SHOPPING CENTRE
COUNCIL OF AUSTRALIA

NSW Independent Local Government Review Panel Consultation Paper

Future Directions for NSW Local Government: Twenty Essential Steps

Submission by the

Shopping Centre Council of Australia

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Introduction

The Shopping Centre Council of Australia (SCCA) welcomes the opportunity to provide a submission on the Independent Local Government Review Panel's *Future Directions for NSW Local Government* discussion paper. We acknowledge the extensive work and consultation undertaken by the Panel and appreciate our engagement to date.

In line with previous submissions on this review, as well as our discussions with the Panel, our principal focus for local government reform is ensuring a fairer rating system with appropriate safeguards for shopping centres.

Our members own and manage billions of dollars of assets across the state, covering over 150 shopping centres in metropolitan and regional areas, so the effective governance and taxation environment of local government is of vital interest to us. Our members are often the largest single ratepayers in a local government area due to land valuation and/or differential rating.

We acknowledge the broad issues presented in the paper including fiscal responsibility and revenue issues. We also acknowledge that the Panel has recommended the investigation of other revenue options – outside traditional rating revenue – which we have recommended in previous submissions.

COMMERCIAL PROPERTY SAFEGUARDS NEEDED

However we do not believe the Panel has yet proposed a framework which includes safeguards against the abuse of the rating framework against commercial property owners, including shopping centres. We have previously raised issues that there is no real electoral accountability to commercial property owners and further, as monopoly service providers, there is a strong need for rating regulation which includes fair rating principles and benchmarks.

For this reason, our comments focus on Section 6 of the paper - "Bolster the Revenue Base" - including the "Preferred options for consultation" set out in Box 5 at page 16. This includes the Panel's suggestions including:

- "Rates are a tax, not a fee-for-service,; they need to be set in accordance with principles of taxation – equity, efficiency, simplicity, sustainability and policy consistency";
- "There is a case for moving from Land Value to Capital Improved Value as the basis for rates to better reflect capacity to pay and the shift to apartment living, but this would be costly and disruptive".

We are pleased to provide the following comments:

1.1. VALUATION BASIS FOR RATING

Firstly, we are concerned that the notion of shifting to a capital improved value rating basis has been raised again in the review. It was first raised in this review in the *Destination 2036 Draft Action Plan*, however it was sensibly removed in the follow-up *Consultation Paper* issued in July 2012.

Secondly, the "case" to transition to a CIV rating basis mentioned in the paper is inconsistent with the <u>clear and only finding</u> in the recent *Final Report of the Inquiry into the Land Valuation* (completed by the Joint Standing Committee on the Office of the Valuer-General) that unimproved land value should be retained as the basis for rating and taxing purposes.

A copy of our submission to the Inquiry is at **Attachment 1**.

The relevant excerpt from the Joint Standing Committee's final report (from page 129) is below:

CONCLUSION

15.18 Given the discussion above, it is this Committee's view that the present criterion is appropriate. Site value is understood and is economically efficient. Alternative methods would create distortions in the development market and involve transition costs. The issues surrounding equity of council rates in strata heavy LGAs can and should be resolved through other means, as they are localized to councils with high strata holdings.

VALUATION CRITERION

FINDING 1

That land value is the appropriate basis of valuation for rating and taxing purposes.

Thirdly, a shift to a capital improved rating base taxes investment and improvement. The final report of *Australia's Future Tax System* (i.e. the Henry Tax Review) states that if 'improvements' were taxed, "the tax would discourage investment and be less efficient and equitable". While this part of the report was focussed on land tax, the same principle applies to council rates.

Fourthly, a shift to a capital improved rating base would be inequitable and place a disproportionate burden on properties with higher valued improvements. Where Victorian councils have elected to move from a site value rating base to an improved value base, it has created a myriad of complexities and inequities. To take one example, when one council transitioned from a site value to capital improved value rating base, rate revenue from non-residential property increased by 75% from the previous period, whereas the residential rate burden was held the same. We provided analysis in a previous submission to the Panel that if rates were shifted from unimproved land valuation to improved valuation (assuming no rate change), the impact on just one centre would be an increase of $2.6 million (716%). Such an alarming potential increase cannot be ignored.

1.2. THE SO-CALLED 'CAPACITY TO PAY' APPROACH

Fourthly, we are highly sceptical about the so-called 'capacity to pay' approach and reject the Panel's suggestion that a shift from land value to capital improved value would "better reflect" capacity to pay.

The Marrickville Metro Shopping Centre case *(Marrickville Metro Shopping Centre Pty Limited v Marrickville Council [2010] NSWCA 145)* provides a reminder of how discrimination and abuse of the 'capacity to pay' principle can occur under the current system. Central to this case was the 'capacity to pay' approach, which basically enabled the council to impose a rate increase because it believed the shopping centre owners could afford it.

In the Marrickville Metro case, the Court of Appeal upheld Marrickville Council's decision to place the shopping centre in a separate subcategory to other retail properties in the area, and apply a higher ad valorem rate. The court rejected Marrickville Metro's various grounds of objection to the subcategory and rate increase including:

- It was for an improper use,
- It was manifestly unreasonable,
- There was an apprehension of bias from some Councillors,
- As a single site, it couldn't be constituted as a 'centre of activity',
- Council considered the centre's capacity to pay.

The capacity to pay approach must be abolished (it has been ruled out in Queensland following the Xstrata case: *Xstrata Coal Qld P/: & Ors v Council of the Shire of Bowen [2010] QCA 170*) or subject to more stringent criteria and tests.

1.3. DIFFERENTIAL RATING

As rightly noted by the Panel in Box 5, the current use of differential rates by some councils is "too complex and poorly justified". Unfortunately the Panel hasn't taken the next step and made recommendations to improve the justification for the use of differential rating.

As we have outlined previously to the Panel, the current differential rating framework is too easily abused and enables gouging at the whim of a local council, with no link to the provision or cost of services. Further, differential rating enables an unfair departure from land valuation.

The creation of rating 'sub-categories' (which can even be applied to just one property) and 'differential rates' enables this to occur without any real limitation. This approach can be abused under both the traditional 'rate pegging' and special variation (section 508 (2) and 508A) (as determined by IPART) approaches to rating. As we have raised with the Government before, some of our members have incurred rate increases well above any reasonable measure such as their own land valuation increases, the Local Government Cost Index (LGCI), Consumer Price Index (CPI), or 'rate pegged' and special variation increases as determined by IPART.

Principles of taxation equity and fairness must be applied to the rating framework, but this must be achieved through practical measures including the abolition of rating sub-categories that target a single or selection of properties, ruling out the notion of 'capacity to pay', individual rate increases over 10% being subject to state government scrutiny, and (similar to the principle in Victoria) limiting that the highest differential rate cannot be more than two times and lowest differential rate.

1.4. RATE PEG STREAMLINING – A CAUTIOUS APPROACH NEEDED

We are concerned that the Panel has recommended (at Box 6 on page 17) that a Council can go above the IPART set rate cap in certain circumstances, and the Minister can exempt a council from rate pegging on the basis of "demonstrated higher performance in asset and financial management".

There are significant issues with the existing rate pegging system, and we fear these will get worse if the proposed flexible arrangements are adopted and do not incorporate adequate safeguards for commercial property owners. As outlined above, much of these issues relate to the differential rating framework.

Under the current rate pegged environment, IPART can approved a rate peg or special variation, yet a local council can then distribute the total rate/revenue burden and impose a disproportionate rate increases (sometimes up to 100%) for certain ratepayers; usually business ratepayers. The fact this can occur under the current rate pegged environment causes great concern that it could only get worse under a more relaxed or 'streamlined' environment.

2. Recommendations

We are pleased to make the following recommendations:

1. Councils should be required to investigate alternative revenue opportunities outside traditional rating revenue. The Panel should lead the investigation of these options as noted in the paper.
2. The Panel must rule out any shift to capital improved valuation for rating purposes.
3. The Panel should acknowledge the Joint Standing Committee on the Office of the Valuer-General finding in the *Final Report of the Inquiry into Land Valuation* that unimproved land valuation is the appropriate basis for rating and taxing purposes.
4. The Panel should recommend that 'capacity to pay' cannot be used in making rating determinations.
5. In the absence of the 'capacity to pay' principle being ruled out in making rating determinations, the Panel should undertake further investigations and develop criteria for its fair use and application.
6. The Panel should develop practical guidelines on the application of taxation principles to the rating framework, including for differential rating and the proposed 'streamlining of rate pegging'. These practical guidelines should include:
   - Rating subcategories that target a single property, or a selection of properties in a land use category, should not be permitted. The creation of sub-categories that only apply to one or a few properties (and where other similar properties or 'centres of activity' are not targeted) should be banned.
   - The notion of 'capacity to pay' as a rating principle should be ruled out, preventing it from being used in any form. 'Capacity to pay' is not a valid rating consideration in Queensland, as reinforced in *Xstrata Coal Qld P/: & Ors v Council of the Shire of Bowen [2010] QCA 170*, handed down on 2 July 2010.
   - There should be no rate increases for any individual rate payer of more than 10%, ensuring a more equitable approach across all ratepayers rather than a small selection of ratepayers being hit with a disproportionate burden.
   - All rate increases must be justified in terms of a link to the increases provision of, and cost of, services that directly impact particular ratepayers.
   - Councils should be required to disclose all other funding sources (e.g. Commonwealth and State grants).
   - There should be no 'minimum' ratings similar to the Queensland approach, which enables a council to capture the upside of valuations, but to limit their losses on the downside of valuations. Minimum ratings enable a departure from the valuation basis of council rates.
   - Like the principle in Victoria, there should be a statutory limit where the highest differential rate cannot be more than two times the lowest differential rate.

3. Contacts

The Shopping Centre Council of Australia represents the major owners and managers of shopping centres. Our owners own and manage more than 11 million square metres of retail space around Australia.

Our members are AMP Capital Investors, Brookfield Office Properties, Charter Hall Retail REIT, Colonial First State Global Asset Management, DEXUS Property Group, Eureka Funds Management, Federation Centres, GPT Group, ISPT, Ipoh Management Services, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland, Westfield Group and Westfield Retail Trust.

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