

Mr John McKee
General Manager
Ku-ring-gai Council
mckee@krg.nsw.gov.au

21 July 2023

Dear Mr McKee

RE: NSFA – Construction of a new grandstand and associated facilities – North Turramurra Recreation Area

We are concerned with Council's apparent lack of due process, transparency and accountability with respect of the NSFA proposal. We seek answers to the following questions:

1. Before signing Heads of Agreement, has Council been provided proof that the NSFA has all the necessary funds to assure construction of the NSFA DA0484/21 (Stage 1 and Stage 2) project, including ongoing funding to assure all capital costs, operational costs and whole of lifecycle cost over 20-30years to be borne by the NSFA?
2. We note in the NSFA Multi-Sport Community Facility Fund 2022/2023 (Round 2) Application, the NSFA states that included in the scope is Stage 2 works (community space & Office space) but Stage 2 is excluded from the grant. Has the funding for Stage 2 been included in the estimated \$6M plus estimated capital cost for the project?
3. If NSFA fails to fund the project at any stage during construction or operation during the term of their licence, what financial risks does council incur?
 - Can Council terminate the Project Deed after the Construction Contract has been entered into?
 - Who is liable for cost overruns in construction, maintenance or operations if the NSFA are unable to provide funding?
 - Is it correct that the NSW Office of Sport may withdraw the \$3,640,243 funding grant if significant progress is not made towards construction by the middle of this year?
4. Is it in Council and ratepayers' interest to cap the contingency costs for NSFA to 15% given that Council has acknowledged the project presents a financial risk and no financial benefit to the community?
5. Is there a legal requirement to publicly exhibit the Heads of Agreement and Licence if Council proposes a minimum 20 Year lease over council owned land with a possible 10 Year extension?
6. Did you or any other council official give Owner's Consent to the NSFA for application to the
 - Multisports Facilities Grant (Round 2) 2022?
 - Female Friendly Grant 2022?

7. We understand there are a number of financial and contractual risks to council identified with the NSFA proposal.

- Is it correct that Council may not have the right to terminate the Project Deed after the Construction Contract has been entered into and therefore may be liable for cost overruns if the NSFA are unable to fund additional costs?
- Is it correct that council may need to cover additional ongoing maintenance and replacement costs if the NSFA do not raise sufficient revenue from operating the facility.
- Is it correct the Office of Sport may withdraw the \$3.6 million funding grant if significant progress is not made towards construction by a stipulated completion date?

8. A Bushfire evacuation plan is required by the RFS as a condition of consent of the DA. At what stage in the process is the Bushfire Evacuation Plan to be submitted?

9. We are extremely concerned by a couple of perceived conflicts of interest:

- Kevin Johnson is, we understand, the CEO of the NSFA and has a brother Stephen Johnson who works for Ku-ring-gai Council as Manager Property. Due to conflict-of-interest issues Kevin Johnson stated in correspondence on 22 November 2022 to Director Andrew Watson that he would remove himself *“from all discussions and communications in relation to the NTRA and other licencing matters in the jurisdiction of Ku-ring-gai Council.”* However, we understand he continues to be active in correspondence to council and councillors over the NTRA and the NSFA proposal including meeting with two councillors on the 11 February 2023 over the wording of the Heads of Agreement. Removing Kevin Johnson’s brother from working directly on the project does not reassure the public there is no conflict of interest. How are the perceived and direct conflicts of both Johnson brothers being addressed by Council with respect to the NTRA and NSFA proposal?
- We understand a couple of councillors met with the applicant Kevin Johnston CEO of NSFA on Saturday 11 February 2023, to discuss the Heads of Agreement and subsequently on the following Monday submitted an email to Director Andrew Watson suggesting changes to the Heads of Agreement following the meeting with Kevin Johnson and copied to particular councillors who have consistently voted in support of the NSFA project. According to the email Kevin Johnson demanded a cap on the contingency funding of 15%!

Doesn't this constitute a conflict of interest for the councillors meeting with the Applicant and drawing up suggested wording for the Heads of Agreement?

We look forward to your reply.

Your sincerely

Kathy Cowley

Kathy Cowley
PRESIDENT