

SHOPPING CENTRE REDEVELOPMENTS

Shopping centres require continual improvement

Shopping centres, and the retailers who comprise them, must constantly reinvent themselves to stay relevant and contemporary. Shopping centres are vibrant and complex organisations. One retailer adviser, Peter James Ryan, has written: *“Shopping centres aren’t ‘set and forget’ exercises. They require a continual improvement process – capital improvements, functional improvements, aspirational improvements, promotional improvements and [tenancy] mix improvements.”*

Shopping centres are engaged in what has been described as “the relentless pursuit of relevance”. They must remain attractive to the constantly changing tastes of their customers. They must have broad cross-sectional appeal for all shoppers, from young people to mature aged persons. Finding the right balance of tenants (the right ‘tenancy mix’) is a constant and evolving process designed to maximise the customer pulling power of the centre for the benefit of all retailers. Shopping centres also have to constantly adapt to demographic changes in their catchment areas. In more recent times they have also begun adapting to technology changes and the way these new technologies are affecting how people are doing their shopping.

Regular changes to the tenancy mix, as well as regular refurbishments and redevelopments, are therefore a very necessary fact of life in a shopping centre. So are regular refreshments of fit outs of individual stores (which can only be required when a lease is being negotiated or renewed.) On average, shopping centres are significantly upgraded every seven to ten years, and sometimes even more regularly. Chadstone Shopping Centre in Melbourne, one of the oldest, largest and most successful centres in Australia (and internationally), has had around 40 refurbishments, extensions and redevelopments in its 55 year history.

Retailers who choose to locate in a shopping centre because of its attractiveness to customers must accept this fact of life. Without regular reinvigoration and refurbishment, shopping centres could not deliver on the promise they hold out to retailers of higher customer traffic than they would enjoy in other locations. In the vast majority of cases, redevelopments bring major benefits for all –retailers, centre owners and customers. In some cases redevelopments involve the relocation of only a handful of existing tenants because these redevelopments are expansions of a centre through the construction of a new wing or a new precinct. In other cases large parts of an existing centre have to be demolished in order to facilitate a substantial redevelopment of the centre.

Redevelopments are also an important way in which shopping centre floorspace is expanded to accommodate new retailers and permit existing retailers to expand. Without regular redevelopments, and the expansion of floorspace which follows, the supply of retail space would be constrained, placing greater pressure on market rents. Redevelopments are economically important in another way. They generate valuable employment, both during the construction phase and also permanently through the additional retailers who locate in the redeveloped centre. The \$300 million redevelopment of Westfield Carindale in Brisbane, completed in 2012, for example, involved around 6,800 employees and around 500 separate contractors and sub-contractors, the vast majority of whom were small businesses. These businesses were drawn from all over Brisbane and beyond. The redevelopment added 110 additional shops, all of which meant job-creation for retail staff.

The Shopping Centre Council of Australia estimates there is currently a three-year (2016-18) shopping centre development and redevelopment pipeline around Australia of around \$10.4 billion. This figure only counts SCCA members' projects. This is a significant factor in assisting the necessary 'rebalancing' of the Australian economy away from its reliance on mining investment and exports.

The alternatives to these constant redevelopments and constant changes to the tenancy mix is to allow a shopping centre to stagnate and die or to provide little or no additional tenure to a tenant at lease-end to ensure flexibility is maintained. Neither alternative is in the interests of the retailers, or customers, of the centre. That's why experienced retailers, although they may be inconvenienced for a period, understand the necessity for such redevelopments and negotiate the best commercial arrangement they can with the landlord. They also welcome the longer-term retailing opportunities the redevelopment will bring.

State Parliaments determine the 'fairness' of relocation and demolition clauses

There is no denying, however, that redevelopments can be a difficult time in a shopping centre's life, both for landlords and tenants. For tenants there is a period of uncertainty following the issuing of the notice of relocation or demolition; the commercial negotiations which then begin with the landlord over new locations or compensation; and trading during the period of physical construction and possible relocation to a temporary and then a new part of the centre.

Equally these are also difficult times for the landlord. The viability of a redevelopment needs to be assessed and approved (often by multiple co-owners and stakeholders) and this involves a significant element of commercial risk. The next step is to gain local government development approval and this can be a long and difficult process. Often the conditions attached to the development consent will impact substantially on the planned redevelopment and the viability of the redevelopment. The process of physically staging the redevelopment in order to cause minimum disruption to the business of the centre, and to an individual retailer's trade, is a delicate exercise. The landlord also has to find the additional retailers to lease the new retail space and then begin the difficult process of 'stabilising' the centre following the redevelopment.

State and territory parliaments have always recognised the necessity for shopping centres to regularly revitalise themselves and redevelop. They have accepted that relocation and demolition clauses, when included in leases, are necessary to facilitate these redevelopments. These Parliaments, in the relevant retail tenancy legislation, have ensured such 'relocation' and 'demolition' clauses are 'fair' to tenants by specifying the minimum protections which must apply to retail tenants and these protections are 'implied' into the lease. If a lease term fails to meet the minimum standards of the relevant legislation then the statutory terms set out in the legislation applies as a 'safety net'. These legislative protections are examined during each retail tenancy legislation review.

The redevelopment of shopping centres, and the protection of tenants during such redevelopments, is highly regulated. Retail tenancy legislation in every state provides significant protections for retailers in these circumstances. If we take the Victorian *Retail Leases Act* as an example (although provisions are similar in all states and territories) the protections for a tenant when a lease is terminated by invoking a 'demolition' clause include:

- The lease cannot be unilaterally terminated by the landlord unless the tenant has agreed to the inclusion of a 'demolition clause' in the lease and the demolition clause includes the minimum protections specified in the Act.
- The tenant must be given at least six months' notice of the termination date.
- The lease cannot be terminated unless the landlord has provided the tenant with details of the proposed demolition, indicating it is a genuine proposal to demolish within a reasonably practicable time period after the lease is to be terminated.
- The tenant may, after receiving a demolition notice from the landlord, with at least 7 days' notice to the landlord, terminate the lease at any time before the termination date.
- The tenant is entitled to reasonable compensation for damage suffered by the termination of the lease if the demolition did not proceed due to lack of a genuine proposal.
- If the lease is actually terminated, the tenant is entitled to reasonable compensation for any of the store fit out (not provided by the landlord), regardless of whether or not the demolition proceeds.
- The amount of compensation is usually decided following commercial negotiations between the parties. If the parties cannot agree, retail tenancy legislation provides well established avenues for resolving disagreements by mediation or, if mediation is unsuccessful, by the relevant tribunal or court

Similar protections apply to tenants in the event that a 'relocation' clause, which also must have been agreed by both parties to the lease, is invoked by a landlord.