is unclear from the description of the threshold of the “trigger” for an IPART review process whether this relates to the nett position of any one development consent as a whole or to individual rates within a contributions plan. The latter scenario would have a material impact on Ku-ring-gai where, in most development scenarios, the

existing development to be demolished is credited at higher contribution rates than new development is levied due to the statistical occupancy rates.

Ku-ring-gai Council has been delivering and continues to deliver a rolling works programme of infrastructure with two of largest projects at a late stage of the pre-construction processes, particularly the Lindfield Community Hub which has been tendered.

It is appropriate in this context that the current Schedule One exemption – though with an updated legal description – should remain in place pending further investigation of the status of this contributions plan with respect to revised thresholds and the essential works list. This s7.11 Contributions Plan, as well as its s7.12 counterpart, are proceeding to review concurrent with the strategic planning processes under the Greater Sydney Commission – which will provide updated supporting plans and strategies to support nexus arguments. Further dialogue to facilitate this transition is the preferred outcome of this process.

It is emphasised that the timing of any transition is of critical importance to the delivery of the major projects in particular. The Schedule One exemption from the threshold as listed in the Ministerial Direction should not end abruptly without a system in place to continue to support on-going infrastructure funding including the recoupment of internal borrowings especially borrowings for the delivery of community floorspace.

Criteria to request a higher s7.12 percentage – Discussion Paper – April 2020

The potential for a larger number of councils to make application for a higher percentage levy for key areas of a Local Government Area is supported in principle. It is considered unlikely that any of Ku-ring-gai's commercial precincts - from the larger centres around the main railway stations of Gordon, Lindfield and Turrumurra to local neighbourhood centres - would be able to meet the proposed criteria of a significant uplift in employment, limiting its potential application in this Local Government Area.

The criteria for categorising centres, identifying supported infrastructure and justifying a higher percentage should be provided in formal guidelines to streamline submissions. In this context, it should be considered that the linkage to a substantial increase in employment potential may be impacted by both short-term and long-term changes to employment areas arising from the current pandemic. The way in which we work has changed and this is likely to have long-term implications for the balance of office-based work and working from home, with benefits for both employers and employees. The role of neighbourhood centres in supporting a larger home-based workforce should be further investigated and accommodated in changes to indirect contributions that support infrastructure improvements. The level of future demand for office floorspace in particular has become less clear during 2020.

The opportunity for supporting redevelopment and renewal potential within older existing but small-scale B4 business parks should also be considered for a higher than one percent levy in order to deliver facilities that would support reinvigoration including improved vehicular access and traffic signals; pedestrian improvements and the public domain.

In this context, Ku-ring-gai Council included the Pymble Business Park in its current s7.11 Contributions Plan, however, subsequent development has proved to be sporadic and highly varied by type, ranging from a Bunnings on the site of a demolished former office building through to the

conversions of some manufacturing businesses to storage businesses. Such unpredictability is arguably better suited to a percentage levy but 1% is unlikely to have achieved the specific traffic related improvements sought under the s7.11 contributions plan particularly in relation to the interfaces with adjoining regional roads.

Planning agreements practice note – Exhibition Draft – April 2020

Planning Agreements are an important component of the suite of measures for infrastructure funding. It is agreed that they should not be a replacement for s7.11 contributions as set down in a formal contributions plan however, for distinct areas or large sites released for redevelopment, particularly if being undertaken by a single developer or consortium, especially under a Masterplan, a Planning Agreement could be best placed to facilitate the timely progressive delivery of appropriate infrastructure.

It is agreed that it is not the role of a planning agreement to make an unacceptable development acceptable. However, where a planning agreement acts to secure the timely on-site provision and dedication of public infrastructure such as open space and pedestrian links to agreed standards, then it has an important role in delivering the development as a whole.

In Ku-ring-gai, a prime purpose of Planning Agreements to date has been to document the agreed requirements and standards for undertaking of works-in-kind, such as the delivery of a single new road link, now opened as Hanson Way in Gordon, by two separate developers each with a development adjoining that street and fronting the two roads linked by that street (Dumaresq Street and Moree Street). The other main function of Planning Agreements has been the dedication of narrow slivers of laneway frontage for the purposes of progressive road and footpath widening as the more narrow back streets and rear laneways within mixed use areas are redeveloped.

As the beneficiary of an exemption from the threshold limitation on contributions in its intensively redeveloping local centres, Ku-ring-gai has been able to adequately progressively fund key community infrastructure and has not had to rely on Planning Agreements to secure additional funding for local infrastructure through value capture or to obtain community floorspace within larger developments.

In principle, there should continue to be a role for planning agreements in value capture or bonus floorspace provision, but there should be clear policy guidance on the drafting of planning agreement policies that allow for value capture and provide a clear link to the Local Environmental Plan and Development Control Plan. Linking additional uplift to impact mitigation, by articulating a causal nexus for the works to be funded by this mechanism, would be one way of controlling value capture through clear policy guidelines. Ideally, there should be standard formulae that remove much of the appearance of subjectivity from the process.

Special Infrastructure Contributions Guidelines – Draft – April 2020

Special Infrastructure Contributions (SICs) are recognised as an important component of the planning framework to enable funding for key infrastructure. As a member council of NSROC, Ku-ring-gai supports the preparation of the Guidelines, especially the expanded stakeholder and community consultation provisions.

Ku-ring-gai Council notes there are a number of urban area Special Infrastructure Areas in adjoining or nearby local government areas including Macquarie Park in Ryde LGA, and St Leonards-Crows Nest in Willoughby LGA and Lane Cove LGA. Should a Special Infrastructure Contributions Area be proposed in the Ku-ring-gai LGA, Council would appreciate early involvement to ensure a balance of local and regional infrastructure delivery.

Environmental Planning and Assessment Regulation 2000 proposed amendments – Policy Paper – April 2020

Commentary on most of the proposed amendments to the Regulations to give effect to the proposed changes appear in the relevant sections above. This section concentrates only on the aspects that have not been the subject of earlier comment.

Financial Reporting as outlined in section four

Ku-ring-gai Council supports the principle of reporting on the financial delivery of infrastructure funded by s7.11 contributions. It is noted that the detailed reporting requirements are to be outlined in separate future guidance to support councils. It is important that these future guidelines take into account the suggestions for implementing this system made as part of this process to ensure that the resulting information is fit for purpose without imposing a significant administrative burden on councils.

It is important to appreciate that existing contributions plans (CPs) have not been written to facilitate the proposed changes in detail to be reported. Many existing CPs contain a large quantity of minor line items in the works programmes which could be comprehensively and coherently reported on as distinct programmes or as components of a larger project.

By way of example, Ku-ring-gai's s7.11 contributions plan separately lists sections of cycleways which could be more effectively reported as a progressive roll-out of cycleway links. In local centres where public domain improvements are proposed, the paving, lighting, street furniture and street tree planting are all listed and costed as separate works, whereas, in practice, the delivery of public domain upgrades in a single street block, would deliver several of these separately listed works under the one single project with a consolidated budget. Lastly, the community hubs are major projects that combine all the categories of contributions (open space, community facilities, traffic improvements and public domain works) together with financing from many other sources to form the total project budget. These major works have long lead times and are being progressively delivered over several years. Ku-ring-gai Council provides substantial public information on its website concerning the status of the delivery of the major projects and, more generally on the delivery of works funded by contributions.

A streamlining of the works programme to facilitate project based financial reporting would allow for a more meaningful delivery of public information. In the short term, if this type of reporting comes in to effect prior to the capacity to review and update the contributions plan, councils should have the option to bundle individual small-scale works into defined projects or programmes for clarity of reporting.

Additional clarity will be required in the proposed additional guidance to councils to outline how the reporting is to be achieved with respect to apportioned works (where only a portion of the item

is funded by contributions and council provides a co-contribution that is often the most significant funding for the project); major works (where the project budget is made up from a number of different sources, some of which, in the case of project partnerships, may be commercial-in-confidence); and progressive works (for example where contributions are sought towards the acquisition and embellishment of open space wherein land is progressively acquired until all the targeted properties are in council ownership and form a large cohesive space, and then demolition takes place and the park itself is then separately delivered as part of the rolling works programme).

Reporting on internal borrowings should be limited to borrowings between reserves. Within reserves, where a number of works are listed under the category, it is inevitable that each work borrows from every other work until the first work delivered is fully recouped and the last work delivered is fully funded.

Further clarity will be required on historical reporting for contributions plans that have been in effect with a rolling programme of works delivery that has been underway for some years. Where aggregate information has already been supplied within Note 23 (formerly Note 17) as part of the audited financial statements, the proposed reporting framework should not retrospectively apply. It is suggested that the proposed changes apply only to those works that have not yet been delivered.

It is appropriate that the reporting should relate to a financial year in arrears, however there is already a large burden of work on councils at the end of each financial year. To avoid adding to this already extensive workload and to facilitate comprehensive reporting, it is suggested that the deadline for provision of audited financial information for contributions and infrastructure delivery should be on or about 30 September each year for the year ending 30 June.

In this context, however, the guidelines will need to include direction for large projects that are progressively delivered in stages or projects which span more than one financial year.

With respect to works-in-kind and the dedication of land, clarification is also sought as to whether this is a point in time valuation either relative to the date the Planning Agreement was entered into, the actual date of delivery or whether regular revaluation is required in this context.

In the context of improving the reporting framework, it should be noted that all contributions plans within the Metropolitan Area will experience a review trigger as part of the strategic planning work being undertaken for the Greater Sydney Commission. Additionally, there is further work to be undertaken on formal reporting guidelines following analysis of the submissions received on this matter.

As such, a delayed implementation of the proposed reporting framework concurrent with this timeline would be appropriate and yield better quality information for both the government and the general public.

Summary

It is not disputed that the current Ministerial Direction relating to s7.11 contribution thresholds together with varying exemptions to those thresholds has, over its more than ten years of operation and amendment, become convoluted and dated and should be streamlined. It is greatly appreciated that the Department has sought input from Local Government and the community prior to making extensive changes that will update the threshold and streamline the IPART review system as well as focussing on the alternate development contributions options of indirect contributions under s7.12 and Planning Agreements.

As one of the few urban councils benefiting from a partial exemption from the threshold limitation by way of mention in Schedule One, Ku-ring-gai Council's s7.11 contributions plan is directly impacted by the proposed changes. Any transition and review process will take time to bring to fruition, especially if an additional IPART review process is required.

It is understood that the present contributions plan is dated and must be reviewed prior to any assessment by IPART and Ku-ring-gai Council confirms that this process is already underway concurrent with the intensive strategic planning processes underway under the direction of the Greater Sydney Commission. The documents being prepared as part of this process are primary supporting documents in the demonstration of nexus and the timing of the present review of the contributions plans is integral to - and not severable from - that process.

As such, any premature removal of the Schedule One exemption has potentially significant and immediate impacts on Ku-ring-gai Council and its on-going infrastructure delivery programme.

Conclusion

The need for reform to achieve greater consistency and streamlined processes is evident and the foregoing submission has outlined some of the key challenges and opportunities in moving forward to achieve the envisaged outcomes. Ku-ring-gai Council commends this commentary to the Department's consideration and would welcome opportunities for further clarification and discussion.