

3 March 2025

Ms Linda Davis
Director Planning + Environment – Future City + Neighbourhoods
Wollongong City Council
41 Burelli St
Wollongong NSW 2500

RE: Submission to Review of Wollongong Development Control Plan 2009 Chapter A2

Dear Ms Davis,

The Urban Development Institute of Australia NSW (UDIA) is the state's leading development industry body. We represent the leading participants in the industry and have more than 450 members across the entire spectrum of the industry including developers, financiers, builders, suppliers, architects, contractors, engineers, consultants, academics and state and local government bodies. We have an established Illawarra-Shoalhaven Chapter that regularly meets with and collaborates with the Local Councils in the area, including Wollongong.

UDIA thanks Wollongong City Council (WCC) for the opportunity to provide comment on its review of Development Control Plan (DCP) Chapter A2, which we acknowledge as part of a suite of reviews into WCC's DCP.

Through these reviews, UDIA will continue to advocate for a streamlined set of controls that support greater transparency and reduce duplication, enabling greater development certainty particularly in this time of high development cost precarity and frequent legislative change. This is especially relevant in Wollongong, given the impending finalisation of the West Dapto Contributions Plan which will increase local contributions to as much as \$80,000 per home.

UDIA expresses some concern with the proposed changes to DCP Chapter A2. As an introductory Chapter, the changes finalised in Chapter A2 will set a precedent for the rest of the DCP Chapters, increasing the importance of getting this Chapter right. While acknowledging that DCPs do not hold legislative weight, UDIA's members have noted concerns with how the proposed changes to Chapter A2 will function in practicality, potentially compromising a reasonable balance between ESD and project intentions. We further outline these concerns in more details below.

Impact on Development Assessment Timeframes

Members have noted that current Development Applications (DAs) in the Wollongong LGA are taking significantly longer than the standard 2 weeks for referral responses, and sometimes several months to receive any additional information requests. There is therefore reasonable concern that adding more requirements with which to assess an application against is only going to slow these times further.

Further, WCC has not referenced dedicated resources to provide evaluations of compliance with this Chapter. This has two implications. First, we would presume this would most likely fall on the already stretched Development Application planners, further contributing to slower timeframes as noted.

Second, we are concerned that the current wording is vague making it difficult for an objective assessment to be undertaken. For example, the precautionary principle notes the avoidance of “threats of serious or irreversible environmental damage” that is guided by “careful evaluation...” and “assessment of the risk-weighted consequences...” without identifying an evaluating party or any objective assessment measures. This leaves the process open to too much subjective interpretation and UDIA strongly encourage any evaluation to be based on clearly identified, objective measures.

While we note that the definition of ESD used in this Chapter has been drafted to mirror similar language from other sources, such as the Protection of the Environment Administration Act 1991, if it is to be incorporated in a local DCP there should be some understanding of how this is meant to be measured or interpreted. Otherwise, UDIA is concerned that this Chapter risks becoming a further source of confusion and uncertainty for the development industry. .

Duplicative Assessment

UDIA notes, that requirements to satisfy ESD principles already exist across various legislation in NSW. For example, facilitation of ESD considerations is the second objective of the Environmental Planning & Assessment (EP&A) Act (see s1.3(b)). This should already authorise ESD considerations to be at the forefront of development assessment across NSW, and be included as appropriate into the adoption of controls such as the State Environmental Planning Policies. Locally, the Wollongong Local Environmental Plan also has ESD embedded into its provisions for design excellence in the Wollongong CBD (see s7.18(viii)).

Regardless of where it is featured, it is also observed that the definitions and parameters of what ESD entails remains broad. This leaves applicants uncertain as to whether they have provided enough information at any given point of assessment to have satisfied ESD provisions. This ultimately has created instances where Council will ask for several reports in an attempt to demonstrate that ESD provisions are met. The Building Code of Australia has often been called in as an ESD measure.

There are already Australian Standards, BASIX and NatHERs which all mandate efficiency requirements for systems, equipment or appliances such as hot water systems, taps etc. We believe that everything else falls outside of the reach of a Council, and the inclusion of this DCP Chapter adds time and confusion to the DA process without demonstrated improvements to ESD outcomes.

Treating ESD through DCPs

By focusing on the principles of ESD, UDIA believes that this Chapter creates uncertainty about the level of weight ESD considerations should have in development assessment.

For example, it is unclear how an application which might fall outside of the examples provided will be assessed as having “considered” ESD. The Principles and Objectives of the exhibited draft Chapter ask applicants to demonstrate that consideration of ESD has occurred for their residential development applications. The use of the word ‘consideration,’ without clear objective measures, creates uncertainty to how an applicant should demonstrate compliance.

Development Feasibility

In addition to the uncertainty surrounding the weight given to ESD considerations in assessment comes, UDIA also has concerns how ESD may be considered against other critical features of development, such as project feasibility. For example, an applicant that has demonstrated, in some way, that it is attempting to meet some ESD principles may find the feasibility of a project is jeopardised by adopting some or all of those measures. It is unclear whether demonstrating some, or all ESG measures, would result in the project becoming uneconomic would be considered satisfactory as having given appropriate consideration under this Chapter.

UDIA believes that this Chapter should make clear that project feasibility remains a key consideration ahead of ESD measures. As noted in the EP&A Act, the DCP is tasked with facilitating development that is permissible under other planning instruments through the setting of controls, rather than focussing on principles. UDIA believes the draft DCP’s loose definition of ESD should not be used as grounds to override rightfully lodged development and should not take precedent over ESD measures.

Recommendation

WCC has an opportunity to lead around the interpretation of ESD in development, while still maintaining a local focus. However, the issues noted above must be considered when finalising this Chapter. We ask WCC to:

1. Remove Chapter A2 as a standalone chapter in the Wollongong DCP, instead incorporating sustainability controls throughout existing ‘B’ chapters of the DCP that are relevant to land uses to remove duplication and observe existing requirements for ESD.
2. If the chapter is not removed, we request re-exhibition of this Chapter with more developed commentary on how ESD provisions will be measured, by who, and with clarification on how other ways to meet ESD requirements might be treated.
3. Continue to acknowledge that consideration of ESD should not take precedent over development feasibility or intentions amidst the current attempt to build a record number of homes in Wollongong, particularly where principles of ESD are addressed at other points of the development process.

We again thank WCC for the opportunity to provide a submission to this exhibition. Should you or your team have further questions about our submission please contact Nathan Boulous, Manager, Research, Illawarra, & Southern NSW at nboulous@udiansw.com.au or on 0499 399 978.

Kind regards,

A handwritten signature in black ink, appearing to read 'Stuart Ayres', with a stylized flourish at the end.

Hon. Stuart Ayres
Chief Executive Officer
UDIA NSW