

27 October 2023

Chief Executive Officer
Attention: Planning, Transport and Regulation
City of Newcastle
PO BOX 489
Newcastle NSW 2300

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

Re: City of Newcastle Draft DCP 2023

Dear Strategic Planning Team,

The Urban Development Institute of Australia NSW (UDIA) is the leading development industry body, representing more than 450 member companies and agencies across the public and private sector. We invest in evidence-based research to inform our advocacy to state and local government, which enables our members to create liveable, affordable, and connected smart cities.

UDIA appreciates this opportunity to respond to the City of Newcastle's (CN) public exhibition of the Draft Development Control Plan 2023 (Draft DCP). We commend CN for undertaking the review of their existing DCP 2012 to consolidate past amendments and provide updates, and for seeking to make the document more user-friendly.

UDIA has strong objections to several new controls in the Draft DCP associated with the proposed buffer around the Summerhill Waste Management Centre (SWMC), as well as new controls around vegetation clearing. In both cases, the proposed new controls could substantially restrict the delivery of much-needed new housing at a time when Australia, NSW, the Hunter region and the Newcastle local government area (LGA) are grappling with a severe housing supply crisis.

UDIA seeks to work with CN to pull all levers to address the housing crisis. We are hopeful that CN will respond to the concerns outlined in our submission which seek to better balance vegetation clearing and waste management while enabling the delivery of a range of diverse housing to meet the needs of Newcastle residents.

UDIA's recommendations are:

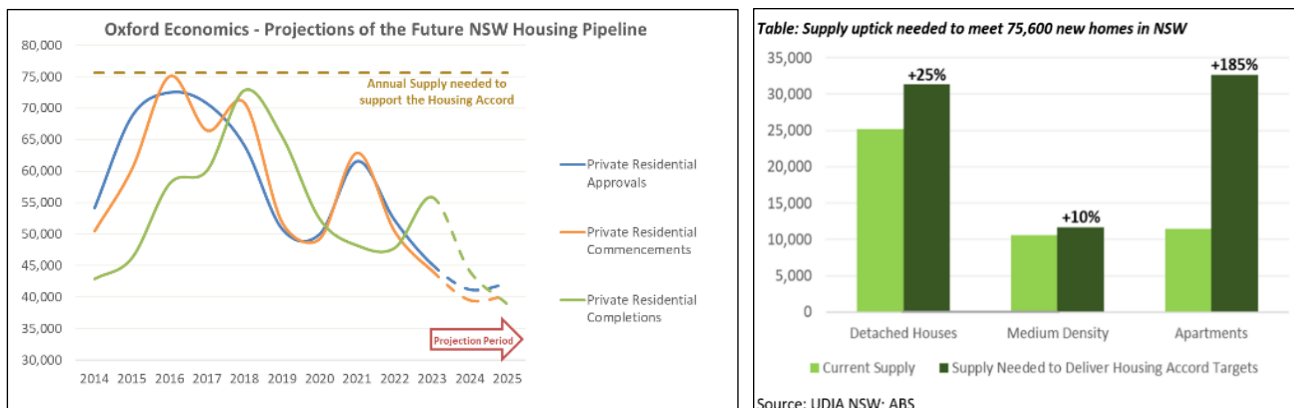
- 1. Amend the proposed controls to align with CN's current consent and operating license for the Summerhill Waste Management Centre by removing the unjustified prescribed buffers and replacing C-1, C-2 and C-3 with a single control stating that "existing and future proposed development within 400m of putrescible landfill cells at the SWMC or 250m of a non-putrescible landfill cell should consider impacts of the adjoining waste management facility in line with the facility's EPA license."**
- 2. Remove C-9 under Clearing of declared vegetation ancillary to a DA. It is unnecessary and too prescriptive for broad application in a DCP. CN should rely on the existing biodiversity legislative and regulatory framework to determine these outcomes.**

Background

The NSW Government has committed to deliver its share of the National Housing Accord by delivering 75,600 new homes a year state-wide for five years, a rate never before achieved and 60% above our current annual supply. Based on current projections, we are already at risk of falling 200,000 homes short in the five years. To meet this target, all markets must be performing at peak delivery, particularly in the relatively more affordable regional markets such as Newcastle. In fact, UDIA believes the Hunter can and must contribute much more to meeting the state-wide housing targets.

To meet our commitments, NSW will have to increase its delivery of all types of housing, including greenfield housing. UDIA agrees that we need to “go up” to deliver more transit-oriented development and more social and affordable housing. But we cannot meet the Housing Accord targets unless we also “go out” and deliver more detached homes on all currently zoned land, plus find new land to rezone to build on our current pipeline. This is true throughout the Hunter, including in the Newcastle LGA where greenfield land is currently undersupplied.

UDIA estimates that to meet this demand the Hunter region will need to deliver over 7,000 new homes every year – almost double the number of new dwellings delivered last year. The following charts illustrate the challenge NSW is facing to achieve the Housing Accord targets, and the supply turn around needed across all housing types.



The City of Newcastle has a big part to play in delivering a range of diverse new housing to meet the needs of the Hunter’s current and future residents.

UDIA is concerned that elements of the Draft DCP will unnecessarily constrain new housing supply in the Newcastle LGA, at a time when there is a shortage of land for new housing. We strongly recommend that CN reconsider its approach to the buffer areas around the SWMC and clearing of vegetation to better balance these controls with the need to support housing supply and consider the overall public interest.

Our reasoning is outlined below.

Waste disposal buffer area

The Draft DCP includes the following proposed controls in Section D1: Subdivision and lot consolidation:

- C-1 Subdivision of new residential sites or an urban release area and other sensitive uses is not permitted within 1000m of past, existing or future putrescible landfill cells at the Summerhill Waste Management Centre refer to Figure D1.03.*
- C-2 Subdivision of new residential sites or an urban release area and other sensitive uses is not permitted within 500m of past, existing or future non-putrescible landfill cells at the Summerhill Waste Management Centre on refer to Figure D1.03.*
- C-3 Subdivision of land for non-residential purposes is not permitted within 500m of past, existing or future putrescible landfill cells at the Summerhill Waste Management Centre refer to Figure D1.04.*

The explanation for these controls is to protect the buffer areas “*from impacts... [that] might constitute discharge from the site of potentially explosive landfill gas, offensive odours, noise, litter and dust.*”

The maps in the referenced Figures impose an erratic buffer around existing cells. We note that the mapped buffers:

- do include undeveloped land that is already DA-approved for subdivision, zoned R2 or R3 residential, or in an endorsed investigation area; but
- do not apply to existing developed residential dwellings within the same distances; and
- do include land that is within the Lake Macquarie City Council LGA and therefore not within the authority of CN.

UDIA has several strong concerns with the proposed buffers around the SWMC:

- A. CN has a responsibility to limit the impact of its waste facility to its own land in accordance with the facility’s operating license. Any encroachment on adjoining private property would need to be compensated.
- B. The proposed buffers would significantly reduce new dwelling yield expected from those areas. This is both unnecessary as outlined below, and inconsistent with NSW endorsed strategic planning priorities and commitments under the National Housing Accord. The reduced dwelling yield would also have a detrimental impact on the ability of CN to deliver the expected infrastructure under its local infrastructure contribution plan for those communities.
- C. The respective 1,000m and 500m proposed buffers are excessive to NSW EPA publication ‘Environmental Guidelines, Solid Waste Landfills’ (2016) (EPA Guidelines) which does not prescribe buffer distances but does suggest an inappropriate distance for landfilling would be “within 250 metres of a residential zone or dwelling”.
- D. The proposed buffers unjustifiably apply equally to past, existing (active) or future cells. This broad application, as well as the excessively wide areas, are inconsistent with CN’s own arguments around DA 10/1319 in 2011 seeking to extend its license, which relied upon a buffer of 400m to active putrescible cells (only). The SWMC was initially approved to have

only a 20-year life and its continued operation beyond 2015 was approved in circumstances where it was known that additional land surrounding the SWMC would be developed for residential purposes in the future. At that time, CN represented that the SWMC could manage environmental impacts and coexist with new residential development, provided that a 400m distance was maintained between active putrescible landfill cells and residential development. Based on the records from that 2011 assessment, it is reasonable to presume that if CN had argued at that time that a 1,000m permanent buffer was required for past, existing and future cells, the continued operation of SWMC would never have been approved.

- E. The application of the buffer only to undeveloped privately held land, while excluding its application to developed land and existing dwellings, is inconsistent, illogical, and inappropriate. The Draft DCP's rationale for the buffer is to protect residential areas from impacts such as "potentially explosive landfill gas, offensive odours, noise, litter and dust." If new development is too high risk for these potential impacts, why do such safety measures not also apply to existing housing and current residents? In obtaining its current approval and operating license, CN argued those impacts are managed. It is not logical that both scenarios coexist.
- F. We are concerned these controls unfairly benefit the SWMC which is owned and operated by CN, at the expense of private landowners.

UDIA believes that in balancing the various elements of the public interest, these proposed buffer controls get the balance wrong and they are a disproportionate response to a perceived potential land use conflict.

UDIA recommends:

1. **Amend the proposed Controls to align with CN's current consent and operating license for the Summerhill Waste Management Centre by removing the unjustified prescribed buffers and replacing C-1, C-2 and C-3 with a single control stating that "existing and future proposed development within 400m of putrescible landfill cells at the SWMC or 250m of non-putrescible landfill cells should consider impacts of the adjoining waste management facility in line with the facility's EPA license."**

Clearing of declared vegetation ancillary to a DA

The Draft DCP includes the following proposed control in Section C3 Vegetation Preservation:

- C-9 *Where the clearing of native vegetation is being undertaken for the purpose of a subdivision:*
 - a. *Areas that meet the NSW Government's high environmental value criteria after ground truthing, including all threatened ecological communities and key habitat for threatened species, are to be avoided and protected.*
 - b. *All areas of threatened ecological community, plus a minimum buffer of twenty (20) metres of native vegetation, are to be avoided and protected.*
 - c. *Biodiversity corridors, with a minimum width of 150m, are to be avoided and protected, where subdivision sites are located within key habitat localities, connecting corridors, or their associated buffer areas in the Green Corridors and Landscape Precincts Plan 2005.*

While UDIA appreciates CN's attempt to provide more clarity on the application of the 'avoid, minimise and offset' hierarchy under the Biodiversity Offsets Scheme of the *Biodiversity Conservation Act 2016*, we believe this clause is unnecessary and too prescriptive for a DCP.

NSW has a very complex regulated system dealing with vegetation clearing that is based on scientific methodology applied to site-specific surveys and the expert advice of qualified ecologist assessors who are accredited by the Department of Planning and Environment (DPE). The 20m buffer in (b) and 150m minimum biodiversity corridor in (c) are arbitrary and may not be appropriate in every instance according to the latest scientific advice for a particular biodiversity entity. We oppose the broadscale use of such rigid controls.

As a matter of general principle, UDIA has long called for more consistent application of 'avoidance' among consent authorities. The overall effect of the current biodiversity system has been uncertainty which has reduced new housing supply. UDIA understands that the Biodiversity and Conservation Division of DPE is working on enhanced guidance on the application of 'avoidance' in order to improve consistency of application. We recommend that CN work with BCD to inform that work and then adopt BCD's guidance.

UDIA recommends:

- 2. Remove Control C-9 of Clause 11 Clearing of declared vegetation ancillary to a DA. It is unnecessary and too prescriptive for broad application in a DCP. CN should rely on the existing biodiversity legislative and regulatory framework to determine these outcomes.**

Conclusion

UDIA highly values the constructive working relationship we have established with City of Newcastle, and we are grateful for the opportunity to offer our recommendations to the Draft DCP 2023. The update is a significant undertaking, and the full extent and interaction of the changes may not become clear until they are implemented. Once an updated DCP is formally adopted, we commit to bringing any additional concerns to CN's attention as they become apparent through practical application.

We would be pleased to discuss our recommendations in further detail. Should you have any questions, please contact UDIA NSW Hunter Regional Manager Elizabeth York on 0434 914 901 or eyork@udiansw.com.au.

Kind regards,



Steve Mann
CEO