AUSTRALIAN TURKISH MAARIF FOUNDATION

Mr Hamish McNulty
Acting General Manager
Cumberland Council
PO Box 42
MERRYLANDS NSW 2160

21 May 2018

Dear Mr McNulty,

Section 7.11 and 7.12 contributions for proposed new Turkish school at 2 Percy Street, Auburn

As you know, the Australian Turkish Maarif Foundation (**ATMF**) is in the process of preparing to submit a development application for State Significant Development (**SSD**) for a new primary and secondary school at 2 Percy Street, Auburn (**the School Site**).

As part of this, we are writing to inform you that, at the time the SSD application is submitted, we will be seeking an exemption for the payment of ss7.11 and 7.12 (previously ss94 and 94A) contributions under the *Environmental Planning and Assessment Act* 1979 (**EP&A Act**). As you are aware, the ATMF has already committed to entering into a voluntary planning agreement (**VPA**) with Cumberland Council (**Council**) in relation to the proposed amendment to the *Auburn Local Environmental Plan 2010* (**Auburn LEP**) to enable the development of an education facility on the School Site (with consent). We note that the planning proposal was granted Gateway determination on 20 February 2018.

The Minister or the Independent Planning Commission will be the relevant consent authority for the SSD application, and therefore will determine the appropriate conditions of consent should the application be approved, including in respect to development contributions. However, as part of our consultation process in preparing the SSD application, we are seeking in principle agreement from Council that it will support the School's submission that ss7.11 and 7.12 contributions should not be payable in relation to the SSD application for the new school.

1 Auburn Development Contributions Plan

The *Auburn Development Contributions Plan 2007* (**Auburn Contributions Plan**) outlines Council's policy in relation to development contributions. Section 3.6 includes a number of circumstances in which Council will exempt a party from the payment of development contributions. One of these circumstances is *'merit exemptions to development contributions*'.

At page 19 of the Auburn Contributions Plan it reads:

Council may consider, on the individual merits, a case for exempting the following types of development from the levying of development contributions:

- *Developments by or for non-profit organisations which provide a distinct community benefit including but not limited to: the provision of childcare services, outreach services or the like, on a cooperative or not-for-profit basis.*

In relation to s94A (s7.12) contributions, the Auburn Contributions Plan states that:

Council may consider exempting developments, or components of developments, from a levy under this Plan that include:

(h) Development by or for non-profit organisations which provide a distinct community benefit including but not limited to: the provision of childcare services, libraries, community or education facilities, places of worship, outreach services or the like, on a cooperative or not-for-profit basis.

The ATMF is seeking exemption from the payment of ss7.11 and 7.12 contributions on the basis that it falls within the exemptions outlined above, that it is already providing significant contributions through a VPA and that the Auburn Contributions Plan does not intend contributions to be levied on organisations such as the ATMF in circumstances such as this. We provide further justification below.

2 Basis for Exemption from s7.11 and s7.12 contributions

We provide specific information on the bases for our exemption from development contributions below.

2.1 Not-for-profit organisation

The Auburn Contributions Plan indicates that development carried out by not-for-profits for a distinct community benefit may be exempted from the development contributions levy.

The ATMF is a not-for-profit organisation. The ATMF is registered as a charity with the *Australian Charities and Not-for-Profits Commission* (**ACNC**). Only charities which have met the legal meaning of a charity may be registered on the ACNC Register. The ATMF has been registered as a charity since 1 July 2017 and continues to be a not-for-profit organisation. The ATMF School Auburn will be operated as a not-for profit school.

2.2 Community Benefit

The ATMF School Auburn will provide a broad benefit to the Community. As the first Bilingual Turkish school in the area, the ATMF School will meet the needs to this community by providing an educational facility for the Turkish community and those who identify with the Turkish community. The ATMF has carried out extensive research and has identified that there is a strong community need and desire for a Turkish School. The new ATMF school will cater for kindergarten to high-school children, providing a valuable educational facility to children across a broad range of age groups.

We anticipate that the school facilities will be used by the broader local community for community events such as fairs, workshops, seminars or sporting events and, as such, the entire community will benefit from the new school facilities.

2.3 Other factors

There are a number of other factors which support our application to have development contributions waived for the proposed new school.

(a) **Section 7.11 contributions for educational establishments** – The Auburn Contributions Plan, in respect of s7.11 (s94) contributions, states that it applies to both residential and non-residential development. Whilst non-residential development is not specifically defined in the plan, the Contributions Plan refers to only two types of development and these are industrial and commercial development. Given that an educational establishment is neither an industrial or commercial development, the Auburn Contributions Plan relating to s7.11 (s94) contributions does not technically apply to educational establishments. It is therefore appropriate (and consistent with the Auburn Contributions Plan) that a s7.11 contribution is not imposed on the ATMF;

(b) **Section 7.12 contributions** – Whilst a school is technically an 'employment generating development' (and therefore included in part F of the Auburn Contributions Plan relating to s7.12 (s94A) contributions), given the community use of the development, which is in itself providing a significant benefit, we would consider it a perverse outcome for a levy to be imposed under this part of the plan. Whilst the school will generate employment, it will have other much broader benefits;

(c) **VPA** – as outlined above, the ATMF has offered to enter into a VPA in connection with the proposed amendment to the Auburn LEP. The School is committed to providing significant contributions to the community in the form of additional traffic works and other measures through the VPA. In this circumstance (and in light of the fact that the ATMF is a not-for-profit seeking to develop a school), we consider that it is unnecessary to impose further development contributions in addition to the already extensive contributions offered in the VPA;

(d) **Distinct community benefit** - The school intends to open up the school and its facilities for community use. The new school will clearly be providing a public benefit to the school students, staff and the broader community; and

(e) **School resources** - The payment of contributions would consume valuable resources which are more appropriately developed to the school's core business of education.

We hope that the above is sufficient justification for Council to support our application to have s7.11 and s7.12 contributions waived in respect to the SSD application. We will of course include detailed justification in our SSD application for consideration by the consent authority. We would appreciate Council's in principle support for classifying the ATMF as exempt from development contributions in this case so that this can be included in our SSD application.

Please feel free to contact Mr Semih Asaroglu on 0422 054 381 if you wish to discuss.

Yours Sincerely,

Dr M. Murtaza YETIS
Director, Australian Turkish Maarif Foundation