31 January 2013

The Executive Officer
Economic and Finance Committee
Parliament House
North Terrace SA 5000

By email: EFC.Assembly@parliament.sa.gov.au

Taxation Review

Dear Sir or Madam

The Shopping Centre Council of Australia (SCCA) appreciates the opportunity to provide a submission on the Economic and Finance Committee's *Taxation Review*, which will principally inquire into and report on the South Australian taxation system.

South Australia is a high taxing state and there is urgent need for reform.

As one example, overall statutory charges (e.g. land tax, council rates, water and sewerage charges) for neighbourhood shopping centres are the highest in Australia ($38/m2).

Of note, and an area of taxation often overlooked, is the fact that council rates are higher than land tax. This area of taxation is a major concern and we urge the Committee to focus on council rates, including the land valuation basis, SA Government guidelines and council analysis and decision making processes as part of its review.

A further burden for our sector is the fact that the recovery of land tax from retail tenants is prohibited under the *Retail and Commercial Leases Act*. In addition to the business cost and impacts, this undermines sound taxation principles, as well as lacking transparency in the retail leasing market. Unfortunately, an attempt to address this issue by the Hon. John Darley MLC in 2011, has failed to be considered by Parliament.

We represent Australia's major owners, managers and developers of shopping centres who have ownership interests in 18 shopping centres and independent management of an additional 30 shopping centres in South Australia. These companies include AMP Capital Investors, Charter Hall Retail REIT, Colonial First State Global Asset Management, DEXUS, Federation Centres (formerly Centro Retail Australia), ISPT, Lend Lease, Precision Group, Savills, Westfield Group and the Westfield Retail Trust. These shopping centres represent a substantial capital investment base and incorporate more than 100 major and 2,000 specialty retailers. These centres also facilitate significant retail and service sector employment (e.g. cleaning, security and maintenance).

Largely as a function of higher land valuation, market valuation and tax rates, our members are significant tax payers and rate payers within South Australia. This includes 'property' taxes such as stamp duty, land tax, council rates, the emergency services levy and water and sewerage charges. In the future, South Australia's 'property' taxes could be extended as a result of the proposed car parking levy scheduled to commence on 1 July 2014 announced as part of last year's Mid-Year Budget Review. In our view, this proposed levy should not proceed and is simply another form of property tax.

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For our member's 18 shopping centres referenced above, we estimate their annual tax payments – referred to as annual 'statutory charges') to be around $31 million – to agencies such as Revenue SA (land tax), local councils (council rates) and SA Water (water and sewerage charges).

We are pleased to provide the following comments:

Taxation principles

The Review should be undertaken based on the core taxation principles of equity, efficiency and simplicity.

Consistent with these principles, in practical terms, we believe the Review should investigate issues such as broadening the tax base (e.g. land tax), lowering tax rates (e.g. land tax, council rates), providing a fairer land valuation basis (e.g. reviewing the use of 'Capital Value' for council rates and water and sewerage charges) and the approach and structure of taxes (e.g. the questionable approach councils can take to increase rates).

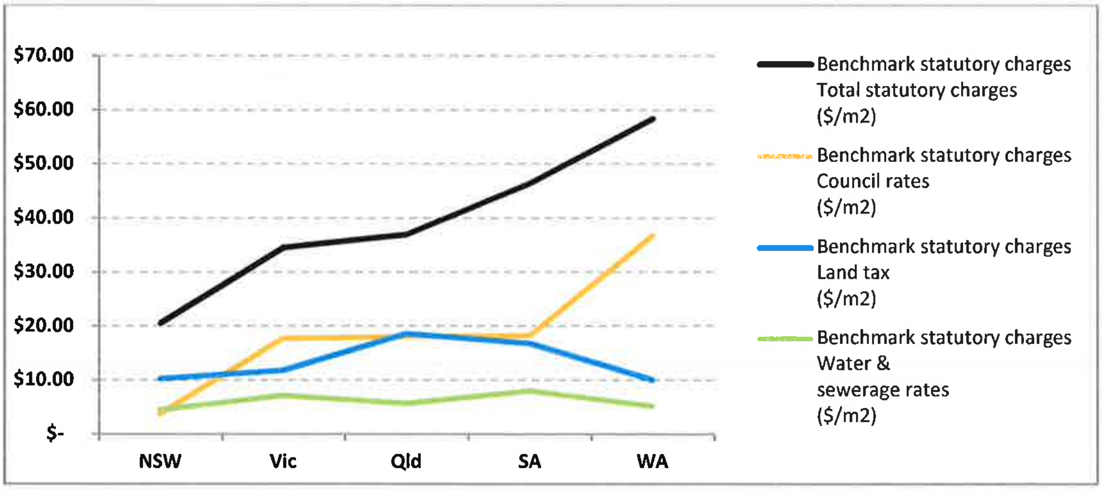
Statutory charges – SA vs. other jurisdictions

South Australia's statutory charges are very high when compared with other states.

As we noted in the previous section, overall statutory charges for neighbourhood shopping centres are the highest in Australia.

We have provided a summary of 'benchmark' statutory charges for regional shopping centres (i.e. larger shopping centres which have a Department store) and neighbourhood shopping centres (i.e. with a supermarket) for South Australia and other major jurisdictions. This data comes from the Property Council of Australia's latest (2011) *Shopping Centre Benchmarks* (for the budget year ending 30 June 2011). We can seek to provide commercial-in-confidence data to the Committee if requested.

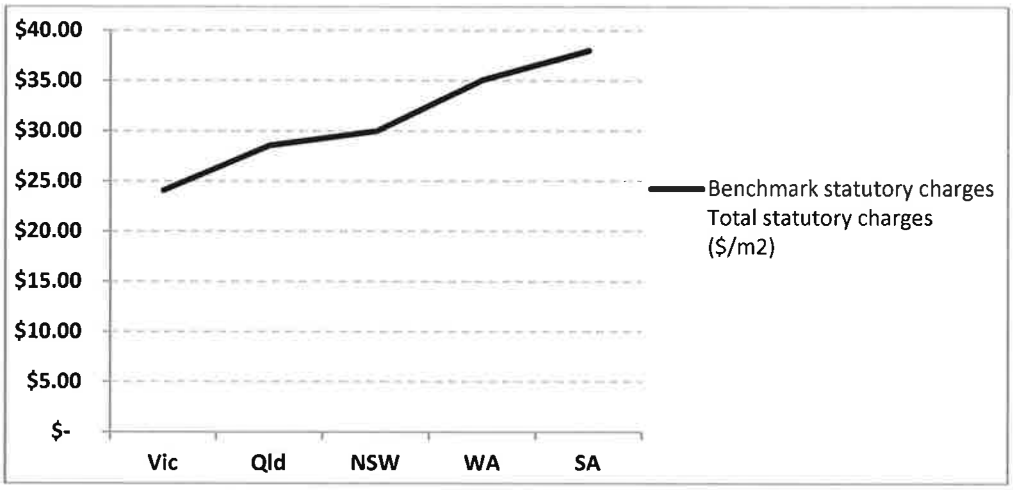
Chart 1: Regional centre benchmarks



As the Committee will note from Chart 1, South Australia's total statutory charges ($46.44/m2) for regional centres are the second highest in Australia; second to West Australia. South Australia also has the second highest council rates (to West Australia) and land tax (to Queensland). Council rates ($18.42/m2) in South Australia are also higher than land tax ($16.96/m2), and South Australia also has the highest water and sewerage charges ($8.16/m2).

Chart 2: Neighbourhood centre benchmarks

As Chart 2 below outlines, South Australia has the highest overall statutory charges ($38.00/m2) compared with other jurisdictions, with the second highest council rates (to West Australia) and land tax (to NSW), and the highest overall water and sewerage rates.



Council rates

While we have major concerns with land tax in South Australia, we urge the Committee to also focus on council rates particularly in relation to differential rating. As highlighted above, council rates for shopping centres are, in some cases, higher than land tax.

To best illustrate our concerns with council rates, we have **attached** our correspondence with the City of Tea Tree Gully in relation to a proposed 50% rate increase last year. We have also **attached** a copy of our weekly newsletter Shop Talk which covered Council's final decision of a phased-in rate increase of 20%/40%/50% across a two-year period.

Of concern, the Tea Tree Gully major rate increase only applied to a handful of properties within Council's area, which we believe to be highly discriminatory. Further, the rationale for the increase was flimsy at best, with no link to the provision of, or the cost of services. The only requirement on local councils, as issued by the SA Government, seems to be that councils "consult" on proposed rate changes. However, even when a council "consults" with impacted stakeholders, there is no requirement for credible analysis or the consideration of options (e.g. spreading the rate burden). In any case, as businesses are in the voting minority, there is also no real electoral accountability on such matters.

We strongly believe the approach that local councils are able to take to ratings should be reviewed to ensure commercial properties cannot be discriminated against. This could ultimately require amendments to the Local Government Act or Regulation as well as revised guidance from the Office of Local Government and Local Government Association of South Australia.

To improve the rating framework we submit the following for consideration:

- Rating subcategories that target a single property or a selection of properties in a land use category should not be permitted.
- The notion of 'capacity to pay' as a rating principle should be ruled out (it is not valid in Queensland).
- There should be no rate increases for any individual ratepayer of more than 10%, ensuring a more equitable approach across all ratepayers, rather than a small selection of ratepayers being levied with a disproportionate burden.
- All rate increases should be justified in terms of a direct link to the increased provision of, and cost of, services that directly benefit particularly ratepayers.

- Similar to the principle under the Victorian system, the highest differential council rate should be no more than two times the lowest differential rate.

Capital Value (CV)

As mentioned above, we have major concerns with the Capital Value (rather than unimproved value) valuation approach which is used as the basis of council rates and water and sewerage charges.

Aside from a natural discrimination against commercial properties which generally have a higher value, and a higher proportion of 'improvements' than other forms of property, the Capital Value approach also means that companies undertaking development can see resultant large increases in their rates if the council doesn't adjust the rate in the dollar.

Recommendations

In summary, our principal recommendations are as follows:

- The Committee should acknowledge and seek to address that fact that South Australia's statutory charges for shopping centres are amongst the highest in Australia, including the highest for neighbourhood centres and the second highest for regional centres.
- The land tax base should be broadened, as well as consideration of a lower rate and an end to the current aggregation rules.
- The *Retail and Commercial Leases Act* should be amended to enable the recovery of land tax from retail tenants (which is currently prohibited) which would greatly improve equity and transparency.
- The policy framework (under the *Local Government Act*) and the approach that local councils use for rating should be reviewed so councils cannot discriminate against commercial property.
- The 'Capital Value' basis for council rates and water and sewerage charges should be reviewed – which naturally discriminates against properties with a higher proportion of 'improvements' such as commercial property.
- The current structure of water charges should be amended to be linked with water usage and quality principles rather than Capital Value, which also provide little incentive for water efficiency.
- The Government's proposed car parking levy, scheduled to commence on 1 July 2014, should be abandoned.

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 (formerly Centro Retail Australia), 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.

I would be happy to discuss this submission with the Committee and provide further assistance on the Review if required. I can be contacted on 02 9033 1930, 0408 079 184 or anardi@scca.org.au.

Yours sincerely,

31.1.14

Angus Nardi
Deputy Director

Attachments: City of Tea Tree Gully correspondence, Shop Talk newsletter

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

21 December 2011

Clr Miriam Smith
Mayor
City of Tea Tree Gully
PO Box 571
MODBURY SA 5092

COPY

And by email: miriam.smith@cttg.sa.gov.au

Dear Mayor Smith,

50% Rate Increase for Commercial Property

I am writing to express our preliminary strong opposition to Council's proposed 50% (first year) rate increase for commercial properties, endorsed on 22 November 2011. This increase will see a $700,000 increase in the annual rates for Westfield Tea Tree Plaza, jointly owned by some of our members; AMP Capital, the Westfield Group and Westfield Retail Trust. This increase is not insignificant to these owners, or their 250 retailers who will ultimately bear part of the cost of the increase. I am aware that you met with Westfield representatives (who manage the centre) to discuss this matter on 20 December 2011.

Firstly, it is disappointing that Council is consulting over the Christmas period, which is a significant period for retail. It certainly does not seem in the spirit of Council's own community engagement policy.

Secondly, beyond our concerns about the narrow tax base (i.e. commercial properties only), we respectfully submit that the reasons Council has used to differentiate commercial properties, and to justify the proposed 50% increase, are spurious and discriminatory. We also question the basis of the 50% increase, and why (for instance) a 10% increase was not chosen. South Australia already has the second highest council rates for large shopping centres on a per square metre basis.

On one hand, Council is seeking to enable flexibility against valuation movements (to no doubt capture the upside). On the other hand, Council justifies the increase based on services that Council provides (Westfield is struggling to think of any, particularly in the order of an additional $700,000). A further rationale is provided: that Council is one of the last to move towards differential rating. We are also concerned that, based on a discussion with a Council officer, Council holds the view that such an increase is justified on the basis of improved capitalisation rates or investment returns. This rationale is potentially ill-informed, and is certainly puzzling to our members that we've discussed this issue with, including commercial property and valuation consultants based in Adelaide.

We will be preparing a more substantial submission by the due date in late January 2012. Part of our investigations on this issue includes economic and legal advice. Given the significance of the proposed increase and poor precedent we believe it sets for local government decision making, we also intend to raise this issue with the state government.

I look forward to discussing this issue with you. Please feel free to contact me on 0408 079 184 or anardi@scca.org.au.

Yours sincerely

21.12.11

Angus Nardi
Deputy Director

cc: All Councillors, Chief Executive Officer

Leaders in Shopping Centre Advocacy

27 January 2012

COPY

Clr Miriam Smith
Mayor
City of Tea Tree Gully
PO Box 571
MODBURY SA 5092

And by email: miriam.smith@cttg.sa.gov.au

Dear Mayor Smith,

New Differential Rating System

Further to my letter to you dated 21 December 2011, I am writing to express our strong opposition to Council's proposed 50% rate increase for commercial properties, carried unanimously at Council's 22 November 2011 meeting. We are equally alarmed that the proposed increase could be merely a first year increase, and could be increased in future years and on an annual basis (as noted at page 8 of Council's *Review of Rating Strategy* report).

We respectfully request that Council reconsiders this proposal and implements a more fair and equitable rating system that will not merely slug the City's commercial property owners and major investors. Aside from the proposed rate increase, the Valuer-General's pending 2012 revaluation could exacerbate the increase for commercial property owners, and also increase the disproportionate outcome between residential and non-residential rate-payers.

We specifically believe that Tea Tree Plaza/Tea Tree Plus (jointly owned by some of our members; AMP Capital, the Westfield Group and Westfield Retail Trust) may require specific rating treatment. Tea Tree Plaza has a well acknowledged role as part of the Modbury Regional Growth Area/Regional Centre, under both Council's *Master Plan* and the Government's *30-Year Plan for Greater Adelaide* (particularly given the link to the O-Bahn interchange). It will be a focal point for further significant investment (including the $200 million investment flagged by Westfield) and other social and economic dividends. The fact that its Capital Value (issued by the Valuer-General) well exceeds other commercial properties in the area should not serve as a disadvantage for rating purposes, particularly given Council's poor analysis and rationale (see further comments below) in seeking to link the proposed increase to the provision of, and cost of Council services (particularly to the tune of an additional $700,000), some of which Westfield does not use (e.g. waste services), or pays separate fees for.

We are pleased to provide the following comments across five key areas for Council's consideration:

Unfair discrimination against commercial properties

It is also difficult to understand why Council would see fit to discriminate against one group of ratepayers (and their retailers), while other ratepayers will see no increase at all (some will see a decrease). On face value, and given that no 'modest' options (e.g. 5%-10% increase) for commercial properties were even considered by Council, it would seem that Council sees the proposal as politically expedient, given the number of residential ratepayers far outweighs the number of commercial ratepayers. We certainly hope that this is not the case. The approach taken by Council is not conducive to good taxation policy, positive investment signals or conditions, or good faith.

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Poor analysis and justification

Council's analysis and justification for the proposed increase is most disappointing, and no credible justification is presented. The rationale is purely valuation driven, rather than having any real basis in the provision of, or cost of Council services, let alone the apportionment of such services amongst the City's 38,000 rate-payers or commercial properties, and the extent to which such apportionment correlates with increased valuation. Where the logic of Council services is used to justify the proposed increase, the rationale is merely borrowed from unnamed "other councils" (page 6 of Council's *Review of Rating Strategy* report), and there are numerous untested claims such as commercial properties consuming "a greater proportion of Council resources than residential properties, particularly in regard to the use of road, parking, storm water, public health, waste and environment". The report (at page 7) also refers to such properties making appropriate contributions "to services that Council provides". Again, what are these services and what is deemed as an "appropriate" contribution? Even if this claim is correct, why didn't Council consider or adopt the benchmark council rate of $18.42 / m2 for regional shopping centres (such as Tea Tree Plaza) from the Property Council of Australia's (PCA) latest *Shopping Centre Benchmarks* as a more uniform measure of apportionment amongst "other councils"? Local council rates are also already the highest statutory charge for shopping centres in South Australia and the 2nd highest charge overall within shopping centres (accounting for 15% of total operating expenses).

While the proposed $700,000 increase in annual rates for Tea Tree Plaza/Tea Tree Plus is significant to the owners and their 250 retailers, increasing Council's current rate to the PCA's benchmark would be a **7.8% increase**. Why wasn't this option considered? Instead, it is proposed to put Tea Tree Plaza in the 'Upper Range' of the PCA's Benchmarks, and also make it have the 4th highest rates of any Westfield centre in Australia, and the 6th highest on a per square metre basis. The fact that Tea Tree Plaza does not utilise some of the mentioned Council services (e.g. it contracts its waste services) and pays separate fees for other services (e.g. public health issues), the claim regarding commercial properties consuming "a greater proportion of Council resources" is equally puzzling.

Further, in relation to the logic used by "other councils" and comparisons with such councils, Council must acknowledged that such comparisons are limited when it comes to Tea Tree Plaza. Tea Tree Plaza is South Australia's second largest shopping centre, behind Westfield Marion (in fact, to our knowledge, both buildings are larger than any other commercial buildings in the state). In this regard, any comparison to other councils is limited. This is notwithstanding the fact that the comparison with Westfield Marion is also problematic, given the differences in key measures such as size (Marion is larger), moving annual turnover (MAT) (Marion has a higher MAT) and the occupancy cost profile for retailers.

Impact on retailers

Council rates are a recoverable outgoing from retail tenants, although recovery is not 100%. This proposed increase will increase operating expenses for the 250 retailers within Tea Tree Plaza from around $3,500 to $5,300 dollars. Whatever Westfield's recovery of council rates might be, such an increase will: (1) lead to increased operating costs for Westfield and their retailers, (2) require increase retail sales (in a declining retail environment) to maintain occupancy cost benchmarks, and (3) result in a potential devaluation of the asset.

In this regard, it is difficult to see why Council would support discriminating against retailers within Tea Tree Plaza, and other shopping centres impacted by the proposed increase. Council's own report highlights the discrimination as follows:

> *Any introduction of a special adjusted rate may discourage small businesses to be located within shopping centres, and may encourage the transfer of these businesses to local precinct shopping centres. The encouragement of local precinct shopping centres aligns with Council's City Master Plan. However this may also encourage small businesses to consider relocating or establishing in other districts and may detract from owners of the nine affected shopping precincts investing in expansion of their facilities.*

Modbury Regional Centre/30-Year Greater Plan for Adelaide

We have also referred to the above statement from Council's report to highlight the reference to its own Master Plan. The reference is highly selective, and ignores other important aspects of that Plan, which also ties in with the *30-Year Plan for Greater Adelaide*. Tea Tree Plaza is identified as an area of "key economic activity" as part of the Modbury Regional Growth Area/Modbury Regional Centre, and indeed, Westfield's future development plans aim to complement this vision by clustering retail and other uses (and as a retail site which makes a "significant contribution to the local economy" – refer to page 11 of the Master Plan), including the efficient use of infrastructure with the potential to become a transit-oriented development (linked to the O-Bahn interchange), which itself is also identified in the *30-Year Plan*. We even note that, as part of your Mayoral campaign, you committed to the development of the Modbury centre including its vision under the *30-Year Plan* (reference: Adelaide Now, 20 October 2010, "Mayoral hopefuls' Modbury visions"). If Council sought to reference the Master Plan in determining the proposed rate increase, we do not know why Council did not also reference the above noted sections. On this basis, we do not know why Council would seek to potentially undermine such an important aspect of the Plan, as well as the *30-Year Plan*, and an area with a major investment under active consideration.

Capitalisation rates/capital returns

Aside from the issues noted above, we are also concerned that, based on a discussion with a Council officer, Council considers that the rate increase is justified on the basis of improved capitalisation rates or investment returns. While we do not understand the basis of this position, we have discussed this with our members, including commercial property and valuation consultants based in Adelaide, and this rationale is potentially ill-informed. In any case, capital returns have not increased by 50% in the past year, nor are they forecast to in the next year. Further, we believe that capital returns are not the proper foundation for rating purposes; particularly given we do not believe that the justification between valuation and the provision of, and the cost of Council services has been provided.

Mayor Smith, thank you for the opportunity to provide a submission on this important Council issue. In providing this submission, we also support the Westfield Group's submission which (for the purpose of transparency and disclosure) we were involved in preparing. Please feel free to contact me on 0408 079 184 or anardi@scca.org.au if required.

The Shopping Centre Council of Australia represents Australia's major shopping centre owners and managers, including significant investors in South Australia. Our members are AMP Capital Investors, Brookfield Office Properties, Centro Retail Australia, Charter Hall Retail REIT, Colonial First State Global Asset Management, DEXUS Property Group, Eureka Funds Management, 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.

Yours sincerely

A. Nardi 27.1.12

Angus Nardi
Deputy Director

cc: All Councillors, Chief Executive Officer

SHOPTALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE COUNCIL OF AUSTRALIA

Thursday 23 February 2012

Archive

WA GOVT ANNOUNCES LEGISLATION FOR SUNDAY TRADING FOR PERTH

The West Australian Government this week announced details of the legislation to permit Sunday trading (from 11am to 5pm) throughout the entire Perth metropolitan area. This follows the announcement by the Leader of the Opposition that the Labor Party would drop its long-standing opposition to Sunday trading (*Shop Talk 2/2/12*). If Labor sticks to its new policy, there will be majority support in both Houses of the WA Parliament for the legislation. The proposed legislation will also abolish the discriminatory and unfair 'special trading precincts' (*Shop Talk 18/6/10* & *24/9/10*), which permitted Sunday trading in selected geographic areas. The legislation will also permit the Minister to allow trading on all public holidays, except Christmas Day, Good Friday and Anzac Day. Although the *Retail Trading Hours Act* is limited in application to the Perth metropolitan area, the Minister has the power to allow Sunday trading in regional areas if councils apply for permission. (More than 20 regional areas of WA have already done so.) It is likely that surrounding councils will quickly seek to apply once Perth is trading on Sundays. The Premier has stated, if the legislation is passed, that he expects Sunday trading will begin in August.

PROPERTY COUNCIL COURSE ON THE RETAIL SHOP LEASES ACT IN TOWNSVILLE

A half-day course on obligations of the Queensland *Retail Shop Leases Act* will be held in Townsville on 2 March. Click here for details and to register.

LATEST EDITION OF INSIDE RETAIL MAGAZINE IS NOW AVAILABLE

The February/March issue of *Inside Retail Magazine* is now available, and contains a useful article for retailers on retail lease negotiation and management. Click here subscribe.

COUNCIL RATE INCREASES SINGLE OUT LOCAL SHOPPING CENTRES

The City of Tea Tree Gully in Adelaide this week approved a substantial rate increase for its local shopping centres, which include Westfield Tea Tree Plaza. The 20% increase, which means an additional $330,000 in rates for Westfield Tea Tree Plaza alone, will commence on 1 July 2012 and will increase to 40% from 2013 and 50% from 2014. While this staged increase is preferable to the Council's original proposal for an immediate 50% increase, it is still unjustified and discriminatory and will damage all local shopping centre owners and their retailers. Our views were clearly outlined in our submissions to Council. A $330,000 increase across around 250 or so retailers is a substantial cost burden which will be magnified by the $800,000 increase in two years' time. This increase is another example of state governments failing to reign in renegade councils. Similar discriminatory increases have occurred in WA, Queensland and NSW. These rate increases are often justified on alleged 'capacity to pay' grounds and are unrelated to council services provided. This is poor public and taxation policy and is simply a selective gouging of shopping centre owners and retailers who comprise a low voting base and, hence, are unable to hold local councillors to account. These rate increases are in addition to other operating cost pressures, such as water, electricity, land tax and, more recently, the cleaning union's Clean Start campaign (*Shop Talk 14/2/12*). Unfortunately, while some retailer associations are constantly in the media about rents, they rarely join the fight against such operating cost increases, many of which are ultimately borne by retailers and their customers.

REMINDER OF THE ICSC RECON GLOBAL RETAIL CONVENTION IN LAS VEGAS

The International Council of Shopping Centers holds its ICSC RECon in Las Vegas on 20-23 May 2012. Click here for the full program and here to register.

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