SHOPPING CENTRE
COUNCIL OF AUSTRALIA

Submission by the

Shopping Centre Council of Australia

on

A New Planning System for NSW: White Paper (April 2013)

28 June 2013

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Executive Summary

The Shopping Centre Council of Australia (SCCA) welcomes the opportunity to comment on *A New Planning System for NSW: White Paper (April 2013)* and associated draft legislation. We congratulate the Government on preparing a comprehensive framework for consultation and support the continuation of the reform process.

Our members are Australia's major retail property owners, managers and developers, with a $5.3 billion development pipeline across the state. The integrity, efficiency and effective functioning of the planning system – along with a level competition playing field with other retail formats – is vital for investment confidence.

We have <u>two areas of significant policy interest</u>:

1) The proposed *Retail Development* policy (part of the *Employment and Economic Growth* NSW Planning Policy) and associated mechanisms such as the new zones, and

2) Infrastructure policy and contributions, including the basis and structure of the new levies and the need for alternative funding arrangements.

We request to be deeply involved in the development of these two areas of policy.

We recommend the Government establishes a multi-stakeholder Retail Taskforce to develop the retail policy.

We request membership on the proposed *Contributions Taskforce*, which we believe should be modelled on the Queensland Government's recent approach on its infrastructure charges review which includes a multi-stakeholder advisory committee (on which we are represented). The current Victorian review of development contributions is also a model worth considering.

<u>A third area of significant interest</u> is a key foundation of the proposed approach to strategic planning approach; the proposed "major shift" to an "evidence based" approach to strategic planning.

RETAIL POLICY

As stated in our Green Paper submission, if we could make only one recommendation, it would be that the Government improves its approach to retail policy.

We welcome the proposal for a *Retail Development* policy as part of the NSW Planning Policy hierarchy, including its prioritisation for completion to "inform the rest of the planning hierarchy". We hope this marks a change in retail policy which will result in the Government taking a more proactive urban management approach to ensure existing activity centres grow and new activity centres emerge which deliver multiple public policy and community benefits.

We welcome the foundation of the new NSW Planning Policy hierarchy which will see the incorporation of relevant existing section 117 Directions, such as the *Integrated Land Use and Transport (ILUT)* policy and "be informed by the priorities and actions in *NSW 2021: A Plan to Make NSW Number One",* which includes a goal to build liveable activity centres.

These policy foundations are rightly underpinned by the Planning Bill's proposed object to promote "the coordination, planning, delivery and integration of infrastructure and services in strategic planning and growth management", and Strategic Planning Principle 2 (section 3.3 of the Bill) which provides that "strategic plans are to be integrated with the provision of infrastructure".

But we have the following concerns which could undermine the positives noted above:

- The retail policy was proposed as a stand-alone policy under the Green Paper, but has now been absorbed into a broader *Employment and Economic Growth* policy;
- The Green Paper proposal that NSW Planning Policies will "guide spatial and sectoral planning outcomes" has been abandoned. Rather, such Policies will "set out objectives and direction rather than be spatial documents or provide prescriptive controls";
- The *Enterprise Zone* has been retained, but in a significant departure to what was proposed in the Green Paper, will now substitute the existing B6 Enterprise Zone with no clear justification why such locations deserve an investment or 'stimulus' focus above other areas.

These substantial changes, made with no clear justification, causes us concern about the Government's approach to policy making. It also highlights there are clear conflicts in the White Paper which need to be addressed. It does little to instil confidence at this early stage of the policy process.

INFRASTRUCTURE CONTRIBUTIONS

The proposed infrastructure contributions framework – including the scope of infrastructure and funding model – makes us nervous.

It looks like the Queensland system (which is currently being reviewed) adopted several years ago which resulted in contributions growing by 1,300% over five years. This severely impacted development feasibility and the delivery of retail floor space. Like the proposed relationship between levies and housing, levies must not compromise the feasibility of retail development or inhibit the delivery of retail floor space. We recommend that "commercial feasibility" and "retail supply" should be inserted as additional principles for the new system.

To the extent that feasible levies apply, the contributions framework should also be based on demand, whereby levies have a clear, proportional and fair link with the demand on infrastructure generated by development. This is logically recognised under Principle 3 for infrastructure contributions (at section 7.3 of the Bill) which states that "the proposed infrastructure contribution should be based on a reasonable apportionment between existing demand and new demand for local or regional infrastructure to be created by the proposed development to which the contribution relates". A maximum, feasible retail levy should be based on a demand unit charge, such as a dollar ($) contribution per Incremental Gross Lettable Area of Retail (GLAR).

However the proposed contributions framework doesn't consistently adhere to the demand-based principle and instead extends to other principles such as: (1) beneficiary pays, (2) close proximity, (3) population growth, and (4) modest contribution. These principles have the potential to reduce the fairness of the system and lead to increased contributions. In particular, the indirect local contributions and Regional Infrastructure Contribution (RIC) depart from demand-based principles and should be reconsidered or abandoned.

The above issues highlight the need for a serious revision of the proposed framework, which should be overseen by the *Contributions Taskforce*.

EVIDENCE-BASED STRATEGIC PLANNING

We welcome the proposed "evidence based" approach to strategic planning, including the legitimisation of this approach under Principle 9 of the Strategic Planning Principles (section 3.3 of the Bill) which provides that "strategic plans are to be based on evidence…". However the White Paper or associated legislation lacks any detail of an 'evidence framework'.

The mere reference to "evidence based" policy, along with our experience in retail policy over the last few years, does not give us confidence that: (a) relevant and credible evidence will be considered and given appropriate weight; and (b) myths, misconceptions and spurious claims will be properly scrutinised and tested. This includes claims that will no doubt be advanced by some retail stakeholders in relation to 'retail competition', 'new retail formats' and 'large retail formats'.

The Department of Planning and Infrastructure has failed in recent times to understand credible evidence in retail policy and has given weight to spurious claims. At its simplest, this includes the failure to test claims about so-called 'large retail formats', 'new retail formats' or 'bulky goods outlets'; let alone the related claims for special planning treatment. There isn't even scrutiny on whether 'bulky goods outlets' actually sell bulky goods. The NSW Treasury's earlier submission on the reform process (April 2012) refers to "evidence" about a lack of retail competition, yet it doesn't produce any evidence to back up this claim. Numerous attempts to clarify these claims with Treasury officials have not been successful. The same submission suggested that 'new retail formats' require facilitation through the use of flexible zoning instruments, without actually defining what such a format is, let alone why picking winners is fair, justified or given a higher priority to 'other' retail formats.

It is irrational and discriminatory that NSW Treasury would not be equally interested in "facilitating" other retail development. Our members have experienced major development issues in areas identified for retail growth due to floor space ratio limitations, caps, the impact on other businesses (which is anti-competitive) and infrastructure contributions and conditions. We are therefore deeply concerned that the proposed *Enterprise Zone* is being pushed by NSW Treasury on the basis of a simplistic understanding of the retail sector and policy which clearly lacks evidence or scrutiny.

If the Government wants an evidence-based approach as a foundation for better strategic planning, it needs to be credible and transparent. We would welcome being involved in the development of a framework for the consideration of "evidence" in the strategic planning process.

We have a substantial evidence base that could be utilised in retail and infrastructure contributions policy.

We would welcome an opportunity to discuss this submission with the Government and look forward to the next round of discussions. Our contact details appear at the end of this submission.

1. Summary of Recommendations

Our principal issues and recommendations are as follows:

1. The Retail Development policy should be finalised as a priority and be the definitive policy on retail planning and development.
2. The proposed NSW Planning Policies foundation of section 117 Directions and NSW 2021 plan is supported and should be maintained in the final framework.
3. The principal objective of the Retail Development policy should be the facilitation of retail development in existing and new activity centres (as reflected in the Draft Sydney Metropolitan Strategy), and the strategic identification of new locations.
4. The Government should adopt a more proactive approach under the new retail policy particularly to facilitate retail expansion opportunities in existing activity centres.
5. The proposed Retail Development policy should address existing investment barriers within activity centres which impede expansion, competition and feasibility, such as floor space caps, strategic directions not being integrated into local plans and detailed design requirements.
6. The Government should appoint a Retail Taskforce to develop the Retail Development policy which includes relevant industry, government, council and community stakeholders. The SCCA should be appointed to the Taskforce if it is established.
7. The proposal that NSW Planning policies will not be spatial documents or provide prescriptive controls should be reversed and brought in line with the original Green Paper proposal and strategic planning principles and provisions in the Planning Bill 2013.
8. The Planning Bill 2013 objectives should reflect the existing Environmental Planning and Assessment Act 1979 object to promote the "coordination or the orderly and economic use and development of land".
9. An evidence framework should be developed for the strategic planning hierarchy to ensure that relevant and credible evidence is given appropriate weight.
10. The Retail Development policy should be a stand-alone policy as was proposed in the Green Paper, and not absorbed into a broader Employment and Economic Growth policy.
11. The proposed Enterprise Zone should be abandoned in its current form.
12. The Government should provide further clarification on the proposed application of the Enterprise Zone.
13. The proposed Enterprise Zone should not provide an investment advantage over priority growth locations, such as activity centres.
14. The Enterprise Zone should be applied to priority growth areas, which deliver multiple economic, social and environmental benefits, such as activity centres.
15. The Government must provide a commitment that the contributions framework has not been finalised and is open to change.
16. The terms of reference for the Contributions Taskforce should be extended to provide advice on all aspects of the proposed framework, and be modelled on the Queensland Government's current advisory group for its infrastructure charges review.

Summary of Recommendations (continued)

17. The SCCA should be a member of the Contributions Taskforce.
18. The Government should seek advice to ensure the new framework doesn't end up like the Queensland approach adopted several years ago which led to a significant escalation in charges.
19. A new principle for the framework should be inserted at section 7.3 of the Bill which provides that the levies should not negatively impact commercial development feasibility or inhibit the delivery of commercial floor space.
20. The Government should commit to retail development levies that are feasible.
21. The charge unit for retail development should be demand-based, and not based as a percentage of construction cost or capital improved value.
22. A maximum, feasible levy be based on a dollar ($) contribution per Incremental Gross Lettable Area of Retail (GLAR).
23. The Government needs to ensure the foundation principle of the contributions framework – consistent with Principle 3 (section 7.3 of the Bill) – is a clear and proportional link between the development and demand placed on infrastructure.
24. The Government needs to provide immediate clarification on the 'non-demand' contributions principles such as beneficiary pays and close proximity.
25. Retail development should not be required to fund infrastructure it does not generate demand for such as open space, community facilities and schools, similar to recent acknowledgements in the Victorian review.
26. The principles for the proposed Regional Infrastructure Fund should be revisited to ensure a clear link with the foundation contributions principle of linking development with infrastructure demand.
27. The proposed percentage of capital investment value charge unit for the proposed Regional Infrastructure Fund should be abandoned and replaced with a demand based unit.
28. The Government should consider alternative funding arrangements with broader tax bases, such as Business Improvement Districts (BIDs) to ensure the delivery of appropriate infrastructure.

2. Retail Development policy

We are pleased to provide the following comments:

2.1 Retail Development policy should be finalised

The proposal for a *Retail Development* policy is welcomed and it should be finalised as a priority. To provide investment certainty, the policy should be the Government's definitive policy statement on retail planning and development and not undermined by other policies or planning practices.

We welcome the fact the retail policy which will form part of the *NSW Planning Policies* hierarchy which will be enshrined in the proposed new legislation and "inform the rest of the planning hierarchy" such as Regional Growth Plans (including the current draft Sydney Metropolitan Strategy), Subregional Delivery Plans and Local Plans. We also support Principle 1 of the Strategic Planning Principles (section 3.3 of the Bill) which provides that "strategic plans should promote the State's economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations".

RECOMMENDATION

1. **The Retail Development policy should be finalised as a priority and be the definitive policy on retail planning and development.**

2.2 Retail Development policy should be activity/town centre focussed

Stated policy foundations

We welcome the foundation of the NSW Planning Policies (including the retail policy) which will see the incorporation of relevant existing section 117 Direction. For the Retail Development policy, this would logically include the *Integrated Land Use and Transport package: The Right Place to Do Business*. The policies will also be informed by *NSW 2021: A Plan to Make NSW Number One* which contains a goal to build liveable activity centres. The current Regional Growth Plan on public exhibition, the *Draft Metropolitan Strategy*, is also instructive about the potential approach where it states that "centres of all sizes will be the primary location of retail".

Activity centres approach: multiple benefits

As we outlined in our Green Paper submission, consistent with the above foundations, we believe the new retail policy should be principally based on the activity centres approach. It is the best planning approach to deliver multiple economic, environmental and social benefits. It also ensures optimal integration with infrastructure. The multiple benefits are outlined in the *Benefits of Activity Centres* report prepared by SGS Economics and Planning which we have provided previously to the Government.

A more proactive approach to activity centres

The new retail policy provides an opportunity for the Government to take a more strategic and proactive approach to retail and activity centres planning. There is, for example, a need to more proactively ensure that retail expansion opportunities in existing activity centres are facilitated through land-use and development controls. Our members encounter a range of investment barriers in activity centres such as:

- Lack of translation of strategic objectives to the local level, which limits shopping centre expansions.
- Development standards such as FSRs being enshrined in LEPs whereby development proposals that exceed the standard must go through the rezoning process and be subjected to the time, cost and assessment against detailed policies. Floor space caps on existing centres are also part of this challenge (e.g. the floor space cap at Westfield Tuggerah). We note that FSRs are being removed under the proposed framework.

- Prolonged assessment of development applications, including delays caused by 'local' political issues.
- The imposition of the *NSW Draft Centres Design Guidelines* which go into extraordinary detail of the design of shopping centres and a standard 'mixed-use' response through a development scheme.

RECOMMENDATIONS

2. **The proposed NSW Planning Policies foundation of section 117 Directions and NSW 2021 plan is supported and should be maintained in the final framework.**
3. **The principal objective of the Retail Development policy should be the facilitation of retail development in existing and new activity centres (as reflected in the Draft Sydney Metropolitan Strategy), and the strategic identification of new locations.**
4. **The Government should adopt a more proactive approach under the new retail policy particularly to facilitate retail expansion opportunities in existing activity centres.**
5. **The proposed Retail Development policy should address existing investment barriers within activity centres which impede expansion, competition and feasibility, such as floor space caps, strategic directions not being integrated into local plans and detailed design requirements.**

2.3 Retail Taskforce should be appointed

The Government should appoint a Retail Taskforce to develop the retail policy, which includes relevant industry, government and community stakeholders. We submit that we should be a member of such a group. The committee should work alongside the CEOs group which has oversight of all NSW Planning Policies.

The appointment of a Retail Taskforce would be consistent with current approaches on housing and employment lands.

The appointment of a Retail Taskforce would be a positive approach and overcome the problems with the development of retail policy in the past. The previous approach has resulted in the non-completion of draft policies such as the 2010 Draft Activity Centres Policy and Draft Competition SEPP.

RECOMMENDATION

6. **The Government should appoint a Retail Taskforce to develop the Retail Development policy which includes relevant industry, government, council and community stakeholders. The SCCA should be appointed to the Taskforce if it is established.**

2.4 The objective of NSW Planning Policies has changed for no clear reason

The overarching objective of the NSW Planning Policies has changed since the *Green Paper* from being policies that "will guide spatial and sectoral planning outcomes" to policies that "will set out objectives and direction rather than be spatial documents or provide prescriptive controls".

There is no clear or transparent rationale for this significant change, and the *Green Paper Feedback Summary* suggests that no concerns were raised with the previously proposed approach. The NSW Planning Policies should guide spatial and sectoral planning outcomes given that their position in the strategic planning hierarchy is to guide spatial plans such as the proposed Regional Growth Plans, Subregional Delivery Plans and Local Plans.

The overarching objective is also confusing given the proposal to incorporate existing section 117 Directions potentially includes spatial policies such as the *Integrated Land Use and Transport* package (see section 2.2 above). The suggestion that NSW Planning Policies will not be spatial documents or provide prescriptive controls also seems inconsistent with the proposed principles and content of strategic plans under the Bill. Principles 2 and 3 (section 3.3 of the Bill) refer to the need for plans to integrate with the provision of infrastructure and to "guide all decisions made by planning authorities and allow for streamlined development assessment". Section 3.4 of the Bill provides that a draft NSW Planning Policy "is to contain principles and policies in relation to strategic planning for the state including: (1) planning for infrastructure and (2) development assessment and (3) other planning related matters".

RECOMMENDATION

7. **The proposal that NSW Planning policies will not be spatial documents or provide prescriptive controls should be reversed and brought in line with the original Green Paper proposal and strategic planning principles and provisions in the Planning Bill 2013.**

2.5 Planning Bill 2013 objectives require amendment

The objects of the current EP & A Act include the encouragement of "the promotion and coordination of the orderly and economic use and development of land". This has been removed under the proposed *Planning Bill 2013* and we believe it should be reinstated. The current object is an important foundation for retail policy which includes the foundation of the existing *Integrated Land Use and Transport* package which will be retained in the new framework.

RECOMMENDATION

8. **The Planning Bill 2013 objectives should reflect the existing Environmental Planning and Assessment Act 1979 object to promote the "coordination or the orderly and economic use and development of land".**

2.6 Retail policy evidence needs a credible basis

The proposed "evidence based" approach to strategic planning is supported, including the legitimisation of this approach under Principle 9 of the Strategic Planning Principles (section 3.3 of the Bill) which provides that "strategic plans are to be based on evidence". However, despite this proposed "major shift", there is no detail in the White Paper or Bill about a much needed 'evidence framework'.

The Department of Planning and Infrastructure has failed to understand credible evidence in recent policy deliberations, and has instead given weight to spurious claims. At its simplest, this includes the failure to test claims about so-called 'large retail formats', 'new retail formats' or 'bulky goods outlets'; let alone the claims for special planning treatment. There isn't even scrutiny on whether 'bulky goods outlets' actually sell bulky goods. Even the NSW Treasury's submission to the planning review (April 2012) refers to "evidence" about a lack of retail competition, yet it doesn't produce any evidence to back up this claim. Numerous attempts to clarify this with Treasury officials have not been successful. The same submission also suggests that 'new retail formats' require facilitation through the use of flexible zoning instruments, without actually defining what such a format is, let alone why picking winners is fair, justified or a higher priority above 'other retail formats.

It is unreasonable that that NSW Treasury does not seem at least equally interested in "facilitating" other retail development. Our members have experienced major development issues in areas identified for retail growth due to floor space ratio limitations, caps, the impact on other businesses (which is anti-competitive) and infrastructure contributions and conditions.

If the Government wants to proceed with an evidence based approach as a foundation for better strategic planning, it needs to be credible. We would also welcome being involved in the development of a framework for the consideration of “evidence” in the strategic planning process. We have a substantial evidence base that could be utilised in retail and infrastructure contributions policy.

RECOMMENDATION

9. **An evidence framework should be developed for the strategic planning hierarchy to ensure that relevant and credible evidence is given appropriate weight.**

2.7 The Retail Development policy should be stand-alone

We question why the retail policy has gone from being a stand-alone policy in the *Green Paper* to being absorbed into a proposed broader *Employment and Economic Growth* policy. No justification is provided. Our concern is not merely seeking the symbolism of a stand-alone sectoral policy and we appreciate the potential benefit of considering retail as part of a broader policy. We have deep concerns that the nuances of retail investment and policy will be overlooked under this broader approach and captured by a broader, undefined, approach to “employment”.

Retail is specifically mentioned in Principle 1 of the Strategic Planning Principles (section 3.3 of the Bill), along with housing, commercial and industrial development, which no doubt is acknowledgement of the significant contribution of the retail property and retail sector to the economy. Further, the content of Regional Growth Plans referenced in the White Paper notes a key objective to facilitate retail activity in the right location.

This provides a reasonable platform for a stand-alone *Retail Development* policy which could drive a more direct link to other strategic plans and the setting and achievement of retail objectives, targets and outcomes.

RECOMMENDATION

10. **The Retail Development policy should be a stand-alone policy as was proposed in the Green Paper, and not absorbed into a broader Employment and Economic Growth policy.**

2.8 Enterprise Zone requires further consideration

The compression of zones is inconsistent with the principal recommendation of the Local Planning Panel. We are also concerned about the retention of the proposed *Enterprise Zone*, given it has now been aligned to substitute the existing B6 Enterprise Zone for no stated reason. This fundamental change has not been justified, where previously it was proposed to apply to precincts such as the Norwest Business Park and Macquarie Park. The proposed approach has the potential to pre-determine the outcomes of sectoral policies such as the retail policy, but also pre-determine that *Enterprise Zone* locations (e.g. enterprise corridors) deserve a focus on investment and stimulus over other locations. Why isn’t the *Commercial Zone* being provided with the same investment and stimulus focus? Our members have various controls that impact the feasibility of their projects and it would be anti-competitive to provide some locations with an investment advantage over priority growth areas.

We provided conditional support for the zone in our Green Paper submission, which was noted in the Green Paper Summary Report, that the Enterprise Zone should apply to priority growth areas such as activity centres. We believe this is logical: apply a stimulus zone to areas that the Government's has identified as priority growth areas. Using this zone in activity centres would entirely be consistent with the broad objectives of supporting innovation and boosting employment where, for instance, shopping centres are at the forefront of retail innovation (e.g. mixed uses, ICT, community facilities) and have a higher employment yield that other retail formats. It would also be consistent with the *NSW 2012* plan and the *Draft Sydney Metropolitan Strategy*.

RECOMMENDATIONS

11. **The proposed Enterprise Zone should be abandoned in its current form.**
12. **The Government should provide further clarification on the proposed application of the Enterprise Zone.**
13. **The proposed Enterprise Zone should not provide an investment advantage over priority growth locations, such as activity centres.**
14. **The Enterprise Zone should be applied to priority growth areas, which deliver multiple economic, social and environmental benefits, such as activity centres.**

3. Infrastructure Contributions

We are pleased to provide the following comments:

3.1 Is the contributions framework already finalised?

We are greatly concerned that the infrastructure contributions framework has already been finalised. We hope this is not the case, and that the Government is open to changes particularly given the issues that we have identified in this submission. There is considerable detail outlined in the White Paper, backed up in the Planning Bill 2013, about the proposed new approach. The role of the proposed *Contributions Taskforce* has been limited to transitional arrangements and essential local infrastructure, which is a mere fraction of the overall framework and critical issues for retail development (and we assume for other development sectors). This suggests that the Government sees only a limited role for direct industry consultation.

RECOMMENDATION

15. **The Government must provide a commitment that the contributions framework has not been finalised and is open to change.**

3.2 Extend the Contributions Taskforce terms of reference

We welcome the proposed establishment of the *Contributions Taskforce* as a consultation measure but we are concerned that its terms of reference are limited to advising on the transition period and list of essential local infrastructure. The *Contributions Taskforce* should have broader terms of reference to provide advice on the proposed contributions framework particularly given some of the clear issues that the proposed framework raises for development. Other consultation mechanisms noted in the White Paper (e.g. the Regional Planning Boards) have a more fundamental policy direction and setting role and this should be extended to the infrastructure framework.

The Contributions Taskforce should be similar to the Queensland Government's advisory group (which we are a member of) on its current review of infrastructure charges which includes a number of key stakeholders from industry, the state government and local government. The Victorian Government's review would be a useful model for consideration.

We submit that we should be a member of the Taskforce, because we are the only association that exclusively represents commercial property interests. We are also a national association and are currently involved in the infrastructure contributions reviews in Queensland and Victoria.

RECOMMENDATIONS

16. **The terms of reference for the Contributions Taskforce should be extended to provide advice on all aspects of the proposed framework, and be modelled on the Queensland Government's current advisory group for its infrastructure charges review.**
17. **The SCCA should be a member of the Contributions Taskforce.**

3.3 Don't make the mistake Queensland made

The framework – including the scope and standard of infrastructure and funding model – looks similar to the Queensland system adopted several years ago, where contributions grew by 1,300% over a five-year period. This severely impacted development feasibility and the delivery of retail space. The Queensland system is currently being reviewed for the second time in as many years, recognising the ongoing challenges from a development feasibility perspective.

We believe the proposed framework will lead to increases in contributions and development conditions. The scope of 'essential' infrastructure looks to be expanding, along with the funding of items for which retail development does not generate demand.

RECOMMENDATION

18. **The Government should seek advice to ensure the new framework doesn't end up like the Queensland approach adopted several years ago which led to a significant escalation in charges.**

3.4 Commercial development feasibility should be acknowledged, like housing

Even where levies are based on the demand generated by a development, they ultimately also need to be feasible from a development perspective.

The proposed contributions framework acknowledges that levies should not negatively impact housing affordability, however this same principle has not been extended to retail (or other commercial) development. Similar to housing, levies must not compromise the feasibility of retail development or inhibit the delivery of retail floor space.

Principle 2 for infrastructure contributions (section 7.3 of the Bill) provides that "the impact of the proposed infrastructure contribution on the affordability of housing should be considered". We strongly recommend that this principle is amended, or a new principle added to section 7.3, which provides that "levies must not compromise the feasibility of commercial development or inhibit the delivery of commercial floor space".

RECOMMENDATION

19. **A new principle for the framework should be inserted at section 7.3 of the Bill which provides that the levies should not negatively impact commercial development feasibility or inhibit the delivery of commercial floor space.**

3.5 Retail development levy needs to be feasible and demand based

We recommend the NSW Government adopts the Queensland approach in setting a maximum levy for shopping centre development based on a demand based charge unit. This would fairly reflect that contributions should be based on the demand generated on infrastructure by a development proposal. With regard to the issue raised in the previous section, the levy needs to be feasible from a development perspective.

This is consistent with Principle 3 of the infrastructure contributions principles at section 7.3 of the Bill which provides that "the proposed infrastructure contribution should be based on a reasonable apportionment between existing demand and new demand for local or regional infrastructure to be created by the proposed development to which the contribution relates".

As a principle, we do not support a contribution rate based on a percentage of construction cost or capital investment value as this would unfairly charge existing floor space and unfairly tax higher valued investment. In this regard we do not support section 7.6 (b) regarding "indirect contributions". In any case, this provision is inconsistent with the principles at section 7.3 of the Bill. A maximum, feasible retail levy should be based on a demand unit charge, such as a dollar ($) contribution per Incremental Gross Lettable Area of Retail (GLAR).

RECOMMENDATIONS

20. **The Government should commit to retail development levies that are feasible.**

21. **The charge unit for retail development should be demand-based, and not based as a percentage of construction cost or capital improved value.**

22. **A maximum, feasible levy be based on a dollar ($) contribution per Incremental Gross Lettable Area of Retail (GLAR).**

3.6 Alternating and confusing contributions principles

As outlined above, we believe that contributions need to be feasible and demand-based. For this reason, we are concerned about the various 'non-demand' contributions principles outlined in the White Paper. The full principles and their justification are summarised as follows:

- *Demand-based*: Development that creates a need for new infrastructure, or contributes to the demands for new or improved infrastructure, should contribute to the costs associated in delivering this infrastructure. There must be a nexus and proportionality between development and infrastructure need. We support this approach.
- *Beneficiary pays*: Parties should only pay for infrastructure from which they will benefit from. When benefits are shared between groups, the distribution of costs should reflect this.
- *Close proximity*: Contributions will recover an amount towards the cost of infrastructure that is in close proximity to the new development – ensuring there is a link between growth and increased investment in infrastructure (Local Infrastructure Contributions).
- *Population growth*: Recovering some of the cost of providing infrastructure to support population growth in major centres, collected on a subregional basis (Regional Infrastructure Contributions) – to be set in Growth Infrastructure Plans which will determine the appropriate level of apportionment towards new development.
- *Modest contribution*: All forms of development within a region will be required to make a modest contribution to the Regional Growth Fund to fund land and works for drainage and open space.

The different principles noted above are concerning, particularly those that stray from a clear and proportional link between development and infrastructure demand. Further, it seems to suggest that despite one principle being based on demand, another principle suggest that retail development should (for instance) contribute to schools or upgrades to regional open space, despite the development not creating demand for this type of infrastructure.

Principle 3 for infrastructure contributions (section 7.3 of the Bill) clearly states that "the proposed infrastructure contribution should be based on a reasonable apportionment between existing demand and new demand for local or regional infrastructure to be created by the proposed development to which the contribution relates". The Government needs to provide immediate certainty on this issue before the framework is developed any further. The Government needs to provide certainty to ensure that the contributions framework is based on a clear and proportional link to the demand on infrastructure generated by development.

RECOMMENDATIONS

23. **The Government needs to ensure the foundation principle of the contributions framework – consistent with Principle 3 (section 7.3 of the Bill) – is a clear and proportional link between the development and demand placed on infrastructure.**

24. **The Government needs to provide immediate clarification on the 'non-demand' contributions principles such as beneficiary pays and close proximity.**

3.7 Regional Infrastructure Contributions / Regional Growth Fund

Following from our comments above about 'non-demand' principles, we have deep reservations about the proposed Regional Infrastructure Contributions and Regional Growth Fund. As noted above, the contributions are proposed to be based on the Government believing "it is appropriate to recover some of the cost of providing infrastructure to support population growth in major centres".

We do not support this view as it is not a fair and credible approach.

The proposed approach is a departure from the clear principle that infrastructure contributions should be based on the demand generated by a proposed development. That principle is clearly identified in other parts of the proposed framework outlined in the White Paper such as at section 7.3 of the Bill.

The proposal that retail development will be required to contribute (through the RIC) to infrastructure for which it does not generate demand for such as schools and open space is not supported. The current Victorian review, under the the Ministerial Advisory Committee's last available report, acknowledged that community facilities and open space should only apply to residential development in some areas. We would urge the NSW Government to take a similar approach.

The structure of the RIC unit, which is to be based as a percentage of the capital investment value of a proposed development, is also unreasonable. Section 7.15 (4) of the Bill provides that "the amount of a regional infrastructure contribution can only be a percentage of the capital investment value of the proposed development or calculated by reference to the area of the proposed development or calculated in a manner authorised by the regulations". At its most fundamental, this is a departure from linking a proposed development with the demand on infrastructure it generates. It is also targeting higher valued investment, which is a natural penalty against shopping centres over other retail formats. Much of the higher investment required is due to government regulation such as the issues outlined in section 2.2.

RECOMMENDATIONS

25. **Retail development should not be required to fund infrastructure it does not generate demand for such as open space, community facilities and schools, similar to recent acknowledgements in the Victorian review.**

26. **The principles for the proposed Regional Infrastructure Fund should be revisited to ensure a clear link with the foundation contributions principle of linking development with infrastructure demand.**

27. **The proposed percentage of capital investment value charge unit for the proposed Regional Infrastructure Fund should be abandoned and replaced with a demand based unit.**

3.8 Consider alternative funding arrangements

Ultimately, infrastructure contributions provided through new development will not be sufficient to fund all required infrastructure. This is despite welcome initiatives such as the deferral of payments (although this appears limited to housing at this stage) and increased contestability. The new planning system provides an opportunity to investigate alternative funding arrangements to the blunt instrument of development contributions.

Funding methods, which can incorporate a broader taxation base, should be considered under the proposed contributions framework such as Business Improvement Districts (BIDs) and Growth Area Bonds.

RECOMMENDATION

28. **The Government should consider alternative funding arrangements with broader tax bases, such as Business Improvement Districts (BIDs) to ensure the delivery of appropriate infrastructure.**

4. Shopping Centre Council of Australia

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 have a current $5.37 billion development pipeline across the state, adding 2.1 million square metres of retail space and comprising 39,000 direct construction jobs.

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.

Contacts

The Shopping Centre Council would be happy to discuss this submission. Please do not hesitate to contact:

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