21 November 2014

Dr John Söderbaum
Director Science and Technology
ACIL Allen Consulting
Level 2, 33 Ainslie place
Canberra City ACT 2601

By email: j.soderbaum@acilallen.com.au

Dear Mr Soderbaum

Review of the Commercial Building Disclosure Program

Firstly, thank you for the opportunity to meet with you in Canberra on 5 November to discuss the review of the Commercial Building Disclosure (CBD) Program as commissioned by the Federal Department of Industry. Kristin Pryce, our Senior Adviser, also attended the CBD workshop held in Sydney on 10 November.

If needed, we would be very pleased to meet with you again to discuss in more detail the issues and information outlined in this letter.

The Shopping Centre Council of Australia (SCCA) represents Australia's largest owners, managers and developers of shopping centres. Our interest in the CBD review principally rests with the Government's request in the Terms of Reference (un-numbered) for the Reviewer to provide recommendations on 'the lessons for assessing possible extension of mandatory disclosure to other building types'. We understand that this could include advice to Government on whether the CBD scheme could be extended to shopping centres.

The SCCA does not support the extension of CBD to shopping centres.

Given the complexity of the issues that would need to be considered to extend CBD to shopping centres, and the condensed timeframe of this review, we would not expect that you would be in a position to make a definitive recommendation to Government to extend CBD to shopping centres in your final report. In light of this, we respectfully suggest that you consider making the following points in your final report to Government:

1. There is no consensus among stakeholders that there is a policy failure, or a clearly defined policy objective, that calls for the extension of CBD to shopping centres.
2. A 'like for like' translation of CBD from commercial offices to shopping centres is not possible.
3. NABERS for Shopping Centres is still in its relative infancy and further testing and updating is required before consideration is given to having it underpin a national energy efficiency strategy
4. If an extension was to be considered in the future, it would need to be informed by a formal policy development and stakeholder engagement process by Government, including a process of Regulatory Impact Assessment.

We have already provided you with the submission we lodged with the Department of the Environment on 23 October regarding the Emissions Reduction Fund (ERF) and the related Commercial Building (NABERS) Methodology. We have long been enthusiastic about the opportunity presented by the ERF for our members. Unfortunately, we have had to advise the Department of the Environment that the ERF will be very difficult for our members to take advantage of. This is as a result of what are, in our view, unnecessary prohibitions and compounding barriers to entry under the ERF methodology for commercial buildings. In this regard, we do not think there will be any opportunity for the ERF to interact with a CBD for shopping centres because we think it unlikely that shopping centres will find any material benefit from the ERF.

High level information

At our recent meeting you asked for some information to assist contextualise the shopping centre sector. We are pleased to provide the following overview of the number and size of shopping centres across Australia, and an indication of the number of tenancies they cover. This data includes information on City Centre, Neighbourhood, Sub-regional, Regional, Major Regional and Super Regional centres only (ie. it does not include bulky good and outlet centres).

- There are around 1,580 shopping centres across Australia, of which around 315 (or 20%) have a Gross Lettable Area Retail (GLAR) of greater than 15,000m^2.
- The 315 largest shopping centres account for around two thirds of total GLAR.
- There are around 60,000 speciality shops (small tenancies) and 2,200 major and mini-major shops (large tenancies) in shopping centres across Australia.
- 60% (or around 36,000) of all small tenancies and 55% (or around 1,200) of all large tenancies are in the 315 largest centres.

You also sought clarification on minimum lease terms as specified in state and territory based retail lease legislation. Most pieces of legislation across Australia prescribe a five year minimum lease term. For tenancies which are not covered by the prevailing retail lease legislation, which generally include larger tenancies such as supermarkets, department stores and discount department stores, lease terms can be upwards of 15 to 20 years.

Reasons for opposition

We have a range of policy and implementation concerns regarding a possible extension of CBD to shopping centres. We made similar points to those following during the 2010 *Mandatory Disclosure Phase Two – Scoping Study Consultation Paper* process, which similarly considered an extension of CBD to shopping centres, and these remain generally unchanged.

The complexity of the issues outlined below illustrates that a 'like for like' translation of CBD from commercial offices to shopping centres is not possible due to the stark differences in built form, regulatory contexts and tenancy profiles. They also demand that, if an extension is considered in the future, a formal policy development and stakeholder engagement process, including a process of Regulatory Impact Assessment, would need to be undertaken by Government.

Firstly, there is no proven policy failure or defined policy intent to justify shopping centres being brought within an expanded CBD scheme. At a high level, this is demonstrated in the NABERS 2013/14 Annual Report, which details a 14% increase in the 'average' Star Rating received by rated shopping centres and a corresponding 8% decrease in energy intensity per square metre year to year. The 68 centres which are noted to have received a certified NABERS rating in 2013/14 account for around 22% of all centres which are able to be reliably NABERS rated. This is a reasonable sample size by which to consider the energy efficiency improvements which are occurring at the sophisticated end of the shopping centre sector in the absence of a mandatory requirement for owners to disclose a NABERS rating.

Also, anecdotal feedback from our members is that there is no strong tenant demand for the information provided for through a NABERS rating (and, subsequently, a Building Energy Efficiency Certificate – BEEC). This feedback is consistent with regard to both large tenants and small tenants.

Secondly, despite being a supporter of NABERS as a voluntary tool for industry, and welcoming the energy efficiency improvements revealed in the most recent NABERS Annual Report, NABERS for Shopping Centres is still somewhat of a 'work in progress'. The tool has only been in the market for five years, having been launched in December 2009, and it has yet to be refined to reach the relative maturity of NABERS for Offices, which has been available for over 15 years.

The NABERS for Shopping Centre tool was only subject to a significant rule change in 2012 to equalise the treatment of large and small centres under the tool. The NABERS Team in the NSW Office of Environment and Heritage is also currently working on a number of other identified issues with the tool. This includes the preparation of a paper on issues surrounding partial HVAC (heating, ventilating, and air conditioning) servicing in centres. The SCCA has also alerted the NABERS Team to early concerns about the impact of lighting requirements in under cover carparks. In our view, NABERS for Shopping Centres needs more time and refinement before any consideration is given to having it underpin a national energy efficiency strategy.

NABERS for Shopping Centres is also only able to be reliably applied to shopping centres with over 15,000 m^2 GLAR. As outlined previously, only 20% of all shopping centres across Australia have a GLAR greater than 15,000m^2.

Thirdly, shopping centres are different to other buildings, not least because they serve a consumer market, not an employment market. There are also major variances in the built form and configurations between shopping centres which are influenced by, for example, the climate of the centre's location (eg. fully enclosed, semi-enclosed, open air). There are also a number of different approaches to parking provision (eg. underground, at-grade, multi-deck).

Shopping centres also have comparatively large numbers of tenants, and the size of tenancies are much smaller, than is typical in a commercial office. By way of illustration, in the approx. 315 centres across Australia with a GLAR greater than 15,000m^2, there are over 36,000 specialty stores (up to around 400m^2) and over 1,200 mini-major (greater than 400m^2) and major tenants (greater then 1,000m^2). Australia's largest shopping centres have over 400 specialty stores, and up to around 10 major tenants.

Fourthly, the various pieces of retail lease legislation which exist at the state and territory level govern nearly every aspect of the negotiations and agreements between a shopping centre landlord, tenants and prospective tenants, including the assignment of leases.

This includes (not exhaustive):

- regulating what information must be provided to a prospective tenant in the form of a disclosure statement, the time frames within which it must be provided in the context of a lease negotiation, and penalties for providing incorrect information in a disclosure statement (for example, the potential invalidation of a lease),
- how and when a landlord can go about advertising space in their shopping centre if there is a sitting tenant (for example, they restrict a landlord from soliciting interest from the market in leasing a tenancy in deference to a sitting tenant),
- what costs a landlord can and can't recoup from a tenant as outgoings (for example, capital works on a building to improve energy efficiency cannot be recouped from tenants), and
- how retail lease disputes are able to be progressed, including the roles of the various Small Business Commissioners and civil and administrative tribunals around Australia.

It is not clear how an extended CBD scheme would exist within the framework of each state and territory's retail lease legislation and whether or not amendments to these pieces of legislation would be necessary to see an extended CBD scheme implemented. Certainly, it would not be possible to extend CBD in a 'like for like' sense to shopping centres in the context of the regulatory framework described above. In the absence of a model piece of retail lease legislation which applies across all jurisdictions (as per the approach taken regarding workplace health and safety legislation) an approach of amending state and territory based legislation could also take several years to negotiate.

The alternative approach of a applying a new, additional layer of Federal regulation would lead to a red tape nightmare of double disclosure and the creation of another avenue for dispute between landlords and tenants, with, potentially, associated dispute resolution and penalty frameworks. This would come with additional resourcing costs for both Government and landlords.

In addition to the above, some businesses in the common areas of shopping centres are protected by the Casual Mall Licensing Code, not the prevailing retail lease legislation. This means there is no 'tenancy', as such. A potential overlap between CBD and the Casual Mall Licensing Code throws up another series of questions that would need to be resolved.

Members and contact details

The SCCA's members are Australia's major owners, managers and developers of shopping centres. They are AMP Capital Investors, Brookfield Office Properties, Blackstone Group, Charter Hall Retail REIT, DEXUS Property Group, Eureka Funds Management, Federation Centres, GPT Group, ISPT, Ipoh Management Services, Jen Retail Properties, JLL, Lancini Group, Lend Lease, McConaghy Group, McConaghy Properties, Mirvac, Novion Property Group (formerly CFS Retail Property Trust Group), Perron Group, Precision Group, QIC, Savills, Stockland and Scentre Group (formerly the Westfield Group and Westfield Retail Trust).

We would be very pleased to meet with you again if you think it would be helpful to further inform the review process.

If you have any questions, please contact Kristin Pryce, Senior Adviser, on 02 9033 1941.

Yours sincerely,

4.11.14

Angus Nardi
Executive Director