SHOPPING CENTRE
COUNCIL OF AUSTRALIA

Standard Development Contributions Advisory Committee

Report 1 'Setting the Framework' (December 2012)

A submission by the

Shopping Centre Council of Australia

April 2013

Executive Summary

The Shopping Centre Council of Australia (SCCA) is pleased to comment on the Standard Development Contributions Advisory Committee's *Report 1 'Setting the Framework'* report. We also appreciate the opportunity to meet with the Committee on 12 March, which included representatives from some of our member organisations: AMP Capital, Colonial First State Global Asset Management, Federation Centres, Lend Lease, Stockland and the Westfield Group.

We note that page 12 of *Report 1* highlights that the time available to the Committee "has not allowed it to explore in detail development levies for non-residential development, including industry, retail and commercial. This will occur as part of Stage 2".

We have focussed this submission on the headline issues for our members who are major retail property owners, managers and developers across metropolitan and regional Victoria, and develop across all 'development settings' including greenfield and infill locations.

The current development contributions framework has the capacity to work well, however there are cases where the process and cost impost is burdensome, significant and inequitable. In some cases, the current Victorian development guidelines are not being applied properly by local councils in negotiations with shopping centre developers. We discussed some of these examples at our 12 March meeting, which included issues around questionable nexus (e.g. that the proposed development is likely to use the infrastructure being funded) and scope (e.g. requirements for libraries), excessive conditions from Vic Roads (e.g. quantum of road network and level of service) and accountability from local government to allocate funds received and deliver the required and agreed infrastructure (e.g. delivering infrastructure on time to coincide with the opening of a retail development).

Within these examples are cases of double dipping, lack of appropriate crediting (e.g. where state roads contributions relieve pressure on local road networks) and free-riders benefitting from our members' earlier contributions but were not required to make an equivalent contribution.

We are optimistic about the capacity to improve the system. However we are concerned the proposed standard levy could result in issues faced in Queensland where the so-called standard levy and 'maximum capped charge' of $180/m2 of incremental Gross Floor Area (GFA) remains too high, open to abuse (e.g. one council increased its previous $100/m2 rate automatically with no link to demand), enables double dipping, and excludes state agency conditions such as the Department of Transport and Main Roads (which can account for up to 90% of government imposed costs on a project). We are a member of the Queensland Government's working group currently reviewing this relatively new framework.

The contributions framework should concentrate on the following outcome areas:

1. Feasible and certain. Levies, permit conditions and agency requirements should be feasible in totality. We recommend a clear, maximum retail development levy range of $50-75/m2 of incremental gross lettable area of retail (GLAR) across all development settings. We are concerned that permit conditions can still be imposed which would circumvent a standard levy, including seeking contributions for out-of-scope infrastructure.

2. Nexus and scope. Contributions should be linked to the demand generated by development, particularly in terms of the scope of 'basic and essential' local infrastructure'. We believe retail development should not be required to contribute to open space and community infrastructure.

3. Equity across all users. The burden should be spread to ensure there are no free-riders. There needs to be a consistent approach across comparable areas within an 'urban area'. We are concerned about the application of the 'urban areas' definition in this regard, which could have selective application and therefore discriminate against our member's developments. Our members have examples where they have contributed to infrastructure, only to have the capacity soaked up by future users that made no contributions.

4. Transparent, contestable and accountable. Demand and cost assumptions should be clear and contestable, and the critical issue of double-dipping should be avoided. Local councils and the state government should be required to deliver required infrastructure.

While the above focus areas align with the Committee's proposed framework principles, the essential addition from our perspective is *feasibility and certainty.* This is the non-residential sector's equivalent of 'housing affordability' and is too often not taken into consideration.

There is a general view within our membership that local councils can take a 'capacity to pay' approach with our members, as if to suggest that because they are large organisations, there's an infinite ability to make contributions without a negative impact on development feasibility and asset performance. This is clearly not the case. Feasibility is critical particularly given the current development environment where there is pressure on rental income, construction costs and funding costs.

Certainty is critical to ensure ongoing investment in retail development and existing centres. Investors are concerned about unknown factors that are likely to impact on the feasibility of future development or that erode value on existing assets. There are examples where uncertainty currently exists in both the overall planning framework and development contributions guidelines in Victoria, and investors are cautious in committing large sums of capital where there is a risk that growth could be impacted.

As a final critical point, we have serious concerns how the new contribution framework will relate to the proposed retail zone reforms – including the proposed new C1, C2 and IN3 zones – currently being considered by the Minister following the Underwood Committee's investigations.

Unless the zoning and development contribution reforms are properly aligned, the zone reforms have the ability to create a massive imbalance between development requirements for different retail development; namely between retail development within an activity centre and outside an activity centre. Further, given the zone reforms propose some 'as of right' uses, the contributions framework must pick up such proposals particularly in cases of significant changes and intensifications of use. The scope of infrastructure is also relevant, where it would be unreasonable that retail development within activity centres have a 'justified' item of community infrastructure imposed due to demand, whereas an out-of-centre retail development does not.

Given the complexity of some of these issues, and some of the different experiences between greenfield and infill development, we recommend further discussion between our industry and the Committee. As such, we would be pleased to meet with the Committee again to discuss these important issues further. Our contact details appear at the end of this submission.

1. Headline issues

Feasibility and certainty

Recommended retail development levy

Feasibility and certainty go hand-in-hand.

The proposed standard levy must be feasible from a development perspective. A levy that is certain, but unfeasible, can cause the deferral or shelving of a development. Even where development proceeds, developers could be less prepared to build quality into developments (e.g. design, construction, materials, fitouts).

We recommend a maximum standard levy of $50-$75/m2 of incremental gross lettable area of retail (GLAR) across all development settings which we believe would be fair, feasible and simple. There should be an appropriate indexation/escalation rate for the levy going forward.

Indexation should be tied to the relevant infrastructure. As an example, while the Roads and Bridges Index could be considered appropriate for all development related transport infrastructure, this index includes activities (e.g. construction of overpasses) that could inflate typical development related infrastructure such as surrounding roads and intersections.

We believe that a flat levy, rather than itemised levies based on different infrastructure categories, is most appropriate for retail development particularly if the scope of basic and essential infrastructure excludes community and open space infrastructure. This approach also has the benefit of being administratively simplistic given that incremental GLAR is easily identified on development applications and major changes and intensifications of use.

It remains important that assumptions such as trip generation data are transparent and open to challenge.

We also believe that the levy should be a maximum benchmark. Given the proposed approach is to be an 'opt in' model, a local council must be required to justify adopting the maximum levy. There are cases, based on nexus and apportionment, where a lower levy could be justified.

We remain concerned however that the proposed levy will still leave open the opportunity for excessive permit and referral agency conditions. This remains the biggest challenge under the Queensland system, where the maximum 'adopted charge' of $180/m2 GFA does not include separate conditioning.

Demand-based levy approach

We believe the levy for retail development should be a demand based unit, as the most credible alignment to the 'demand' on infrastructure generated by incremental development. While the dollar rate remains the critical feature in terms of feasibility, we generally do not support levy units such as a percentage of construction or development value, or a fixed charge per hectare of developable area. These approaches have the capacity to levy existing floor space which could be the subject of the development proposal (akin to double dipping) and also tax higher valued projects. In the case of a per hectare charge, we believe such an approach unfairly charges non-demand generating space.

The Victorian approach to council rating already applies on a Capital Improved Value (CIV) basis so capital improvements from development is already caught (and penalised) under the local government funding model. It would be unfair to base a development levy on this basis.

We believe the levy should apply to incremental retail floor space for new and existing retail assets, as well as major changes and intensifications of use to retail such as the conversion of an industrial use to a retail use.

Nexus and scope

Non-residential should not provide community / open space

Contributions should be linked to demand generated by the proposed development and we welcome the idea of a list of basic and essential local infrastructure.

A critical issue that drives the cost of contributions is obviously the scope and standard of infrastructure.

We have some concerns with the proposed 'allowable items' of infrastructure.

We believe that the scope of infrastructure for retail development should be limited to transport, drainage and public land infrastructure (in greenfield areas). This must be correctly apportioned in greenfield areas, as well as 'incremental upgrades' within existing urban areas. Infrastructure costs should be apportioned on a usage basis, including future users, so as to not overly burden the current developer.

We broadly welcome the approach in urban areas that the levy will not include land but be limited to cost of construction of the required infrastructure. Where land is required it should be valued at market rates and fully off-settable. Consideration also needs to be given to the opportunity cost of land contributions, which can be in excess of a valuation (e.g. land sought for bus interchanges can impact optimisation of car parking and shopping centre design and layout).

In this regard, we believe that retail development should not be required to contribute to open space and community infrastructure in any development setting, as retail development does not generate significant demand for such infrastructure. This should be extended to the retail component for mixed-use development. However where such infrastructure is provided by a developer (e.g. council libraries) – e.g. through agreement with a council – it should be credited and offset from the other cash and in-kind contributions.

The exclusion of community infrastructure for retail development should extend to the suggested items for growth areas including libraries, aquatic centres, lacrosse fields, performing arts centres and indoor recreation facilities, as well as community services, sporting facilities and park improvements in urban areas.

In this regard, we welcome the acknowledgement in the report at pages 51 and 68 that where a DLS is prepared and in a growth area, "community and recreation infrastructure should only apply to residential development or developments which include a residential component". However we question the finding at 5.4 (iv) that such infrastructure "can be applied to other uses if it can be justified". We are unclear how such justification will be determined.

Works-in-kind / crediting / offsetting

We welcome that works-in-kind, as well as crediting and offsetting will be maintained in the new framework, however we believe that improvements should be made particularly in relation to state agency requirements.

Currently, the provision of state agency requirements (e.g. Vic Roads) cannot be credited against a local contribution. However there are clearly cases where, for instance, improvements to state road infrastructure or the provision of a bus interchange can bring about improvements for the local road network and service the local population.

We welcome the proposal to reform the role of referral agencies to 'recommendation' agencies. This could alleviate some of the cost pressures being imposed by agencies such as Vic Roads.

Section 173 agreements

As a final point, we remain concerned that while flexibility is being maintained under section 173 agreements (often prepared in lieu of a Development Contributions Plan), permit conditions can still be used for off-site infrastructure which could extend to non-basic or essential infrastructure. In the case of our members, this could include community facilities. This has the potential to jeopardise the proposed merits of the standard levy approach, particularly in relation to setting conditions that go well beyond a 'maximum' standard levy.

Equity across all users

Proposed retail zoning reforms

Ensuring equity across all users should be a critical aspect of the new framework.

To illustrate, one developer providing 15,000m2 of additional retail space should not incur a disproportionate levy or contributions burden when compared with another developer providing 15,000m2 of additional retail space. The biggest risk of having major discrimination in this area is, we believe, the proposed retail zoning reforms currently being considered by the Minister.

The proposed opening up of land for retail space could create a significant unlevel playing field under the development contributions framework. As an example, the Minister seeks to improve retail competition through the zoning reforms, however there must be equitable and competitive development contribution requirements between different retail development. We would urge the Committee to give consideration to this issue in its investigations.

Free-riders

As a related point, the burden of contributions should be spread to ensure there are no free-riders. Our members have examples where they have contributed to infrastructure, only to have the capacity soaked up to future users that made no contributions. When our members come to develop a further stage, they can no longer receive the benefit of their previous contribution, even though other users soaked up that capacity and made no contributions themselves.

Transparent, contestable and accountable

Transparency and contestability

We welcome the Committee's proposed approach to ensure a transparent contributions framework, including across the basis of the proposed standard levy (e.g. the alignment with a local council capital works program) as well as the collection and allocation of levies.

We support annual reporting on the collection and expenditure of levies.

However we believe there should be some improved transparency through how infrastructure will be apportioned to incremental retail floor space. While the proposed approach includes investigating historical population growth to apply future demand assumptions, we are keen to understand how these assumptions will be applied to retail space.

Appeals

An important element of the new framework will be the ability of developers to contest and appeal the levy and permit conditions in a timely manner.

We are keen to avoid the current delays that can be experienced through the VCAT process, and therefore recommend the consideration of a new separate process.

In this regard, we also reiterate our concerns that the proposed standard levy could be undermined through permit conditions to mitigate off-site impacts or seek contributions on shared facilities. This could include out-of-scope contributions that are not permitted under the standard levy.

Allocation of funds

We strongly believe that accountability could be improved by requiring local councils to refund cash contributions if they have not been expended within a two year time period.

Review of levies system

We believe that the proposed five year review process for the new contributions framework is excessive. There should be an initial review after a two-year period, as is occurring currently in Queensland. The Queensland framework, which commenced on 1 July 2011, is already being reviewed ahead of its two year anniversary. This process includes all key stakeholders and is a positive process, with current weekly meetings which will inform the release of a future discussion paper.

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, in more than 500 shopping centres.

Our members are major owners, managers and developers of retail property across metropolitan, regional and rural Victoria, covering almost 90 shopping centres, comprising almost 2.9 million square metres of retail space and 9,000 retailers. Our members also have a $4.49 billion development pipeline across Victoria, adding 480,000 square metres of retail space and comprising 30,000 direct construction and operational 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

We would be happy to discuss any aspect of this submission. Please do not hesitate to contact:

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