30 January 2025

The General Manager
Attn: Strategic Planning Team
City of Newcastle
PO Box 489
Newcastle NSW 2300

Via email: planning@ncc.nsw.gov.au

Dear Strategic Planning Team,

Re: Draft Affordable Housing Contributions Scheme

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development across NSW through our over 450 member organisations. UDIA's members are developers, consultants, councils and state agencies. Our Hunter Chapter consults regularly with the City of Newcastle Council on local development issues and planning matters pertinent to the region. Together with our members, we shape the places where people will live for generations to come and in doing so, we are city shapers.

UDIA appreciates the opportunity to offer our comments to the City of Newcastle's (CN) draft Affordable Housing Contributions Scheme (draft Scheme), and we welcome further engagement prior to the finalisation and implementation of the Scheme.

UDIA supports the intent of the draft Scheme being to increase the supply of housing, in particular the supply of affordable housing for the community. However, UDIA has a number of concerns regarding the proposed contributions and the potential unintended consequences of the Scheme, and we offer the following recommendations for finalising the Scheme:

UDIA recommends:

1. Provide evidence of the analysis that has been undertaken of the Scheme's impact on future dwelling supply of both affordable housing and general market housing.
2. Provide clear justification for the Scheme exemptions and instead consider broader application with lower rates across all new housing.
3. Clarify that land in the Western Corridor already zoned for residential purposes at the time of the Scheme's adoption, is exempt from the Scheme, consistent with the planning proposal.
4. Ensure that the Scheme allows for and welcomes innovative solutions to the provision of affordable housing.

5. Utilise the strengths of different CHPs to manage and/or develop CN's affordable housing portfolio by establishing a small panel of CHPs who can demonstrate a good track record and aiming to engage a diversity of providers.
6. Provide clearer explanations for the proposed varied contribution rate methodology and is application.
7. Make it more clear how the pathways (dedication, payment or a combination) are available to developers and ensure pathways are easy to execute at the development stage without negotiation.
8. Include a mechanism for contributions to be deferred in the case of multi-stage developments without the requirement for an equivalent bank guarantee.
9. Provide that any affordable housing delivered in a development under the Housing SEPP will count towards the contribution under the CN Scheme.
10. Improve governance, transparency and accountability through additional reporting measures; third-party review; and Department of Planning Housing & Infrastructure (DPHI) endorsement of future rate changes as outlined in our submission.
11. Ensure the contribution payment applies only to final residential lots and clarify the Scheme does not apply to the creation of development residue lots and/or superlots.
12. Clearly state that the legal agreement regarding dedication and transfer of land/dwellings cannot be unreasonably withheld by CN and its execution will be administered efficiently.
13. Include a grandfather clause to exempt any DA that is lodged at the time of Scheme commencement.
14. Phase in the Scheme over 5 years instead of 2 years as drafted.
15. Re-exhibit the draft Scheme and planning proposal once recommended changes have been incorporated.

Background

The proposed contribution represents another tax on residential development in addition to various other local, state and federal levies and taxes applied to the delivery of residential dwellings. Charges introduced within the last 12 months on the delivery of residential housing in the locality include the Housing and Productivity Contribution, Hunter Water developer charges and this proposed affordable housing contribution.

The above charges, in addition to Section 7.11 / Section 7.12 levies, stamp duty, biodiversity offsets and land tax, comprise a significant portion of the sale price of a residential dwelling and the introduction of this affordable housing levy will add further upward pressure on housing input costs.

The introduction of such additional charges impacts development feasibilities, acting as a disincentive for the delivery of housing. We are in an especially fragile moment of housing project viability with challenging macro-economic conditions resulting in housing completions at well below levels required by the National Housing Accord. Given the ongoing development challenges, the ability of CN to meet its Housing Accord target of

11,000 new dwellings over five years is already in question. Now is not the time to add further costs and challenges to housing delivery.

UDIA offers several recommendations to reduce the risks to project feasibility and mitigate potential negative impacts on housing supply, as follows.

Recommendations

1. ***Transparency: share evidence of impact on housing supply***

Housing affordability is the number one issue facing the state of New South Wales and the proposed introduction of additional levies and taxes requires careful consideration so as to not reduce the overall volume of future dwelling supply. UDIA holds significant concerns regarding the impact of the draft Scheme on overall development feasibility and is of the view that the policy, as drafted, may significantly compromise the future dwelling supply within the Newcastle LGA. To this end, UDIA requests that City of Newcastle provide evidence of the analysis that has been undertaken on the impact of this draft Scheme on future dwelling supply of both affordable housing and general market housing.

2. ***Application to be broad and equitable***

The Scheme, as drafted, does not apply to any residential development resulting in residential gross floor area (GFA) less than 540sqm. UDIA requests further explanation from CN regarding this policy position on exemptions. At face value, it is likely to incentivise the continuation of detached housing in infill locations, rather than promote the increased density that CN and the NSW Government are seeking to support housing targets.

It is understood that this threshold was introduced due to the proposed levy resulting in this type of development being unfeasible. That acknowledgement highlights the potential feasibility risk to all development to which the Scheme applies. UDIA recommends a broader application of the Scheme with lower rates across all new housing.

3. ***Inconsistency between Draft Scheme and Planning Proposal***

The exhibited planning proposal and the draft Scheme appear inconsistent in the applicability of the Scheme. Whereas the planning proposal seems to exempt currently zoned land in the Western Corridor, the draft Scheme does not make this exemption clear. UDIA requests clarity that land in the Western Corridor already zoned for residential purposes at the time of the Scheme's adoption is exempt from the Scheme, consistent with the planning proposal.

The draft Scheme and planning proposal should be re-exhibited once this inconsistency has been resolved.

4. ***Flexibility for innovation***

The draft Scheme requires any affordable housing delivered to be transferred free of cost to City of Newcastle. UDIA recommends the Scheme should explicitly include more flexibility to consider innovative solutions to affordable housing under various ownership and management models that could emerge. This flexibility will allow the Scheme to remain current as community housing providers and industry continue to work for solutions together, offering increased choice and competition in the sector. We recommend the Scheme should outline how it allows for and welcomes innovative solutions to the provision of affordable housing.

5. *Partnering with CHPs*

Section 3.3 of the draft Scheme speaks to engagement with a community housing provider (CHP) to manage or develop affordable housing. UDIA encourages Council to consider the benefits of engaging more than one CHP to manage Council's affordable housing portfolio. Diversity of provider is in the community interest, as providers have differing strengths and capabilities that may be better suited to the needs of some tenant cohorts over others. It is suggested to establish a small panel of CHPs who actively manage social or affordable housing within the LGA and can demonstrate a good track record in doing so.

Land dedicated to Council should be made available to CHPs to develop affordable housing. Given the core business of CHPs is the delivery of affordable housing with a long-term focus, their involvement facilitates the achievement of economies of scale and affordable housing portfolio optimisation. Not-for-profit CHPs have tax-free status, as well as access to favourable lending arrangements via Housing Australia and grant and funding opportunities that can also reduce the overall cost of development and increase affordable housing outcomes. Again, the UDIA would encourage Council to consider the benefits of engaging more than one CHP to partner in the development and establish a small panel of CHP's who already actively manage social or affordable housing within the LGA and can demonstrate a good track record in property development.

6. *Monetary contribution to be feasible and easy to understand and apply*

The draft Scheme outlines different contribution rates for various suburbs within the LGA. Whilst work has been undertaken regarding the feasibility analysis to inform the contribution, we cannot identify evidence in the exhibited material that this theoretical analysis fully captures the commercial risks faced by industry. UDIA again notes that there is a real risk of the Scheme resulting in reduced housing delivery across the LGA due to the cumulative impact of contributions on development costs.

The proposed methodology for the application of monetary contribution rates across the LGA is difficult to understand. UDIA recommends that the explanations be made clearer prior to implementation.

7. *Clarify implementation pathways*

UDIA welcomes the choice to fulfill the Scheme requirement by way of either delivery of affordable housing on site or payment of a monetary contribution.

Depending on the particulars of various projects, either mechanism (or combination of the two) may be preferred. We recommend making it clear how the pathways (dedication, payment or combination) are available to developers and ensuring pathways are easy to execute at the development stage without negotiation.

Per our recommendation at #4 above, we request that the Scheme invite consideration of other innovative approaches that may emerge as the market evolves, and the pathway to consider alternative solutions should also be clear.

8. Impact on development cashflow

UDIA is not convinced the feasibility analysis undertaken gives due consideration to the real impacts of the Scheme on cashflows at various and critical points of a development project. Depending on project-specific market and financing variables, the Scheme may result in some developments not proceeding despite meeting the theoretical 'feasible' assumptions outlined by CN. This oversight in the analysis would therefore lead to a reduction in overall housing supply, including affordable housing.

To mitigate this risk, UDIA recommends the Scheme should include a clear mechanism for contributions to be deferred in the case of multi-stage developments without the requirement for an equivalent bank guarantee. There is strong precedent to defer contribution costs in consents and this approach is frequently taken where a consent authority acknowledges the significant upfront costs that typically occur prior to or parallel to delivery of the first few stages. Providing for deferral of costs would partially alleviate the cashflow considerations in early stages of larger projects, whether in subdivision or multi building apartment developments.

9. Overlap with NSW Housing SEPP

The draft Scheme suggests that the CN affordable housing contribution requirement is in addition to any affordable housing delivered under the Housing SEPP for a proposed development. Clarification is sought on this matter and justification as to why this would be the case. UDIA believes the application of CN's Scheme to these projects would undermine the intent of the Housing SEPP incentive and result in the delivery of fewer affordable housing dwellings.

To avoid undue impacts on project feasibility and reduction of overall housing supply, any affordable housing delivered in a development under the Housing SEPP should count towards the contribution under the CN Scheme.

10. Governance

The draft Scheme lacks detail regarding the proposed governance controls to be put in place during its implementation. UDIA requests that the following concerns be addressed prior to the adoption of the Scheme:

a. Controls to ensure monetary contributions collected will be used for their intended purpose within a timely manner, e.g., allocated to a specific project or opened for CHP tender within 2 years
b. Transparent ongoing reporting by CN regarding the results of the Scheme, detailing how many affordable housing dwellings are available, under delivery or not delivered by CN (in the case of land transferred to CN) to ensure homes are delivered in a timely manner.
c. Transparent reporting by CN to ensure the homes in question are indeed being used for affordable housing.

d. Controls in place and transparent reporting regarding any future sale of affordable housing owned by CN.
e. Clear governance framework for any potential future reviews of the Scheme including any revisions to monetary and contribution rates. UDIA recommends that a third-party review should be required under the Scheme and that DPHI must endorse any future rate changes.

11. Administrative provisions

UDIA recommends that the following administrative matters be resolved prior to finalisation of the Scheme:

a. Multi-stage projects generally undergo a number of procedural subdivisions and the creation of superlots prior to the creation of final subdivided lots for dwellings. The Scheme should be revised to clearly acknowledge this reality and ensure the contribution payment applies only to final residential lots, not the creation of development residue lots and/or superlots.

b. The current clause for the dedication of land/dwellings requires the developer to enter into a legal agreement with CN regarding the transfer prior to the issuance of a SWC/CC. UDIA is concerned this procedural step could delay progress and delivery of housing. We request that the Scheme clearly state that this agreement cannot be unreasonably withheld by CN and its execution will be administered efficiently.

c. The draft Scheme proposes a two-year phase-in period and makes no mention of the treatment of DAs already lodged prior to commencement of the Scheme. The impact of the Scheme on housing delivery is not fully understood, and there is a risk it could delay the supply of both affordable and market housing. UDIA therefore recommends a cautionary approach with two elements:

    i. Include a grandfather clause to exempt any DA that is lodged at the time of Scheme commencement.

    ii. Change to a 5-year introductory period as follows:
        - Year 1: 100% discount contribution
        - Year 2: 80% discount to contribution
        - Year 3: 60% discount to contribution
        - Year 4: 40% discount to contribution
        - Year 5: 20% discount to contribution

Conclusion

Thank you for the opportunity to comment on this important policy area and the draft Affordable Housing Contributions Scheme. We welcome further consultation prior to the finalisation of the Scheme. Please contact Policy and Regional Manager Elizabeth York at eyork@udiansw.com.au with any questions or follow up.

Kind regards,

Hon. Stuart Ayres
Chief Executive Officer