



SHOP TALK

ISSUES AND NEWS AFFECTING THE AUSTRALIAN SHOPPING CENTRE INDUSTRY

SHOPPING CENTRE
COUNCIL OF AUSTRALIA

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SUBMISSION ON DEVELOPMENT OF AIRPORT LAND

The Shopping Centre Council has made a submission to the Federal Department of Infrastructure and Regional Development on a discussion paper titled *Airports Act 1996: Regulatory Streamline Package: Efficiency Proposals: Master Plan and Major Development Plan*. The paper floats a number of changes to the *Airports Act* (the Act), including changes to the threshold for the preparation of Major Development Plans (currently \$20 million) and the cycle of preparation of Airport Master Plans (currently every five years). Our interest in the Act and the proposals only extends to non-aviation related development on airport land. An un-level playing field exists between development on and off airport land. Development on airport land doesn't have to comply with the prevailing state and local planning legislation and is the beneficiary of a streamlined approval process. Despite providing comment on previous reviews and policy discussions regarding planning and development on airport land, we only became aware of the existence of the discussion paper via media reports and had to request access to the paper for review. We are disappointed with the consultation process and the anaemic evidence base the paper provides to support the proposed changes. We have requested that the proposals be put on hold until a proper policy development and consultation process is undertaken.

MIKE KERCHEVAL TO RETIRE AS CEO OF THE ICSC IN JANUARY 2016

The President and CEO of the International Council of Shopping Centers, Michael Kercheval, has announced his intention to retire in January 2016, after heading the ICSC for 13 years. Mr Kercheval is a great supporter of the Shopping Centre Council of Australia and recently visited here with the current ICSC Chairman, Robert Welanetz ([Shop Talk 21/8/14](#)).

STRANGE INTERVENTION BY SMALL BUSINESS COMMISSIONER IN VICTORIA

The next step in the Victorian Small Business Commissioner's request for an advisory opinion on whether a landlord can enforce a commercial lease obligation requiring a tenant to maintain a leased premises 'essential safety measures', and whether the landlord's costs can be recoverable as an outgoing, took place this week with a directions hearing at the Victorian Civil and Administrative Tribunal (VCAT) ([Shop Talk 26/6/14](#)). The SCCA lodged a [submission](#) to the Small Business Commissioner and VCAT on 27 August, along with five other interested parties. In a very unusual move, the Small Business Commissioner made a last minute submission to VCAT (dated 3 October, only one full working day before the directions hearing on 7 October) which effectively advocates a position on the issue, rather than remaining neutral. The VCAT President, Justice Garde, has [ordered](#) that a hearing on this issue will be held on 5 and 6 February 2015. The SCCA has been given leave to intervene in proceedings by making written and oral submissions and additional submissions must be received by the VCAT Registrar by 4pm on 5 November. Although we understand this is the first advisory opinion sought by the Small Business Commissioner, we are quickly forming the view that this is a very peculiar process. The VCAT's advisory opinion is just that and we understand that it does not bind future decision making. This is a very long and expensive process – both for the third parties having to intervene in proceedings and for the Victorian Government (on behalf of the Small Business Commissioner) – for an outcome which has no legal weight. This raises a very simple question: Why could the Small Business Commissioner not wait to raise this issue until the *Retail Leases Act 2003* was next reviewed or even just arrange a meeting with relevant parties in an attempt to clarify the drafting? Going down either of these paths would have saved a lot of time and money and seen the issue considered in a way which could have resulted in a more certain outcome.