

# ANZRPGN 1 DISCLAIMER CLAUSES AND QUALIFICATION STATEMENTS

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide advice to members in the drafting and notifying disclaimer clauses and qualification statements when reporting to clients.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope

This Guidance Note applies to members reporting to clients on any solution to a property problem. It relates specifically to the need for, and the drafting and notifying of, disclaimer clauses in those reports and should be used in conjunction with other guidance notes and practice standards which are either over-arching or directly applicable to the type of property, purpose or issues involved.

### 1.4 International Valuation Standards

This Guidance Note recognises the International Valuation Standards 1 and 2, and the International Valuation Application 2, effective from 2007 by the International Valuation Standards Committee and it is intended to be consistent with the concepts and definitions contained in those standards, however, there may be departures from IVSC Standards to reflect Australian & New Zealand law and practice.

### 1.5 Unlikely Instructions if Seek Exemption

Members are unlikely to be given instructions to value or give advice on property if they seek exemption from liability to their clients.

### 1.6 Protect from Unrelated Third Parties

They may, however, wish to protect themselves from unrelated third parties by attempting to limit the class of person to whom a duty of care may be owed. For that purpose members will often, and indeed, may be required by their professional indemnity insurer to, use a variety of third party disclaimers.

### 1.7 Qualification Statements

Similarly, a Member may wish to include qualification statements in a property report to bring to the attention of the reader assumptions and/or other issues concerning factors which might affect the property, and ultimately its value and any other conclusions in the report.

## 2.0 Third Party Disclaimer Clauses

### 2.1 Third Party Disclaimer Clauses

Third Party Disclaimer Clauses can take many forms, but would usually contain one or more of the following components:

- the purpose for which the valuation was prepared.
- the person for whom the report was prepared.
- a statement as to who can rely on the information contained in the report.
- a statement that the signatory/firm accepts no responsibility (other than to the client) for the document or its contents.

### 2.2 Not Able to Exclude Liability

A disclaimer will not, of itself, be able to exclude a member's liability in negligence where such a liability would otherwise exist. [Refer Barwick C.J in the Evatt's case and Allen J in Burke and Ors v Forbes Shire Council (1987), Supreme Court of New South Wales, Australian Torts Reports 80-122].

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### 2.3 Disclaimer Clause May be Effective

However, in spite of those rulings a disclaimer clause may be effective. The presence of such a clause is one factor which could be considered relevant in establishing whether there was a sufficiently close relationship between the parties, in particular whether it was reasonable, in the circumstances, for the third party to rely upon the information set out in the report.

### 2.4 Legislation

Similarly, under the various legislation e.g. Federal Trade Practices Act and the various State Fair Trading Acts in Australia, and the Fair Trading Act in New Zealand, it is not possible to avoid liability to third parties simply by stating that the member does not accept responsibility to that person.

### 2.5 May be Effective Where Limitation Reasonable

A disclaimer may be effective to avoid liability under these acts where the limitation upon liability to third parties sought to be created by the member is reasonable having regard to all the circumstances including the instructions provided, the purpose of the report, the intended circulation of the report (who is likely or intended to receive and rely upon it) and the clarity of the disclaimer.

### 2.6 Sufficient Warning to Third Parties

In such circumstances, the third party disclaimer will be effective because it provides a sufficient warning to third parties that it may not be safe to rely upon the report without further recourse to the author. A report containing such a third party disclaimer may be held not to be misleading or deceptive to a person of the class of third parties to which liability has been disclaimed.

### 2.7 Specifically Drafted

Accordingly, at both common law and under the Trade Practices Act and state Fair Trading Acts in Australia, and the Fair Trading Act in New Zealand, the most effective third party disclaimer will be one that is specifically drafted for the circumstances of the particular report and which, thereby reflects the instructions, purpose and intended recipients of the report.

### 2.8 Most Impact at the Beginning of Report

Generally, the clause is more likely to be effective if included at the beginning of the report.

### 2.9 Ambiguity

Where there is any ambiguity in the meaning of the clause, a Court is likely to interpret the disclaimer in a manner which is least helpful to the party relying on that clause. It is therefore necessary to consider carefully each set of instructions and to adopt clear, concise wording appropriate to the particular valuation or property report being undertaken.

### 2.10 Inappropriate Disclaimer

Members should also note that the use of a third party disclaimer, where the disclaimer is inappropriate to the instructions, purpose and intended recipients of the report, could itself constitute misleading or deceptive conduct in breach of the Federal Trade Practices Act or State Fair Trading Acts in Australia, and the Fair Trading Act in New Zealand.

### 2.11 Instruction Paragraph Details

Ideally, the instruction paragraph should set out the details of the party issuing the instruction, the date of their written instructions, the party to whom the report is addressed, the names of any other parties to whom liability is extended under the report and the purpose of the report. For example:

Acting on written instructions from ... dated ... on behalf of ..., we have inspected the property situated at ... for the purpose of assessing the current Market Value of that property for mortgage security purposes.

This valuation may only be relied upon by ...

The report has been prepared for the private and confidential use of the above parties and it should not be reproduced in whole or in part or relied upon for any other purpose or by any party other than ... without express written authority.

## 3.0 Qualification Statements

### 3.1 Highlight Factors Affecting Reliability

Qualification statements should be used whenever the quality of the information provided by the member can be improved by highlighting any factor which may affect the reliability of that information.

## 3.2 Clearly Inform the Reader

Qualification statements should clearly inform the reader of:

- any factors which might affect the reliability of information in the report;
- any additional steps which the reader should take to make the information more reliable;
- the potential effect on the value if the information is not correct.

## 3.3 Not a Substitute - Highlight Limitations

Qualification statements should not be used as a substitute for the member's own reasonable enquiries and verification of information. They do, however, have a legitimate role in highlighting particular aspects of the instructions, limitations upon the extent of enquiry, which the member is reasonably able or expected to carry out, and/or limitations in expertise.

## 3.4 Most Impact Adjacent Information Intended to Qualify

Qualification statements will have the most impact on the reader if they are included in the body of the report immediately adjacent to the information which they are intended to qualify. Where particular qualification statements (including assumptions) are of central importance to a particular property report, it may be good practice to repeat those qualification statements in a prominent place such as adjacent to the conclusion or statement of valuation opinion.

## 3.5 Mould to the Circumstances

While it is useful to have a standard set of commonly used qualification statements to act as a reminder or 'trigger', members should take care to mould the appropriate qualification statements to the circumstances of each particular report. A slavish adherence to standard qualification statements may undermine the effectiveness of those statements.

## 3.6 Appended Page Less Useful

Similarly, a page of qualification statements appended to a property report may not assist the reader of the report to focus on the issues and may be less useful in assisting the Member to resist allegations of negligence and/or misleading or deceptive conduct.

## 3.7 Must Inform the Reader

Qualification statements do not have any 'magic' effect. In order to be of assistance in minimising liability they must actually inform the reader in a way that allows the reader to assess the information provided by the property report in a balanced and informed manner. By doing so qualifications will assist the member to meet his or her duty of care and avoid information in the property report creating a misleading or deceptive impression.

## 3.8 Examples Relevant to Situations

Some examples of qualification statements which may be relevant to situations commonly encountered by members are set out below. The manner in which these examples are designed to address limitations in the member's role, instructions or expertise should be noted. They may assist to draft specific qualification statements to address particular circumstances or reports, however they should be used as a guide only. Disclaimer clauses should be specifically designed to suit particular instructions as appropriate.

## 3.9 Site Survey

### Member Generally not Qualified

The member is often asked to state that the improvements on a property are located within the boundaries of the site. Generally the Member is not qualified to make that certification, unless also qualified and registered as a Surveyor.

## 3.10 Survey Qualification

The Institute suggests that the following qualification may be appropriate for inclusion in reports.

'A current survey has not been sighted. The valuation is made on the basis that there are no encroachments by or upon the property and this should be confirmed by a current survey report and/or advice from a Registered Surveyor. If any encroachments are noted by the survey report, the member should be consulted to reassess any effect on the value stated in this report.'

## 3.11 Town Planning/Resource Management

### Verbal Enquiries

In most instances a member will only make verbal enquiries of the Local Authority or the State Planning Department as to the zoning or planning

area of a property. In some locations - it is not possible to obtain a 'zoning or planning area certificate' and obtaining written confirmation of zoning can take considerably more time than is generally available to the Member and/or the client.

### 3.12 Extent and Nature of Enquiries

It is therefore necessary to set out the extent and nature of the enquiries made in ascertaining the zoning and development requirements of the subject property. For example:

Town planning information was verbally obtained from offices of the Town Planning Department. .... Council, however, we recommend that this zoning or planning area should be verified by application to Council for the issue of a zoning certificate pursuant to Section 149 of the Environmental Planning and Assessment Act, 1979.

### 3.13 Environmental/Contamination Issues

#### Increased Awareness

An increased awareness of environmental issues in the community today has brought about a need for members reporting on property to be conscious of influences which may affect the value of a particular property at the time of reporting or at some time in the future.

#### Issues Include

Those issues may include:

- contamination - through petroleum or chemical products;
- nutrient management for properties adjacent to rivers/ streams or over underground water supply sources;
- conservation - including rare flora and fauna species;
- Native title claims.

#### Examples

Some examples of clauses relevant to this issue include the following:

- Environmental Issues  
Our enquiries at ..... Council indicate that the site has not previously been utilised for any industrial or manufacturing use or for the storage (either above ground or underground) of any chemical substance.

Our verbal enquiries at EPA indicate that the Authority is unaware of the existence of any site contamination. Whilst our inspection of the site surface confirms the results of these enquiries, we have not investigated the site beneath the surface or undertaken vegetation or soil sampling. This valuation is therefore subject to a satisfactory contaminated site assessment report from environmental consultants.

or

The site is (or has been) occupied by an undertaking which, having regard to the nature of process or chemicals used or stored, has a potential to cause soil contamination. Whilst our enquiries at EPA indicate that the Authority is unaware of contamination, we recommend a site inspection by an Environmental Consultant.

- Petroleum products

The subject property is operated as a service station and workshop and therefore fuels, oils and other products capable of causing contamination are used on the site as part of the operation. There are no visible signs of any pollution on the property; however, we are unable to certify that there is no contamination of the property beneath the surface of the soil.

- Asbestos

Inspection of the improvements showed the use of asbestos products in the building. We must point out that we are not experts in this area and therefore, in the absence of an environmental consultant's report concerning the presence of any asbestos fibre within the subject property, this valuation is made on the assumption that there is no health risk from asbestos within the property. Should it subsequently transpire that an expert report establishes that there is an asbestos related health risk we reserve the right to review this valuation.

- Pest Affectation

The subject property is located in an area considered susceptible to termite infestation. Inspection of the subject improvements did not reveal any apparent termite infestation. This should however, be confirmed by a certified pest control firm.

- Right to Review  
The right is reserved to review and if necessary vary the valuation figure if any contamination or other environmental hazard is found to exist.

## 3.14 Improvements

### Extent of Investigations

In describing the improvements to a property, and their condition, it is important to highlight in the report the extent of the member's investigation as to the structural integrity of the building and its plant and equipment. For example:

- An inspection of all readily accessible parts of the improvements on the property has been carried out by the member.
- We have not sighted a qualified engineer's structural survey of the improvements, or its plant and equipment. The member is not a building construction and/or structural expert, and is therefore unable to certify as to structural soundness of the improvements. Prospective purchasers or mortgagees would need to make their own enquiries in this regard.
- We have not sighted a structural report on the property nor have we inspected unexposed or inaccessible portions of the premises. We therefore cannot comment on the structural integrity, defect, rot or infestation of the improvements nor can we comment on any knowledge of the use in construction of material such as asbestos or other materials now considered hazardous.

## 3.15 Tenancy Details

### Extent of Investigation of Lease Details

In reporting the specific lease details of a property it is important to advise the extent of the investigation of lease documents and other supporting documentation undertaken by the Member.

### Valuation of a Proposed Development

On occasions, particularly when undertaking an 'as if complete' valuation of a proposed development, lease negotiations or preparation of documentation may not have been concluded. In those circumstances it is necessary to specify in the report that the valuation is subject to satisfactory conclusion of those lease negotiations and the

sighting by the member of a stamped lease agreement by the parties. For example:

This assessment of Market Value is based on the assumption that the proposed lease agreements outlined earlier in this report are all executed, signed and stamped.

Upon being stamped those documents should be referred to the member for sighting to confirm that the particulars of the document concur with those set out in this report.

## 3.16 Value As If Complete

### Requires a Variety of Assumptions

In Australia it is normal practice in valuing a proposed development for mortgage security purposes to assess the market value of that development as though the property were completed at the date of valuation. Such a process requires a variety of assumptions to be made, which may include:

- construction and development costs;
- in accordance with plans and specifications at the time of valuation;
- the impact of existing and future competition;
- the level of sale prices; and
- in the case of income properties, the likely level of rents, the lease-up period, rental concessions and commissions, capitalisation rates, discount rates, etc.

## 3.17 Set Out in Detail Assumptions Made and Qualifying Clauses

It is therefore imperative that the Member, in undertaking an 'As If Complete' valuation, sets out in detail the assumptions made and inserts a qualifying clause in the valuation report stating that the valuation is subject to the assumptions outlined in the report, particularly where those assumptions are based on purported lease negotiations or pre-sale contracts. These qualifying clauses could include:

- Satisfactory completion of the improvements in accordance with the plans, specifications and details as provided.
- An inspection by the valuer following practical completion of construction.
- Confirmation or variation of the original valuation figure relevant to the original valuation date, following an inspection of

the project and any leases after practical completion.

- Issue of all relevant approvals including a satisfactory building completion certificate under the appropriate legislation.
- Sighting of any reports from other experts who have provided advice in aspects of the construction of the buildings.
- Such other matters/issues that the valuer is of the opinion should be drawn to the attention of the lender.
- The right to review and, if necessary, vary the valuation if there are changes in the project itself or leasing.

An example of what could be stated follows:

'The Value As if Complete assessed herein is the Market Value of the proposed improvements as detailed in the report on the assumption that all construction had been satisfactorily completed in all respects at the date of this report. The valuation reflects the valuer's view of the market conditions existing at the date of the report and does not purport to predict the market conditions and the value at the actual completion of the improvements because of time lag.

Accordingly, the 'As if Complete' valuation must be confirmed by a further inspection by the valuer, initiated and instructed by the lender, on completion of improvements. The right is reserved to review and if necessary, vary the valuation in this report if there are any changes in relation to the project itself or in property market conditions and prices'.

### 4.0 GST Qualification

In analysing the sales and/or leasing evidence referred to herein, it is noted that we have attempted to ascertain whether or not the sale price/rental is inclusive or exclusive of Goods and Services Tax (GST). In relation to sales evidence, it is emphasised that Land Titles Offices in Australia and the Land Registry Offices in New Zealand do not currently differentiate between or record whether or not the sale price is inclusive or exclusive of GST.

Where we have not been able to verify whether or not GST is included in the sale price or rental, we have assumed that the record of sales price or the rental is inclusive/exclusive of GST. Should this not be the case for any particular sale or letting used as evidence, we reserve the right to reconsider our valuation.

# ANZRPGN 2 ACTING AS AN EXPERT WITNESS, ADVOCATE OR ARBITRATOR

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide information, commentary, opinion, advice and to Members acting as experts in judicial or quasi-judicial proceedings

### 1.2 Status of Guidance Notes

Guidance Notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

This Guidance Note applies to Members acting as experts in judicial or quasi-judicial proceedings and is intended to provide information on what is considered to be good practice where a member is required to give expert evidence.

This Guidance Note has been prepared against a background of court dicta and specified requirements emanating from the Courts regarding the duties and responsibilities of expert witnesses.

An expert witness report should include all facts which the expert regards as being relevant to the opinion which he has expressed and should draw to the attention of the judicial body any matter which would affect the validity of that opinion.

An experts report should include a statement that the report complies with the relevant court practice note, rules or regulation and which will usually include a statement that the expert has read and compiled with the relevant document. The experts duty to the court is emphasised, in contrast to the duty to the client.

## 2.0 Responsibilities

The duties and responsibilities of expert witnesses in civil cases include the following:

- Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert.
- An expert should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the experts expertise. An expert witness should not assume the role of an advocate.
- An expert should state the facts or assumptions upon which an opinion is based.
- An expert should state when a particular question or issue falls outside the experts expertise.

## 3.0 General Duty

### 3.1 Duty to the Judicial Body

The duties of an expert witness can be defined as follows:

- The primary duty of the expert witness is to assist the court or tribunal.
- The duty is to be truthful as to fact, honest as to opinion and complete as to coverage of relevant matters. The duty is the same whether or not the Expert is giving evidence in Court or to a Tribunal on oath or not on oath.
- Expert evidence must be independent, objective and unbiased.

### 3.2 Instructions

On receipt of instructions the expert should establish whether any conflict of interest may arise.

If a conflict of interest exists or may exist the expert should either refuse the assignment or seek

written confirmation of instructions following disclosure.

### 3.3 Purpose of Evidence

The purpose of expert evidence is to assist a judicial body in exercising its functions.

The evidence given should, therefore, give all the necessary detail from which conclusions have been drawn in order to enable the judicial body to judge the appropriateness of the conclusions based upon the facts submitted.

### 3.4 Evidence of Fact

The expert witness is often required to assist the judicial body in establishing, clarifying and ordering logically the relevant facts and issues to be addressed.

The expert should be aware that evidence to the judicial body may take precedence over any contractual, professional or other duty.

Where an expert is instructed to give an opinion based on assumption or number of assumptions, the experts report should state the assumption or assumptions.

A written report provided by an expert should include a schedule of the documents relied upon and where necessary, copies of such documents or the relevant portions thereof. The expert should indicate the source of factual information relied upon.

### 3.5 Giving Evidence

Expert evidence must be objective, independent and unbiased. Opinion should not be exaggerated or seek to obscure alternative views.

When experts are instructed to meet to agree facts they may be instructed also to endeavour to agree opinions and, in such instances they should disclose facts and information relevant to their evidence and where they disagree the reasons for disagreement should be recorded and reported.

Where an expert changes their opinion, for whatever reason, such change should be communicated immediately in writing to the appointer, with whom the responsibility will lie to communicate it to other parties and the judicial body.

## 4.0 Acting as an Advocate

A member is entitled to act as an advocate for a client however the advocacy role is subject to proper professional practice in conducting negotiations on the clients behalf and that role must be declared to all parties. A member must not act as an advocate then as an expert in the same matter (see ANZPS 1).

## 5.0 Acting as an Arbitrator

Experts appointed as arbitrators are usually required to act in accordance with the uniform commercial arbitration legislation.

The Institute of Arbitrators and Mediators Australia and New Zealand conducts education and training for arbitrators and mediators and grades arbitrators according to experience.

Experts should not act as arbitrators unless they have the appropriate education, training and experience in relation to the commercial arbitration legislation.

# ANZRPGN 3 LEASING INCENTIVES

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide information, guidance and advice on leasing incentives to Members undertaking tasks involving the assessment or analysis of rental and capital values.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

This Guidance Note applies to Members assessing the impact of leasing incentives on rental and capital values particularly in relation to commercial property.

### 1.4 International Valuation Standards

This Guidance Note recognises the International Valuation Standards 1 and 2, and the International Valuation Application 2, effective from 2007 by the International Valuation Standards Committee and it is intended to be consistent with the concepts and definitions contained in those standards, however, there may be departures from IVSC Standards to reflect Australian & New Zealand law and practice.

### 1.5 Cyclical Market

Since the 1960's the commercial property market has experienced increased volatility. This is primarily because demand lead time is far shorter than the time needed to create more supply. This cyclical pattern is unlikely to change in the foreseeable future so that valuation methodology and techniques and the practitioners themselves must be able to cope with the varying market conditions – no matter how extreme.

### 1.6 Over Supply Leading to Incentives .... analysis of evidence essential

Oversupply of office space in most of the major cities has led to incentives being offered to prospective and existing tenants. Whilst these incentives are of prime importance to the parties directly concerned, they are also important to the market place as a whole to the extent that they may affect market rental values. The analysis of rental evidence for comparative purposes is an essential part of the valuation process and is of particular relevance where rent reviews and asset valuations are under consideration.

### 1.7 Range of Opinions

The range of opinions amongst valuers and their clients as to how leasing incentives should be interpreted has resulted in a broad ranging public debate.

### 1.8 Intention of Clarifying Principles

In response to specific requests, this Guidance Note has been prepared with the intention of clarifying the principles involved.

### 1.9 No Uniformity of Market Conditions

A review of the situation in the various cities clearly shows that there is little uniformity in market conditions. This tends to be the normal situation and makes it impractical to enunciate Practice Standards on how matters must be evaluated.

### 1.10 Skill of the Valuer is to Investigate

The traditional skill of the valuer is to investigate, report and evaluate the specific situation being considered, taking into account the differing factors which affect rental levels and capital values in the particular location or market.

### 1.11 Many Factors to Consider

These factors include the wording of the pertinent lease clause (of which there are countless variations), the state of the building, the general market, the size and duration of the lease, case law, and many other factors of which incentives granted on new leases are but one.

### 2.0 Leasing Incentives

#### 2.1 Rent Freely Negotiated Between Two Parties

The consideration paid for the right to occupy premises owned by another usually takes the form of a periodic rent which, in the case of new lettings, is negotiated freely between the two parties. Rental value is assessed by various methods. In the case of office space, the method most frequently used in rental review determinations is to analyse rents paid for comparable space, thereby deriving a rental rate to be applied to the subject accommodation. Rental values normally refer to accommodation that has been completed up to the stage of the tenant's fit out.

#### 2.2 Supply and Demand ....excess of supply

The fundamental laws of economics apply and in the case of the office market, it is difficult, given the lead time involved in supplying new space to the market, for supply to respond quickly to rise or fall in demand. Surplus space can be withdrawn from the market place but owners are understandably reluctant to take this course. Accordingly, once a significant excess of supply over demand is demonstrated, rental values may fall.

#### 2.3 Incentives for Leasing New Building

In periods of oversupply of accommodation, incentives are often granted during the leasing up of a new building and these amounts are regarded by the owner/developer as part of the capital costs.

#### 2.4 Incentive to Move

The cost of fitting out and relocating can be high and without an incentive from the landlord which meets all or at least a substantial part of these capital costs tenants would, in many instances, not move to new premises.

#### 2.5 Sustaining Rental Levels in Times of Over Supply

If rentals are to be sustained in times of oversupply, some form of compensatory consideration may be required to achieve new lettings. That consideration, where it occurs, is also part of the incentive in whatever form it may take.

#### 2.6 Incentive Benefit Offset Against Commitment

The consideration of incentive, may take the form of a capital payment or relief from a revenue obligation. In either case the tenant receives a benefit which will be offset against the totality of the tenant's rental commitment and fit out cost.

#### 2.7 Incentives Even in Balanced Market

It is relevant to note that lessors have often given incentives to in-going tenants, even when the leasing market has been balanced in terms of supply and demand.

#### 2.8 Extent Incentive is a Reduction of Rent

What has to be assessed is the extent to which a particular incentive package includes an amount, which might be regarded as a reduction from the stated rent. It is noted that leasing incentives have sometimes increased in anticipation of increasing vacancy factors and may be perceived to create a false rental base, which may cause difficulty in the analysis and assessment of rentals and capital values.

#### 2.9 Valuer to Decide Appropriate Technique

There are several techniques for arriving at a value, which are well known to practising valuers some of which are appropriate to different situations. It is up to the judgment of the Valuer in each case to decide which of the techniques to use. In many cases the Valuer may utilise more than one technique in the process of producing a valuation.

### 3.0 Effective Rental Value

#### 3.1 Converting Incentive Into Periodic Equivalent

Where it is determined that an incentive has been paid, the valuer is called to utilise judgment in the light of the current conditions in the location concerned as to whether any element of the incentive should be regarded as a de facto rent reduction. This element should be converted into a periodic equivalent over the term of the lease. This periodic equivalent should be deducted from the nominated or passing rent in order to arrive at the effective rent. Any effective rental should represent the most valid interpretation of the transaction concerned for comparative purposes, which may not necessarily represent market rent.

### 3.2 Interpretation of an Incentive in Terms of Cash Flow

Care should be taken to ensure the correct interpretation of an incentive in terms of cash flow. For example, a lump sum payment equal to three years rental, paid at the start of the lease, will not equate to an actual rent-free period of three years.

## 4.0 Rent Reviews

### 4.1 Points to Consider in Rent Reviews

In reaching a view as to the rent that should be adopted on review the valuer may take many points into consideration including:

- The specific wording of the subject lease clause.
- Relevant case law.
- The rents being agreed between landlord and tenants on review for similar tenancies in the area.
- The size of the tenancy concerned relative to the size of space of available comparable rentals.
- The fact that a review to market rent may not necessarily be influenced by the level of rent previously passing unless required under the lease conditions.
- Rents on review may fall as well as rise according to prevailing market conditions unless there is provision in the lease to prevent the rental falling.
- Guidance should be sought from a wide range of rentals including rentals freely negotiated at review dates and rentals for new lettings both of which may or may not truly reflect the rent which would be paid in the market. The circumstances of the rentals must be fully investigated and appropriate adjustments may be required up or down in the valuation process.
- The possibility of incentives having an effect on the stated rent as outlined in points 3.1 and 3.2 where new lettings are considered in reaching a view on the current market rent.
- The valuer should have regard to this practice and decide as to whether the amount of the inducement is greater than a reasonable inducement to move and assess as to whether, in all the circumstances, all or part of

the incentive granted would be regarded as a rental rebate.

### 4.2 Deciding the Weighting to Apply to Evidence

From time to time a valuer will be faced with rent reviews occurring, some of which have had regard to the level of effective rent created by incentive payment while others in the same building (or similar buildings) demonstrate a disregard for such consideration. Obviously the Valuer should examine the particular premises, the remainder of the term available and the particular conditions of the lease before deciding the weighting he needs to apply to such evidence in the process of assessing market rent. In fact the lease conditions may require an assessment of a rent level that is not market rent.

## 5.0 Secrecy Clauses

### 5.1 Encouragement for Full Disclosure

Secrecy clauses and side agreements in leasing arrangements are a negative development and every encouragement should be given to lessors and lessees to provide full disclosure of all lease arrangements.

### 5.2 Secrecy Undesirable

Secrecy arrangements are clearly against the operation of an informed market and are thus undesirable.

### 5.3 Serious Repercussions Can Flow

The Institute recognises that two parties have the right to confidentiality of their commercial arrangements. However, the Institute believes that serious repercussions can flow from the use of non-disclosure or secrecy clauses particularly when their use may distort valuations based on inadequate information.

### 5.4 Ascertaining Existence

Before accepting instructions valuers should where possible:

- Enquire in writing as to the existence of any secrecy clauses or side agreements.
- Obtain a written response.

### 5.5 Refuse to Act

The valuer has a right to refuse to act in instances where it is considered that the lack of information

prejudices the valuer's ability to discharge the responsibility of making the assessment.

### 5.6 Professional Responsibility

In discharging this responsibility the valuer should be aware of the liability for potential claims for professional negligence or fraudulent conduct.

## 6.0 Capital Values

### 6.1 Adjustments

The capital value of an income producing property should be arrived at by capitalising the market rent making adjustments for any continuing rent free periods, vacancies, leasing up costs, reversions, outstanding repairs/renovations, the strength of lessees' covenants, lease terms and so forth. In a stable market, the assessment of market rental value and the appropriate capitalisation rate can be undertaken without undue difficulty, notwithstanding the degree of research required. The introduction of incentives coupled with a relatively inactive market makes the valuation process more complicated and, possibly more subjective.

### 6.2 Matters for Consideration

It is recommended that careful consideration should be given to the following matters in addition to the matters referred to above:

- The relativity between the passing rent and market rental value indicated by the long-term rental trend line in the relevant market.
- The need to distinguish between passing rents, market rents and effective rents and their relative growth patterns and the relationship with real net cash flow.
- The proper assessment of the sustainable level of net income.
- Due allowance for the reversionary value of lower than market level rents.
- The capitalisation rate to be applied in the light of market rental levels and the position of the property market in its cyclical movement.
- The danger of applying a capitalisation rate to a passing rent which, for whatever reason, does not represent market rent.
- The precise interpretation of the rent review clause(s).

- Where appropriate, a comparison between the Internal Rate of Return derived from the cash flow as analysed in the above process and the Internal Rate of Return required by buyers in the market place at the date of valuation.
- Adequate allowance for letting up and leasing incentives for vacant areas.
- Adequate allowances for any building works or refurbishments needed.
- Any possible tax implications.

## 7.0 The Market

### 7.1 Valuers Interpret

Valuers do not set the market, they interpret it.

### 7.2 Interpreting Varying Conditions

The market and market practices are subject to continuous change. Consequently, the valuer should interpret these varying market conditions in the application of established methodology.

### 7.3 Market Dictates Value

The Courts have often noted that it is the market that dictates value (*Broken Hill Pty Co Ltd v Australian Mutual Provident Society*, reference *The Valuer*, Vol. 29 at 340).

# ANZRPGN 4 METHODS OF MEASUREMENT

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide a national guide to members for the consistent measurement of buildings. It is intended to be used for the purpose of valuations, property management, property analysis, leasing and sales.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

In Australia properties covered by this guideline are listed in 6.0, below. For the purpose of consistency, the Property Council of Australia (PCA) Method for the Measurement of Lettable Area (Copyright 1997) has been adopted for the purpose of defining lease space in Commercial, Retail and Industrial premises. Properties not within the scope of the PCA document are included in this guideline and additional properties may be added from time to time. This is a national document and is being harmonised with international practice.

#### New Zealand Members Note:

This guidance note was originally intended for use by Australian Members. Sections are relevant to New Zealand, although some Australian definitions differ from those used in New Zealand. New Zealand Members are specifically referred to the PCNZ/PINZ Guide for the Measurement of Rentable Areas revised in 2006. This publication is an update of the former BOMA/PLEINZ guide

### 1.4 Use of this Guidance Note

The guideline provides definitions of the various

types of measurement generally used in the property industry. It then lists property types in alphabetical order together with the relevant method of measurement.

### 1.5 Limitations

Some building areas (particularly retail) may be defined in some state and territory legislation and will over-ride the definitions in this Guidance Note where appropriate.

## 2.0 Principles of Measurement

### 2.1 Accuracy

Physical measurements are a matter of fact (not opinion) and should be accurate. The degree of accuracy, for example 'rounding' (see 2.2, below), will depend upon the circumstances, but should never be misleading. Where appropriate, an area may be obtained from a registered surveyor to ensure accuracy.

### 2.2 Unit of Measurement

All measurement should usually be in Square Metres (sq m) and/or cubic metres (cub m). There may be some circumstances where cubic capacity may be relevant such as in industrial buildings. Recommended guidelines include:

- Areas <100 sq m usually shown to one (1) decimal place (e.g. 85.6 sq m)
- Areas >100 sq m usually rounded to nearest whole figure (e.g. 120.4=120 sq m)

Measurement of buildings is usually rounded up if '.5' or more

(e.g. 120.5=121 sq m).

### 2.3 Height

In some types of property such as industrial, the height or cubic capacity of the premises can be an important aspect of the measurement of the building. This is usually shown in the building description, with a reference to a 'clear span' building height from the finished floor surface to the underside of a beam or roof truss.

### 2.4 Agreement

Where an area of measurement is to be used for negotiations or determinations, it is important for the parties to agree the method of measurement and the area before entering into negotiations or making a valuation determination.

### 2.5 Analysis

The guidelines seek only to set out an acceptable method of measurement for each type of property. The methodology for analysing market information, including a judgement on the relative building efficiency, design, presentation, quality, etc is generally outside the scope of this guideline. It is either covered by other Standards & Guidelines or left to the professional judgement of the member.

### 2.6 Method Adopted

The method of measurement adopted can vary depending upon the purpose for which it is used. For example, an area may be used for calculating building costs or insurance (gross basis), or it may be used for assessing rents (net basis). Care should be taken to ensure the purpose and method of measurement is clearly stated.

### 2.7 Shared Facilities

Where there are shared or common facilities, a separate area should be provided for the space used as a sole occupancy, with a separate description (and where appropriate) a separate area provided for the shared space.

### 2.8 Use Of Premises

For the purpose of analysis, the use of the property will generally determine the method of measurement, but not in all cases. For example, a house located on a zoned industrial site may be used as a residence and may not necessarily be the highest and best use of the building. In this case the method of measurement could be either (GBA or GLA) depending upon the purpose of the report. The methodology used and reasons for adopting a certain method of measurement should be clearly stated.

## 3.0 Area Definitions (Commonly Used)

### 3.1 Gross Building Area [GBA]

Gross Building Area (GBA) is the most commonly used method of measurement. The Gross Building Area is the area of the building at all building levels, measured between the normal outside face of any enclosing walls (or the centre line of common walls between different properties), balustrades and supports. The enclosed and unenclosed areas (see FECA and UCA definitions for detail) are usually shown separately and added together to give the total GBA.

(Note: Gross Building Area should not be confused with Gross Floor Area)

### 3.2 Strata Area (leases) [Various PCA]

The strata area is usually measured from the inside face of the wall. The area is calculated by a registered surveyor and is shown on a registered strata plan. The strata area is not usually used for the purpose of leases (although this may occur in some markets). Rental valuations and lease negotiations should usually be based upon the appropriate PCA definition for retail, commercial and industrial premises.

### 3.3 Stratum Area [SUA]

The stratum area is the area shown on a registered plan of subdivision as calculated by a registered surveyor. Adopt the same principles as for Strata (sales) and Strata (leases).

### 3.4 Strata Area (sales) [SA]

The market generally adopts the strata area shown on a registered strata plan as the basis of negotiation and sale. The strata area is usually measured from the inside face of the wall and the area calculated by a registered surveyor. The strata area is usually adopted as the basis for negotiations for individual and whole building strata units. Valuations generally show the PCA leasable areas for the capitalisation approach and the strata area for analysis of direct comparables (this may vary in some markets). In all cases, the basis for the method of measurement being used should be clearly stated.

### 3.5 Company Title

Company Title units should generally be treated on the same basis as strata title.

**3.6 Community Title**

Community Title areas definitions should be treated on the same basis as strata title, except where specific legislation over-rides this approach.

**4.0 Area Definitions (Property Council of Australia)**

**Gross Lettable Area Retail [GLAR]**

Applies to retail uses.

**Gross Lettable Area [GLA]**

Applies to warehouses, industrial buildings, freestanding supermarkets, and showrooms.

**Net Lettable Area Office Buildings [NLA]**

Applies to office buildings, offices, and business parks.

**5.0 Area Definitions (Others)**

**5.1 Building Area [BA]**

(See Gross Building Area definition)

**5.2 Equivalent Main Area [EMA]**

The calculation of the EMA of a building is usually used for analysis and costing, with only a \$ rate per square metre to be stated as a single figure, rather than a set of different \$ values on each component of the building. The EMA uses the Gross Building Area as the basis of common measurement. The main building is counted as 100% of the GBA, with the other components of the building counted at lower percentages (see Residential) in accordance with their associated added value. Detached Improvements including rooms, studios, garages, carports, swimming pools and other improvements are not included in the EMA.

The EMA should not be quoted in a report unless its calculation is also shown as it may be misleading. It should also be clearly noted as an EMA.

**Floor Space Area [FSA]**

(See Gross Floor Space definition)

**5.3 Fully Enclosed Covered Area [FECA]**

The Fully Enclosed Covered Area (FECA) is the sum of all areas at all building floor levels, including basements (except unexcavated portions), floored

roof spaces and attics, garages, penthouses, enclosed porches and attached enclosed covered ways alongside buildings, equipment rooms, lift shafts, vertical ducts, staircases and any other fully enclosed spaces and usable areas of the building, computed by measuring from the normal inside face of exterior walls, but ignoring any projections such as plinths, columns, piers and the like which project from the normal inside face of exterior walls. It shall not include open courts, light wells, connecting or isolated covered ways and net open areas of upper portions of rooms, lobbies, halls interstitial spaces and the like, which extend through the storey being computed. (See N.P.W.C)

**5.4 Gross Floor Area [GFA]**

The GFA (or FSA) is the sum of the ‘Fully Enclosed Covered Area’ and ‘Unenclosed Covered Area’ (as defined by Quantity Surveyors and Architects).

The GFA (also described as the FSA) is often used by councils to define the floor space that can be developed on a site based upon its Floor Space Ratio. It can be used for determining the development potential of sites. Care should be taken that GFA is clearly defined (and not confused with Gross Building Area) if used in analysing values or in negotiations for development sites.

Definitions change in various LGAs and States and individual codes should be checked. A typical definition is as follows:

GFA means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the inside face of the external walls as measured at a height of 1,400 millimetres above each floor level, excluding the following:

- Columns, fin walls, sun control devices, awnings, and any other elements, projections or works outside the general lines of the outer face of the external wall;
- lift towers, cooling towers, machinery and plant rooms and ancillary space and vertical air-conditioning ducts;
- carparking needed to meet the requirements of the Council and any internal access thereto;
- space for loading and unloading of goods;
- Internal public arcades and thoroughfares, terraces, balconies with outer walls less than 1400 millimetres high and the like.

### 5.5 Unenclosed Covered Area [UCA]

The sum of all such areas at all building floor levels, including roofed balconies, open verandahs, porches and porticos, attached open covered ways alongside buildings, undercrofts and usable space under buildings, unenclosed access galleries (including ground floor) and any other trafficable areas of the building which are not totally enclosed by full height walls. Computed by measuring the area between the enclosing walls or balustrade (i.e. from the inside face of the UCA excluding the wall or balustrade thickness). When the covering element (i.e. roof or upper floor) is supported by columns, is cantilevered or suspended, or any combination of these, the measurements shall be taken to the edge of the paving or to the edge of the cover, whichever is the lesser. UCA shall not include eaves overhangs, sun shading, awnings and the like where these do not relate to clearly defined trafficable covered areas, nor shall it include connecting or isolated covered ways. (See N.P.W.C).

## 6.0 Special Building Types [Method of Measurement]

### 6.1 Backpacker Hostels [GBA]

To be measured using the GBA method. It is also desirable to show both the number of rooms and beds in the description, and indicate whether there is a manager's residence or room, number of bathrooms (showers, toilets per bed), kitchens, living room, laundry area.

### 6.2 Banks (Retail) [GLAR]

To be measured in accordance with the GLAR Method. The building area should include vaults and substantial masonry walls.

### 6.3 Boarding (Guest) Houses [GBA]

To be measured using the GBA method. It is also desirable to show both the number of rooms (singles, doubles, etc) in the description, and indicate whether there is a manager's residence or room, number of bathrooms, kitchens, and laundry area, etc.

### 6.4 Bottle Shops [GLAR or GBA]

If the bottle shop (same as liquor store) is a stand-alone operation it should be measured in accordance with the GLAR method. However, if

it is part of a larger hotel operation, it should be measured using the GBA method.

### 6.5 Carparks (Commercial) [GBA]

To be measured on GBA basis. It is desirable to provide a separate break-up of the parking bays/ vehicle circulation area and the service areas (office toilets and amenities). The parking bays/vehicle circulation can be analysed on the number of cars to gross floor area to show the efficiency ratio (e.g. 1 space to 28 sq.m of gross floor space). Where there is a 'split floor' system, the GBA is calculated on the total gross floor plate area.

### 6.6 Cinemas [GLAR or GLA]

Freestanding cinemas should be measured on a GLA basis. Cinemas located in retail and commercial complexes should be measured on a GLAR basis. Measurement should include the foyer, box office, concessions sales areas, toilets, back of house, 'bio box' or projection area and cinema auditorium area. The seating capacity and cinema screen numbers is usually part of the market analysis.

### 6.7 Clubs (Recreation) [GBA]

Clubs should generally be measured using the GBA method. A description can provide a break-up of the uses in the club including reception, office administration and boardroom areas auditorium, restaurants, gaming areas, recreation facilities such as bowling greens, etc.

### 6.8 Hotels (Accommodation) [GBA]

The accommodation component of hotels should be measured on a GBA basis. A further description of the upper floors is desirable showing the number of rooms, average rooms sizes and net efficiency between the room sizes and common areas (service core and lifts, corridors, linen rooms, etc) on typical upper floors. Specialised uses such as retail arcades, which are attached to the hotel, should be measured as separate components and in accordance with the PCA retail method of measurement.

### 6.9 Industrial [GLA]

To be measured using the GLA method

### 6.10 Liquor Stores [GLAR or GBA]

If the liquor store (same as bottle shop) is a stand-alone property it should be measured in accordance with the GLAR method. However, if

it is part of a larger hotel operation, it should be measured using the GBA method.

**6.11 Motels [GBA]**

To be measured using the GBA method. It is desirable to show separate areas for the following:

- Managers Residence
- Office and Back of House
- Motel Rooms
- Restaurant
- Facilities (games room, pool, etc)

(Market analysis is usually on a per room and/or per bed basis.)

**6.12 Nursing Homes & Hostels [GBA]**

To be measured on a GBA basis. It is desirable to show separate areas for the following:

- Wards (including approved and actual number of bedrooms/beds)
- Managers Residence
- Offices
- Garages
- Parking Spaces Facilities and common area

(A market analysis may also show a component break-up based upon the various levels of care.)

**6.13 Offices [NLA]**

To be measured using the NLA method.

**6.14 Residential (Houses, Units, Town Houses, Flats)**

**1. [GBA]**

Residential property is generally measured on a GBA basis (non strata) or SA (strata) basis where there is a registered strata plan. Investment flats which are not on strata title are usually shown on a GBA basis.

**or 2. [EMA]**

For the purpose of analysis or costing, the GBA can be converted to an Equivalent Main Area (EMA) using the example percentages shown below:

Main Structure - Masonry (example only)

- Solid construction -under main roof 100%
- Solid Construction -skillion roof 75%
- Timber, cement sheet, iron or 75%

- glass wall under main roof
- Timber, cement sheet, iron or glass wall under skillion roof 66%
- Unlined timber framed walls 33%

Main Structure- Timber or Steel Framed

- (with external cladding such as timber, cement sheets, etc)
- Solid construction under main roof 100%
- Solid construction under skillion roof 75%

General (masonry, timber or steel framed)

- Porch under main roof 33%
- Verandah under main roof 33%
- Verandah not under main roof but true to style 25%
- Extensive Verandah (e.g. homesteads) 20%
- Galvanised Iron verandah attached to dwelling 0%

Car Parking - (Dwellings Only)

- Garage under main Roof 66%
- Basement Garage and under main roof 66%
- Carport under main roof with brick pillars or timber posts 33%
- Carport under main roof with parapet wall 50%
- Skillion galvanised iron or timber post carport attached to dwelling 0%
- Space under elevated house 0%

These percentages may vary between States and Territories and from region to region due to variations in relative costs.

**6.15 Restaurants [GLAR or GBA]**

If a restaurant is a stand alone operation it should be measured in accordance with the GLAR method. However, if it is an integral part of a larger hotel operation, it should be included in the measurement of the hotel using the GBA method.

**6.16 Retirement Villages [GBA]**

To be measured showing separate areas for the following:

- Residential units
- Garages
- Managers Residence

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- Offices
- Facilities and common areas

### 6.17 Rural Buildings [GBA]

Rural buildings should generally be measured on a GBA basis. Note homesteads should be measured in accordance with the residential guideline. In addition the following information may be used as a further unit of description/comparison.

Type	Additional Unit Of Description/Comparison
<i>Air Strips</i>	Length
<i>Bore</i>	Flow rate (litres per second)
<i>Broiler Sheds</i>	Bird Capacity (number of mature birds accommodated comfortably)
<i>Dairies</i>	Capacity Per Head at any one point in time
<i>Dams</i>	Volume (per cubic metres)
<i>Fruit Drying Racks</i>	Length (and Capacity)
<i>Grain Storage Sheds</i>	Capacity (Tonnes)
<i>Grain Silos</i>	Capacity (Tonnes)
<i>Haysheds</i>	Expressed as either square or round bale capacity
<i>Homestead</i>	See definitions in Residential
<i>Piggeries</i>	Capacity Per (Lactating) Sow at any one point in time
<i>Pipelines</i>	Length (in metres) and Diameter (express in mm)
<i>Shearers Quarters</i>	Number of Shearers plus Cook accommodation
<i>Shearing Sheds</i>	Number of Stands or Per Head Basis
<i>Stables</i>	Number of Stalls i.e. individually subdivided stalls
<i>Stock Yards</i>	Maximum capacity ie, the number of head (cattle or sheep) the yards could hold & remain workable and /or number of panels/rails within each panel
<i>Tanks</i>	Volume in Litres Capacity
<i>Winery SS Store Litres</i>	
<i>Winery Barrel Store</i>	Barrel Capacity
<i>Windmills</i>	Diameter (windmill head) & Height (of Tower)

### 6.18 Service Stations [GLAR]

Service stations are generally to be measured in accordance with the GLAR method. However, some larger service centres may need to be broken into other categories as follows:

<i>Office</i>	NLA Square Metres.
<i>Workshop</i>	GLA Square Metres. Number of Work Bays.
<i>Other</i>	Number of Pumps
<i>Canopies</i>	Covered Roof Area Square Metres
<i>Tanks</i>	Number and volume in litres
<i>Hardstand/Parking</i>	Square Metres

### 6.19 Shopping Centres, Shops (Strip shops, In commercial Buildings, semi-detached, terraces) [GLAR]

To be measured using the GLAR method.

#### Showrooms [GLA]

To be measured using the GLA method.

#### Supermarkets (Freestanding) [GLA]

To be measured using the GLA method.

#### Warehouse [GLA]

To be measured using the GLA method

# ANZRPNGN 5 FEASIBILITY STUDIES

This Guidance Note is divided into three parts:

- Part A - Approach
- Part B - Report Contents
- Part C - Worksheets

## PART A – APPROACH

### 1.0 Introduction

#### 1.1 Purpose

The purpose of this Guidance Note is to provide Members with a framework in which to conduct and prepare feasibility studies and determine the viability of undertaking development of real estate.

#### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

#### 1.3 Scope of this Guidance Note

This Guidance Note covers the preparation and collection of relevant information, the evaluation of development potential, the estimation of development costs, the valuation of the development on completion and the profit margin and rate of return. It should be used in conjunction with other guidance notes and Practice Standards, which are either over-arching or directly applicable to the type of property, purpose or issues involved.

#### 1.4 Feasibility Study

For the purpose of this Guidance Note, a 'feasibility study' is defined as the process of undertaking an assessment to identify the opportunities and risks of a property development project and to estimate the projected costs, revenues and profit potential of the project. This Guidance Note assumes the feasibility study to be in a full report format, clearly

describing the project in all respects and it should include a financial feasibility, using either a static analysis, dynamic analysis or discounted cash flow method of analysis.

#### 1.5 Static Analysis

*Static Analysis* - With this approach costs are generally summated as at the date of completion of the project and income is assessed as at the same date with allowances for vacancies and letting up periods. This is the less complex financial analysis which is suitable for preliminary feasibility studies and for calculating profit and risk or land value. A 'static analysis' assumes no change in prices or costs during the period of development.

#### 1.6 Dynamic Analysis

*Dynamic Analysis* – allows for potential movements in prices and costs over the period of the development.

#### 1.7 Discounted Cash Flow Method

Discounted cash flow method - With this approach, both costs and income are assessed over an appropriate time period and then discounted back to present value, generally being the date of the commencement of the project. This is the more complex financial analysis that should include interest rate calculations based on a 100% funded basis (an equity basis may also be included if required).

#### 1.8 Terminology and Principles

The terminology used in this Guidance Note generally reflects commercial development schemes for investment purposes, but the principles apply equally to owner occupied schemes, to residential developments and developments for other non-commercial uses.

### 2.0 General Considerations

#### 2.1 Choice of Comparables

The preparation of a feasibility study generally relies on comparison of unit costs and rates from similar development schemes which are then applied to the particular development to be

analysed. In using this approach, reasonable care must be taken in the choice of comparables to ensure that unit rates for other schemes do not reflect particular circumstances (e.g. exceptionally poor ground conditions, grossly different building specifications, different planning constraints). Equally, particular circumstances pertaining to the feasibility study being prepared should be carefully considered and reflected in the feasibility analysis.

### 2.2 Number of Variables

In preparing a feasibility study, the number of variables to be considered is large and the Member should be aware of the errors which may arise from using comparable transactions which require a significant number of adjustments. If an attempt is made to adjust for too many variables, the usefulness of the comparison may be destroyed.

### 2.3 Time and Program Constraints

In large, phased schemes the Member should have regard for time and program constraints and should make use of discounted cash flow techniques if appropriate.

### 2.4 Sensitivity Analysis Using Alternative Assumptions

The Member should state clearly the assumptions made and should be in a position to justify them by reference to evidence, research and sound reasoning. If a particular variable cannot be assessed objectively, it will often be appropriate to undertake and provide a sensitivity analysis demonstrating the results that would flow from using alternative assumptions for that variable.

### 2.5 Purpose of Feasibility Study

Any feasibility study to establish site worth that takes account of the client's specific circumstances cannot purport to be an open market assessment. There is an important distinction between an assessment for the purpose of establishing Market Value and one carried out for specific purposes (e.g. to determine how much to bid for a site). The Member should ensure that the instructions are clear as to the purpose of the feasibility study

### 2.6 Limitations of Residual Valuation Process

The Member should, therefore, be wary of presenting the estimate of site worth arising from a residual valuation approach pertaining to a feasibility study as a precise statement of value.

If the instructions permit, it may be preferable to indicate a range of values. In any event the Member should ensure that the client is aware of the limitations of the residual valuation process for development property and should indicate the areas in the calculation carrying the greatest sensitivity.

## 3.0 Agreeing Scope of the Feasibility Study with the Client

### 3.1 Discuss Client's Requirements

Before proceeding with the feasibility study, the Member should discuss and confirm the client's requirements to formulate the brief, i.e. obtain full and proper instructions from the client as to the extent of the feasibility study, the scope of the development and the scope of services to be provided by relevant parties

### 3.2 Concept Plans

The concept plans of the proposed development on which the feasibility study is based need to be clearly agreed with the client.

### 3.3 Changes to Scope of Development

During the feasibility study, information may come to hand which justifies changes to the scope of the development. Any changes in scope or changes in assumptions applicable to the feasibility study must be agreed in writing with the client.

## 4.0 Methodology

### 4.1 Elements in a Feasibility Study

This and the succeeding paragraphs of this Guidance Note focus on the individual elements in a feasibility study.

### 4.2 Stages in Study

The stages in undertaking a feasibility study may be summarised as follows:

- obtaining written instructions agreeing the scope of the development with the client including pre or post taxation assessment and depreciation considerations;
- preparation and collection of information;
- evaluation of development potential;

- estimating development costs;
- assessing value on completion; and
- determining profit margin and rate of return.

### 4.3 Guidance Note Not Exhaustive

This Guidance Note should not be taken as exhaustive and the Member is responsible for ensuring that all relevant factors are taken into account. The Member should retain satisfactory records to support assumptions made and data used in the evaluation process, to provide an 'audit trail' should it prove necessary to justify the results.

### 4.4 Level of Detail

The level of detail which is practical, when assessing development potential and costs, will vary according to the circumstances of the feasibility study. This Guidance Note assumes that a comparatively high level of accuracy is to be achieved. The Member will need to make a judgement (perhaps in consultation with the client) as to what is appropriate in each case. If information obtained from other consultants or experts (architects, quantity surveyors, leasing agents, valuers, etc) is relied on, the Member should identify the source and state the information on which he or she has relied.

## 5.0 Preparation and Collection of Information

### 5.1 The Development Site

Inspection will familiarise the Member with the subject property and will establish a strong visual reference to any matters which affect either value or cost. In the case of development properties, referencing should include, where relevant and practical, the following:

- drawings showing the buildings or site, or measurement of site or buildings to ascertain frontage, width, depth and built measurements;
- shape of site and ground contours;
- plot ratio and site density evaluation;
- existing building height and that of adjoining properties;
- efficiency of existing building (if to be retained);

- access;
- party wall, boundary and rights of light issues;
- ground conditions and evidence of contamination;
- availability and assessment of services; main drainage, water, gas, electricity and telephone;
- any evidence of the existence of rights of way, easements, encumbrances, open water courses, mineral workings, filling, tipping, etc;
- any matters which will affect the cost or practicality of the construction process (e.g. poor access, cramped site conditions);
- sources of all relevant material used to establish underlying assumptions, e.g. building plans and specifications provided by building consultants.

If any of this information is unavailable or cannot reasonably be obtained, the Member should state what assumptions have been made.

### 5.2 Third Party Interests

In brief, the Member should investigate the following factors which may affect value and the practicality of development:

- the extent and nature of the client's interest in the project;
- other interests in the property (actual or implied by law) including leases and other rights of occupation; and
- easements, restrictive covenants, rights of way, rights to light, drainage or support, registered charges, etc.

### 5.3 Planning and Other Statutory Requirements

The Member should investigate a range of issues relating to planning permission and policy and statutory controls.

### 5.4 Planning Permission

A feasibility study may be requested on the basis of an existing planning permission. In other circumstances, it will be necessary to form a view as to the best permission of which there is a reasonable prospect, and the cost of complying with any planning agreements likely to be required in order to secure the permission. Depending

on market conditions, it may be appropriate to discount the site value to reflect the risk of not obtaining such permission and/or the delay that might be caused if it were to prove necessary to appeal against refusal or the imposition of conditions.

### 5.5 Planning Policies

Planning policies are also relevant in that they control future additions to the supply of particular types of building. They may, therefore, affect the Member's opinion of the potential supply of competing buildings and hence the letting or sale period, future rental or price prospects and investment yields.

### 5.6 Particular Issues

Particular attention is drawn to the following issues:

- current planning policies, i.e. zoning/Planning Area and use controls, affecting the subject site and surrounding area. Normally, these will be found in Regional and Local Authority statutory plans; supplementary guidance prepared by the local authority planning officer or an independent Town Planner may be appropriate and prudent;
- any existing valid permission and related conditions or reserved matters;
- the requirements of any legally binding agreements with statutory authorities;
- any special controls that may apply, e.g. heritage restrictions, heritage listing of buildings, conservation area designation, tree preservation orders;
- permitted and non-conforming use approvals relating to existing buildings (if to be retained);
- environmental protection legislation (e.g. noise abatement, control of emissions, requirements for asbestos removal);
- building regulation requirements (e.g. sprinklers, fire escape arrangements, etc); and
- special/specific statutes and regulations affecting the particular type of development proposed;

### 5.7 Development Program

An outline program will be required covering:

- preparation and agreement with client of concept plans for the proposed development;
- the pre-contract period; site assembly, obtaining possession, adjoining owner negotiations, the planning process, architectural and engineering design to the required level, soil investigations, the building contract tender period, etc;
- the building contract, including demolition and any necessary site preparation (it may be appropriate to seek advice from a quantity surveyor, engineer or architect); and
- the post-contract period - usually defined as the period up to the full letting or sale of the completed development.

## 6.0 Evaluation of Development Potential

### Optimum Balance Between Market and Potential

In order to evaluate the development options, the Member will need to consider both the market requirements for the proposed development and the physical potential of the site and will need to determine the optimum balance to maximise the return. The Member should also consider whether there is scope for enhancing the development potential of the site by merging it with adjacent land. Conversely, if it is necessary to acquire adjacent land or rights over it (e.g. for access), allowance will have to be made for the cost of such acquisition. It must be recognised that, in the absence of compulsory purchase powers, it may prove very difficult or expensive (or perhaps even impossible) to acquire such rights and the Member should draw attention to such risks in relevant cases.

### 6.1 Form of Development

The Member will need to make an accurate assessment of the form and extent of physical development which can be accommodated on the site, having regard to the site characteristics and the likelihood of obtaining permission. This assessment may be undertaken in consultation with appointed project consultants, such as architects and quantity surveyors but, if this is not possible, the Member will have to make an independent assessment. The Member should take into consideration and balance the requirements of:

- occupiers' preferences for particular design features, building layouts and specification;
- investors' requirements;
- the time likely to be taken to produce the new buildings, in relation to market requirements, financing and cost; and
- achieving a high efficiency ratio (net internal area expressed as a percentage of the gross external area) without unduly compromising quality.

## 6.2 Demand and Market Analysis

The Member will need to analyse the market, both current and projected, for the proposed new buildings, in order to provide his or her best view of occupier demand for the alternative forms of development that may be possible. Such assessment requires an understanding of economic, fiscal and social trends at national, regional and local level, to the extent that they affect occupier demand for specific types of property at a time relevant to the date that the completed development is due to be marketed. Occupier demand will be influenced by many factors, which are likely to include:

- the location of the property;
- access;
- the availability of transport routes;
- car parking facilities;
- amenities attractive to tenants and/or purchasers;
- the size of the development in terms of lettable packages;
- form of development;
- incentives that may apply currently or in the future that may affect the viability of the project; and
- market supply, including actual or proposed competing developments.

## 7.0 Estimating Development Costs

### 7.1 Land Cost

The land cost should generally be established by reference to actual cost or by reference to

comparable land sales. In some instances, the aim of the feasibility study is to establish land worth by calculating the residual land value after deducting cost of development from value created. Land cost should include ancillary costs such as purchase fees, stamp duty, etc. If the development is to be carried out in stages, the implications for the cash flow and the various categories of cost should be considered.

### 7.2 Site-Related costs

Costs incurred in obtaining vacant possession, acquiring necessary interests in the subject site or adjacent property, extinguishing easements or removing restrictive covenants, rights of light compensation, etc. The allowance should be realistic, recognising the fact that the other party will expect to share in the development value generated by the site assembly.

### 7.3 Building Costs

Estimated costs relating to the construction of the buildings, which should include preliminary survey and investigations, soil testing, demolition, temporary protection and enabling works, hoardings, public utility works, diversion of services, works to adjoining sites, other interested parties' accommodation works, highway improvements, etc.

The accuracy with which costs can be assessed will vary greatly with circumstances. Members should be aware that the use of 'rules of thumb' to estimate costs will compromise the accuracy of the building cost estimate. Ideally, an estimate should be prepared by a quantity surveyor.

A decision has to be made as to whether to adopt a projected out-turn cost (i.e. including increases due to inflation, comparable to a fixed price contract) or a 'day-one' cost (i.e. comparable to the initial contract sum in a fluctuating price building contract). It may be necessary also to consider the effects of any time lapse between the valuation date and the likely placing of the building contract. For further comments on this see 8.0 below. In general, it is advisable to consult a quantity surveyor if any projection of costs is contemplated.

### 7.4 Professional Fees and Expenses

The costs relating to the appointment of professional consultants to secure procurement of the building. The number and type of consultants,

and nature of their appointment, will depend upon the building procurement method chosen. It will normally include an architect, a quantity surveyor and a structural engineer with additional specialist services being supplied as appropriate by mechanical and electrical engineers, a landscape architect, traffic and civil engineers, an acoustic consultant, a project manager and others. More specialised disciplines may be required depending on the nature of the development and allowance for these should be reflected in the assessment of fees. Expenses and costs excluded under the normal conditions of appointment should be added where necessary (e.g. models, printing). Fees vary significantly according to the size and nature of the project and the Member should take care to reflect current fee levels for the type of project envisaged.

### 7.5 Letting Expenses

The costs to be incurred in securing tenants for the completed buildings, generally comprising letting agents' fees and promotion costs (possibly including a show suite). An allowance should be included where necessary for capital contributions or other inducements needed in order to secure lettings, unless these are discounted in the letting terms assumed.

### 7.6 Legal Costs and Fees

Costs incurred for legal advice and representation in connection with such matters as site acquisition, town planning, building contract matters, occupational leases (unless assumed to be recoverable from the tenant) and raising finance.

### 7.7 Planning and Building Regulation Cost

The cost of securing planning permission (development approval), a building licence and concluding any agreement under relevant Town Planning Acts. It may be appropriate to allow for a model and the cost of a planning appeal if one seems likely.

### 7.8 Cost of Raising Finance

Costs related to the raising of development finance, including professional fees for monitoring draw-downs vis a vis construction progress.

### 7.9 Holding Costs

The total attendant costs (excluding interest) in holding the completed building up to the assumed date of letting, including such items as insurance,

security, cleaning and fuel (or a proportion of the service charge on partly let properties) together with rates and taxes.

### 7.10 Sale Costs

Costs to cover the developer's sale fees (agents and legal costs) if the sale of the completed development is intended or assumed. The costs of the purchaser are usually allowed for in the valuation of the completed development, but forward sale agreements may contain different provisions.

### 7.11 Interest Charges

Interest charges reflecting the actual or assumed financing arrangements for the development and the projected program during the pre-contract, contract and post-contract stages. For the purposes of the development appraisal, it is usual to make an allowance for short-term finance during the development period on the assumption that the completed and fully let development will be sold or long-term finance will be obtained on its transfer to the developer's investment portfolio.

It is normal for interest to be treated as a development cost up to the assumed letting date, unless a specific forward sale agreement dictates otherwise. Appropriate assumptions will have to be made regarding cash flow and the rate of draw-down. The rate of interest adopted should be based on realistic assumptions both as to the finance market and the status of the developer (whether the Client or a hypothetical purchaser).

## 8.0 Value 'As if Complete' and 'At Date of Completion'

Capital Value 'As if Complete' or Net Rental Income

The Member may require the services of a qualified valuer for this aspect of the feasibility study, depending on the nature of the study and the parties for whom it is intended. Depending on the profit criterion used (see below) it will be necessary to estimate either the capital value 'as if complete' and/or the net rental income likely to be generated by the completed development. In addition to the usual considerations relevant to such valuations, particular issues arise which are peculiar to development schemes.

## **8.1 Capital Value**

If a capital value is required, it is normal to assume that the building is let and income producing, due allowance having been made in the assessment of development costs for the expenses incurred in achieving the letting(s) and for the finance and other costs of holding the property during the letting period. Rent-free periods granted under the lease are dealt with variously, e.g. by continuing interest charges on the development costs, by treating the 'lost' income as a development cost or by taking account of the rent-free period in the valuation of the completed development. The Member should be aware that the appropriate approach towards voids and rent-free periods may be dictated by financing or forward-sale agreements and should seek information from the Client where appropriate. If the objective of the feasibility is to make an open market assessment of capital value, the appropriate approach would be to take account of rent free periods in the valuation of the income stream likely to be generated by the development.

## **8.2 Take Account of Delay**

Unless the development has been pre-let and/or pre-sold on fixed terms, the Member will not only have to make those normal assumptions which are required in every vacant possession case, but will have also to decide how to take account of the delay between the date of the study and the date on which the eventual letting is expected to take place. The Member should have regard for market conditions at the date of the study and the factors that may cause changes in the future, e.g. supply and demand, inflation, interest rates, etc.

## **8.3 Sensitivity Analysis**

The Member may wish to present an appraisal based on provable values with a sensitivity analysis to show the effect on profit of differing assumptions as to the future rent and yield. The Member should aim to assist the Client in assessing the likely value on completion, by reference to present and future market trends and likely shifts in supply and demand. Wherever possible, the treatment of these issues should be discussed with the Client.

## **8.4 Potential Changes in Rental Values, Yields and Costs**

The treatment of potential changes in rental values and yields, may be influenced by the

extent to which potential cost changes are also reflected, particularly the effect of inflation on building costs, but also likely changes in interest rates. Rather than attempt forecasts, it may be appropriate to adopt a 'current rent, current cost' approach, but it is advisable to accompany this with a sensitivity analysis to show the effect on site value of differing assumptions as to future rents, yields and costs. In any event, unless the Member's instructions specify the basis to be adopted he or she should familiarise himself or herself with common practice at the time of the valuation and adopt a method of valuation, which is consistent with market conditions.

## **8.5 Estimated Value at Date of Completion**

It should be noted that the estimated value on completion should not be discounted back to the valuation date. The inclusion of interest charges within the development cost makes the completion of development the date at which cost and value are to be compared.

## **8.6 Distinction**

Value 'on completion' or 'at date of completion' reflects the anticipated value of the project at the time the project is actually completed. This is in contrast to a value 'as if complete' which assumes the project to be complete at the date of the assessment or feasibility study. It is appropriate to clearly state which basis the assessment has been made on and to provide an appropriate explanation (as well as assumptions and limitations).

## **9.0 Profit Margin and Rate of Return**

### **9.1 Profit as a Percentage of Total Development Cost**

When using the residual method to establish the development site value, it is usual to assume that the developer will seek a capital profit expressed as a percentage of the total development cost (including interest) or of gross development value. This derives from the traditional financing arrangement whereby the development is sold on completion to a long-term investor. It is also common practice for development companies, which retain completed schemes in their investment portfolios to judge the success of a scheme in terms of the enhancement of the

balance sheet (net asset value) rather than the profit and loss account (income).

### 9.2 Other Criteria

There are, however, other criteria that are sometimes adopted, whether as a substitute for profit yield or as an additional test of profitability. These include:

### 9.3 Initial yield on cost

The net rental return calculated as the initial full annual rental on completion of letting expressed as a percentage of the total development cost. This criterion may be significant in establishing whether the developer could service a long-term mortgage loan, or for evaluating the effect of the development scheme on the profit and loss account of a company.

### 9.4 Cash-on-cash (or Equity Yield)

The capital uplift or (more usually) net income (after interest charges on any long-term mortgage loan) expressed as a percentage of the long-term equity finance provided by the developer.

### 9.5 Discounted Cash Flow Methods

The income stream is projected with explicit assumptions about rental growth and end sale value and discounted back to a net present value (NPV) using an appropriate discount rate. The scheme is deemed viable if NPV exceeds the total development cost. The discount rate should include an allowance (profit margin) for the management requirements and risk of investing in a development project rather than an existing fully let property. This approach is particularly appropriate for large, phased schemes.

### 9.6 Internal Rate of Return

The discount rate that equates the present value of the net cash flows of a project with the present value of the capital investment. It is the rate at which the Net Present Value (NPV) equals zero. The IRR reflects both the return on the invested capital and the return of the original investment, which are basic considerations of potential investors.

### 9.7 Amount of cover

The extent to which the rent or sale price can be reduced, or the letting or sale period extended (often expressed as a number of months of rolled-

up interest or loss of rent) without suffering an overall loss on the scheme.

### 9.8 Transition from Non-Viable to Viable

If an appraisal is carried out in the course of advising a Client, it will be appropriate to seek instructions on both the nature of the criteria to be adopted and the critical value, which, to that Client, represents the transition from non-viable to viable. Where this guidance is not available, the Member will have to exercise his or her own judgement, based on experience.

### 9.9 Capital Profit Test or Alternative Criterion

Traditionally, the capital profit test has been the most widely used. However, the Member should acquaint himself or herself with common practice among developers and should be prepared to consider and, if appropriate, adopt an alternative criterion if experience shows it to be in wide use.

### 9.10 Developer's Level of Profit

The level of profit to be assumed in the appraisal cannot be specified as a standard, as market requirements will vary from time to time having regard for the nature of the development. Evidence may be deduced (possibly with difficulty) by analysing transactions, but is better obtained by first-hand experience of developers' requirements.

### 9.11 Appropriate Profit Influenced by Risk Profile

In any event, it must be recognised that the appropriate profit to be expected from a particular development will be influenced by a number of factors, which might lead to a departure from the market 'norm'. High amongst these will be the general risk profile (e.g. whether or not rents and cost are inflated, whether the interest rate is fixed, whether the scheme is pre-let or pre-sold) but also relevant will be the scale of the development, the amount of financial exposure and the time scale.

## **PART B-REPORT CONTENTS FEASIBILITY STUDY CHECKLIST**

It is recommended that a feasibility study report make reference to the following checklist of items. There may be circumstances where not all headings need to be included in the report, but the Member should be satisfied that the omission of a section will not mislead or distort the findings of the feasibility study.

### **Basis of Appointment**

- The person/party for whom the feasibility study is being prepared.
- Details of the instructions including any special conditions and/or assumptions.
- The date and basis of the feasibility study.
- The purpose of the feasibility study.

### **Land Description**

- Title details (including title searches).
- Registered proprietor.
- Encumbrances.
- Lease details.
- Details of any options, conditional contracts, etc

### **Location**

- A general description of the location of the property, transport, shopping, etc.
- Surrounding development and land use.
- Special features such as views, etc.

### **Site Details**

- Dimensions.
- Area.
- Services (water, sewer, drainage, electricity, gas, and communication) detailed analysis of the availability and location of services, relevant authorities, any special problems, etc.
- Geo-technical, filled ground, landslide.
- Flooding.

### **Planning and Other Statutory Requirements**

- Details of current zoning/planning area and allowable uses under statutory planning legislation.
- Details of any existing planning approvals on the site.
- Detailed analysis of all relevant planning requirements affecting the proposed development.
- Heritage details (if applicable).

- Comment on the local community and political environment and the affect this could have on the project.
- The requirements of any legally binding agreements with statutory authorities.

### **Existing Improvements**

- A detailed description of any existing improvements including any compliance problems with the Building Code of Australia (NZ Building Act 2004) and statutory authorities.
- Any comments in relation to demolition, site access, cramped site conditions, etc.

### **Environmental Audit**

- Full history on the types of uses the property has been used for.
- A detailed analysis of any contamination issues including Environmental Assessment by an independent consultant where available. Reference should also be made to the Institute's Guidance Note GN15 Reporting on Contaminated Land.

### **Evaluation of Development Potential**

- Market potential (supply and demand).
- Physical capacity of the site.
- Planning controls on the site, e.g. plot ratio, car-parking controls.
- Potential for merging with adjoining sites.

### **Proposed Development**

- Detailed description of the proposed development, which is the subject of the feasibility analysis.
- Details of any development approvals, building approvals, subdivision plans, etc.
- Comments on proposed Design and Finishes.

### **Development Program**

An outline program will be required covering:

- Concept approval by client.
- Site Assembly.
- Design documentation.
- The building contract period.
- Period for letting up or sale of completed development.

### **Demand and Market Analysis**

- General economic influences.
- Market supply, including actual or proposed competing developments.
- Historic and projected demand.

## ANZ REAL PROPERTY GUIDANCE NOTE 5

### Estimating Development Costs

- Land cost.
- Site-related costs.
- Building costs.
- Professional fees and expenses.
- Letting expenses.
- Legal costs and fees.
- Planning and building regulation costs.
- Cost of raising finance.
- Site holding costs.
- Sale costs.
- Interest charges.

### Income Estimate

- Assumed letting up period.
- Rents.
- Tenancy incentives, e.g. rent free periods, etc.

### Capital Value Estimate

- Capitalisation rates (static analysis).
- Discount rate (discounted cash flow analysis).
- Comparable market evidence.

### Profit Margin and Rate of Return

- Developer's risk and profit margin.
- Initial rental yield on cost.
- Return on capital.
- Capital Profit (cost vs value created).
- Internal Rate of Return.
- Comparison with normal market returns.

### Sensitivity Analysis

The Member may carry out a sensitivity analysis to test the financial assumptions. The results of the sensitivity analysis should be clearly set out in this section of the report.

### Conclusion and Recommendations

The Member should summarise the results of the feasibility analysis in terms of the original brief and instructions.

### Sample Disclaimers

The following disclaimers are illustrative samples for consideration for inclusion in any Feasibility Study report.

It must be recognised that the real estate market and building industry fluctuate with market forces. The results of this feasibility study are based on the information available as at the date of this report and the assumptions stated in this report. Reliance after an extended period from the date of this report or reliance on the findings of this report for modified development plans should only be made after written confirmation that it is appropriate to do so by the Author.

Information furnished by others, upon which all or portions of this report are based, is believed to be reliable but has not been verified in all cases. No warranty is given as to the accuracy of such information.

This report is for the use only of the party to whom it is addressed ..... (instructing party nominated) and is for ..... (reason for the feasibility study) purposes and no other purposes. Under no circumstances will responsibility be accepted to any third party who may use or rely on the whole or any part of the contents of this feasibility study. Any third party wishing to use this report should obtain prior written approval from ..... (name of author or firm preparing the report).

### Attachments

- Feasibility Checklist
- Financial feasibility.
- Development approvals and plans.
- Title searches.
- Planning certificates.
- Surveys (building and site).
- Services diagrams (sewer, etc).
- Any appropriate documentation supporting assumptions.

## **DEVELOPMENT CHECKLIST**

<b>Item</b>	<b>HEADING</b>	<b>Tick Box</b>
<b>1</b>	<b>LAND ACQUISITION</b>	
2	Purchase Price	
3	Stamp Duty	
4	Legal Costs	
5	Vacant Possession	
6	Zoning/Planning Certificate (also see 21)	
7	Services/ Sewer Water Diagram	
8	Geo Technical Report	
9	Title Searches/Easements	
10	Contamination Report	
11	Contract Special Conditions	
<b>20</b>	<b>TOWN PLANNING</b>	
21	Zoning/Planning Certificate (also see 6)	
22	Local /Regional/State Environmental Planning Controls	
23	Development Control Plans (FSR's. height, setbacks, etc)	
24	Car Parking Code	
25	Unhealthy Building Land Certificate	
26	Sulphuric Soils Investigations	
27	Flooding/Earthquake Investigations	
28	Sewerage/Water Diagram	
29	Heritage Local/Regional/State/National	
<b>30</b>	<b>STATUTORY AUTHORITIES</b>	
31	DA Fees/Construction Certificate/Occupation Certificate/Design Assessment	
32	Contributions -Low Cost Housing//Parking/Community/Open Space/etc	
33	Long Service Leave Contribution	
34	Public Signage	
35	Public Art Contribution	
36	Footpaths, Kerbing & Guttering (Repairs & Replacement)	
37	Water/Sewer/Drainage (Section 73 Sydney Water Approval NSW)	
38	Power Authority Fees	
39	Council Bonds (footpaths, etc)	

(continued)

## ANZ REAL PROPERTY GUIDANCE NOTE 5

Item	HEADING	Tick Box
40	<b>CONSULTANTS</b>	
41	Development Manager	
42	Architect (Design, Documentation, Construction Supervision)	
43	Interior Architect	
44	Engineer- Structural	
45	Engineer- Services (water, sewer, AC, hydraulic, lifts)	
46	Project/Construction Manager	
47	Quantity Surveyor	
48	BCA Consultant	
49	Principal Certifying Authority	
50	Town Planner – (Statement of Environmental Affects NSW)	
51	Environmental Design Consultant	
52	Heritage/Conservation Architect	
52	Heritage (photographic record)	
53	Acoustic Report	
54	Surveyor Identification, Survey/Levels, Strata, Floor Areas, etc	
55	Landscape Architect	
56	Traffic Engineer	
57	BASIX Certifier	
58	Accessibility Consultant	
59	Wind & Reflectivity Reports	
60	Economic/Social Impact Statements	
61	Archaeologist Report	
62	Waste Management Plan (Construction/Operational)	
63	Energy Audit Report	
64	Demographics/Market Research Report	
65	Management Operational Consultant/Report (hotels, backpackers, etc)	
66	Model Maker	
67	Feng Shui Report	
68	Endangered Fauna & Flora	
70	<b>CONSTRUCTION</b>	
71	Demolition/Excavation/Hoarding	
72	Construction Contract (Tender, GMP, D&C, Cost Plus, Const Mgt, etc).	
73	Development Approval (Conditions)	

## ANZ REAL PROPERTY GUIDANCE NOTE 5

Item	HEADING	Tick Box
74	Construction Certificate-conditions	
75	Quantity Surveyor/Superintenant	
76	Building Contract/Specification/Bill of Quantities/Cost Plan	
77	Contingency (check QS report)	
78	Rise & Fall/Escalation	
79	Furnishings (Carpets, Blinds, etc)	
80	GST (check if in QS figures)	
<b>90</b>	<b>FINANCE COSTS</b>	
91	Interest	
92	Establishment Costs – Senior Debt	
93	Establishment Costs – Mezzanine Debt	
94	Line Fees	
95	Legal – Financier & Borrower progress payments	
96	Valuation	
97	Financial Planner	
98	Insurance Broker	
99	Construction Contract	
<b>110</b>	<b>ADMINISTRATION</b>	
111	Accounting	
112	Legal- General	
113	Operational Overheads	
<b>120</b>	<b>MARKETING</b>	
121	Advertising	
122	Brochures, models, signs	
123	PR, Research & Consultants	
124	Display Suite	
125	Launch Event	
<b>130</b>	<b>SELLING COSTS</b>	
131	Sales Commissions	
132	Legal Costs	
133	Leasing Commissions	

(continued)

## ANZ REAL PROPERTY GUIDANCE NOTE 5

Item	HEADING	Tick Box
134	Incentives	
135	Rental Guarantee on sale	
136	Cost of Issuing New Title	
<b>140</b>	<b>HOLDING COSTS</b>	
141	Council rates	
142	Water Rates	
143	Land Tax	
144	Insurance	
145	Security	
146	Repairs & Maintenance	
147	Cleaning	
148	Property Management	
<b>150</b>	<b>GST</b>	
151	New Residential Projects	
<b>160</b>	<b>INCOME</b>	
161	Sales Income	
162	Rental Income	

Notes:

1. Feasibility usually carried out on a pre-tax basis (i.e. excluding depreciation allowances, etc)
2. GST is usually shown as a cost for new residential projects (check if the "margin scheme" approach is applicable)

## **Part C-Worksheets**

### **Feasibility Studies**

This section has been drawn from Rawlinsons *Australian Construction Handbook*, and is reproduced with permission.

The purpose of feasibility studies is to calculate the return that will be derived from a particular project.

The return can be expressed as an annual percentage return or as a terminal percentage return. An annual

percentage return will be used where the project will be generating rent for the owner, while a terminal return is used when the project is to be sold.

The calculated returns are important only for comparisons, i.e. to compare one project with another or to compare one project's return with the return that would be achieved by investing elsewhere.

The following pro-forma represents a suggested set out to calculate the return. Item 3.0 is shown in alternative forms. The first alternative is applicable to an annual return and the second to a terminal return.

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## ANZ REAL PROPERTY GUIDANCE NOTE 5

### 1.0 PRIMARY INFORMATION

Site Area	sqm	
Frontages	m	
Gross Floor Area	sqm	
Net Rentable Area	sqm	
Parking Provision	No	(Cars)
Land Purchase Price	\$	
Building Cost	\$	
Vacant Possession Costs	\$	
Preliminary Sketch Plans	Months	
Development Approvals	Months	
(Design Development Stage) to calling of Tenders and including Bill of Quantities)	Months	
Calling Tenders and Awarding Contract	Months	
Construction Time	Months	

### 2.0 CAPITAL EXPENDITURE

LAND COSTS	\$	\$
Purchase Price		
Stamp Duty @ % on first \$		
Plus % on remainder		
Legal Costs		
Vacant Possession Costs		
Soil Tests		
Land Surveyor's Fees	=	
BUILDING COSTS		
Demolitions		
Contract Price		
Architects, Engineers & Consultants Fees		
Project Management Fees		
Quantity Surveyors Fees		
Local Council & Planning Authority Fees		
	=	
	C/fwd	

## ANZ REAL PROPERTY GUIDANCE NOTE 5

### 2.0 CAPITAL EXPENDITURE (continued)

	\$ Per Annum	\$ B/fwd
RATES AND TAXES		
Council Rates @     in \$     on the relevant value		
Land Tax @     in \$     on the relevant value		
Water		
Sewerage		
Drainage	=	
(+ 12)	= \$	per month
Planning and Construction Time (     ) months	x _____	months
	=	
ADD		
Interest (@     % per month simple)		
On Land Cost		
On Rates and Charges		
On Building Costs	=	
SUNDRY COSTS		
Owner's Moving Expenses		
Furnishing		
Market Studies		
Advertising and Signs		
Premises Department's Costs		
Owner's Overhead Expenses		
Letting Agent's Fees @     %		
Tenant Inducements		
Contingency	=	
TOTAL CAPITAL EXPENDITURE	\$	*
Allow for G.S.T. on applicable		
Items of the foregoing @ 10% -		
G.S.T. refund for applicable clients/owners		
As defined in TAXABLE on page 790 -		
TOTAL EXPENDITURE INCLUDING G.S.T.	\$	

\* NO ALLOWANCE FOR LIFE CYCLE COSTING

## ANZ REAL PROPERTY GUIDANCE NOTE 5

### 3.0 ANNUAL INCOME AND EXPENDITURE

INCOME		\$		\$
Car Parking	cars @	\$		
Ground Floor sqm	@	\$		
Upper Floors sqm	@	\$	=	
<b>TOTAL ANNUAL INCOME</b>				<b>\$</b>

<b>ANNUAL EXPENDITURE</b>				
Council Rates				
Land Tax				
Water & Sewerage Rates				
Insurance combined @		%		
Electricity to Public Areas				
Garbage Removal				
Caretaker & Cleaning @		per sqm		
Window Cleaning				
Security Service				
Fire Alarm & Sprinkler Service				
Lift Maintenance and Operation				
AC Maintenance and Operation				
Management Fees at Scale (say 4%) of total letting			=	\$
<b>PROVISIONS</b>				
Building Maintenance				
Building Depreciation	years @	%		
Plant Depreciation	years @	%		
Vacancies - say		%	=	
<b>TOTAL ANNUAL EXPENDITURE</b>				<b>\$</b>
<b>NET ANNUAL INCOME</b>				<b>\$</b>
ANNUAL RETURN =	$\frac{\text{Net Annual Income \$}}{\text{Total Capital Expenditure \$}}$	x	$\frac{100}{1}$	= %

## ANZ REAL PROPERTY GUIDANCE NOTE 5

<b>ALTERNATIVE</b>		
<b>3.0 TERMINAL INCOME &amp; EXPENDITURE</b>	<b>\$</b>	<b>\$</b>
SALE PRICE	=	
SELLING EXPENDITURE		
Council Rates		
Land Tax		
Water & Sewerage Rates		
Insurance		
Security Service		
Agents Fees		
Interest	=	
<b>NET SALE PRICE</b>		<b>\$</b>
TERMINAL RETURN =	$\frac{\text{Net Sale Price} - \text{Total Capital Expenditure}}{\text{Total Capital Expenditure}} \times \frac{100}{1} =$	%

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# ANZRPGN 6 DUE DILIGENCE

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide a guide to Members as to the due diligence process which a prudent purchaser would undertake prior to entering into a contractual obligation to acquire a commercial property.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

This Guidance Note applies to Members performing due diligence or involved in the due diligence process in relation to commercial property.

### 1.4 Comprehensive and Probing Investigation

These guidelines are intended to provide a guide to the due diligence review process which a prudent purchaser would undertake prior to entering into a contractual obligation to acquire commercial property. There is no single definition of "due diligence", although the expression is now in common usage, particularly in relation to securities law where a specific due diligence defence is available to directors of companies in certain circumstances. In general terms, however, a due diligence exercise is taken to involve the type of comprehensive and probing investigation which a prudent adviser would bring to bear on the matter in question.

### 1.5 Numerous Issues ....a checklist

These guidelines also aim to alert interested parties to the numerous issues which ought to be examined and addressed in order to ensure

that such parties are fully informed regarding the attributes of a particular property, and the risks associated with a proposed transaction. Whilst we have aimed to make the guidelines as comprehensive as possible, they have been drafted so as to provide no more than a checklist of points and issues which ought to be considered in a property transaction. (A checklist is included as Annexure 1).

### 1.6 Necessity of Engaging a Team of Experts

It is not intended that these guidelines provide a do-it-yourself checklist for property investors and other relevant parties. Indeed, the numerous issues set out in this document should alert users of the guidelines to the necessity of engaging a team of qualified professionals to undertake the due diligence review. This team may include experts such as valuers, land economists, structural engineers, consulting engineers, solicitors, architects, financial and taxation consultants, quantity surveyors, urban consultants, etc.

### 1.7 Advice on Changes to the Law

Though efforts are made to keep guidance notes current, advice should be obtained regarding any changes to the law and practice in more recent times.

## 2.0 Valuation

### 2.1 General

Advice that may be obtained from a Valuer or Member could include following matters.

### 2.2 Importance of Establishing Value

Any purchaser of property must, of necessity, form a view as to what the particular property is worth. Ultimately, one's assessment of value will be a key factor in determining how much to pay for a property or an interest in property and, from the point of view of a vendor, how much to accept for the sale of a property. Equally, the value of a property will be of critical importance to a lender who proposes to advance money against the security of a property. Valuations may also be

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required for the purposes of financial statements, for insurance purposes, and to assist in analysing investment performance.

### 2.3 Appoint a Valuer to establish Market Value

#### [Definitions - Market Value]

In order to obtain an expert and impartial assessment of the value of a property, a suitably qualified, experienced and (where required) registered or licensed valuer (being a Member of the Institute) should be appointed to prepare a valuation of the property on an appropriate basis. Usually, this will involve an assessment of the property's "Market Value" which is defined by the International Valuation Standards Committee (whose definition has been adopted by the API and PINZ).

### 2.4 Forced Sale Price

On occasions, a valuation report may include advice concerning the price that might be achieved for a property in the circumstances of a forced sale. Similarly, an assessment of the replacement cost of a property may sometimes be required.

### 2.5 Valuation Methodologies

There are several valuation methodologies which may be used in assessing the value of a property, and different methodologies may often produce different outcomes. It will often be appropriate for more than one methodology to be considered, and a valuer needs to form a view as to which method or methods best suit the particular property. Methodologies commonly used in valuing a property are:

comparable sales - points to be considered in relation to both the subject property and comparables include:

- location
- size and type of the property
- lease and tenancy characteristics
- rental income
- outgoings
- age and condition of the property and building services
- potential for rental growth / redevelopment

capitalisation of income (market and / or passing rents) - points to be considered include:

- comparable sales evidence
- alternate investments
- rental received / rental growth potential / market rental levels
- lease terms
- types of tenants / financial strength
- type of ownership - freehold or leasehold
- supply and demand
- economic factors / inflation rate / bond yields
- supply and demand

discounted cash flow / target internal rate of return - assumptions need to be made regarding:

- required discount or target rate
- rental income / future rental predictions
- covenant of the tenant(s)
- taxation / capital gains
- outgoings
- inflation
- exit capitalisation rates
- terminal value
- forecast period

hypothetical development (for development sites) - assumptions need to be made regarding

- best permitted development for the site
- time required to obtain approvals, develop and lease
- development cost
- future rental income
- initial yield
- development profit
- valuation on completion of development

summation method (direct comparison) - points to be considered include

- land value rate
- building value rate
- comparable sales evidence

(Note: Care should be taken with the use of this method in relation to properties with investment potential)

## 2.6 Contents of Valuation Report

Although the contents of a valuation report will vary depending on the type of property and the purpose of the valuation, generally speaking, a valuation will need to address the points listed below:

### Basis of valuation

- Market Value
- forced sale
- replacement cost

### Land and title

- title reference
- name of the registered proprietor(s)
- identification of encumbrances such as easements,
- covenants etc
- identification of registered leases

### Location of the property

- description of location
- commentary on access / public transportation
- proximity to major commercial / retail centres
- special features such as views, adjoining developments
- demographics

### Site description and services

- land dimensions and area
- site accessibility
- services
- site problems, ie. drainage, potential flooding, apparent contamination, soil characteristics etc

### Town planning/Resource Management

- current zoning (including restrictions which may affect future potential of the property)
- extent to which use constitutes a non-conforming use
- proposed amendments to planning scheme
- development codes, site ratios, development guidelines
- transferable floor area issues

### Improvements

- description of improvements and materials used in construction including, structure, floors, service core, walls, roof
- description of internal finish including, wall finishes, ceiling finishes, floor finishes, doors
- description of general accommodation including, toilet facilities, tea rooms etc
- commentary on age and condition of improvements and building services including, air conditioning, lifts, fire services, security system, backup power supplies
- analysis of net lettable area
- compliance with current building regulations

### Environmental Issues

#### Tenancy details

- description of all leases, licenses and agreements including commencement date, name of lessee / licensee, demised premises, term / options, current rental, rent reviews, lessee's obligations etc
- commentary as to whether leases have been executed
- comparison of actual rentals and market rentals
- consideration of current and potential future vacancy levels including timing and costs of re-letting premises
- consideration of impact of future rent reviews
- commentary on rental arrears
- review of outgoings
- commentary on financial strength of tenants
- detail current incentives / financial obligation to tenants (ie. carpet, painting, fit out etc)

## 2.7 Market Overview

- general market overview (including legal, political, economic)
- overview of specific region in which property is located
- both overviews would usually address factors including:
  - demand and supply
  - vacancy factors

- rental movements
- demographics / population growth
- any other trends in the market

### Valuation Approach

- rationale behind method or methods of valuation
- details of comparable sales and other market evidence
- reconciliation of the various valuation approaches

### Valuation

- valuation amount and date
- note qualifications, assumptions and disclaimers

## 3.0 Structure

### 3.1 General

Professional advice should be obtained on any structure.

### 3.2 Engage Structural Engineer and others

A Structural Engineer should be engaged to examine and report on the structural condition of the property. It may be appropriate for a structural engineer to be engaged together with other specialist engineering disciplines and / or, depending on the nature of the building, also an architect. For example, on a high rise building with a curtain wall facade, there would normally be a need for an architect with specialist ability in this technology to work with the structural engineer. Clearly, the types of report required will vary, depending on the size and nature of the subject property.

### 3.3 Co-ordination of Reports into one

Where a building is significant, it may be advisable for an architect to co-ordinate all of the reports from the various engineers into one "Condition Report". This report should not only identify problem areas, but also provide an indication of the cost to rectify and when rectification will be required.

### 3.4 Due Diligence Process

The Due Diligence process should involve:

Review of documentation including:

- as built architectural drawings

- structural drawings
- structural calculations
- geotechnical report
- other specialist reports such as wind engineering, facade testing
- shop drawings, particularly of performance specified facades
- construction quality control reports
- any reports on building problems
- warranties

### Building Code Compliance

- Advise on whether the structure meets relevant building code or other legislation as well as cost to upgrade the building to comply (if viable)

### Inspection of Property

- Inspect together with building superintendent (or other person familiar with maintenance of the building)
- Obtain information regarding problem areas, maintenance program, any major maintenance items (i.e. roofing replacement) etc.
- Inspection of tenant fit outs - do fit outs comply with statutory requirements?
- Talk to occupants

### Design Criteria

- Review basic design loads for different parts of the building
- Examine how design loads relate to codes and industry standards, including floor live loads, wind loads and earthquake loading

### Durability

- Report on durability problems, such as rust staining, spalling of the surfaces, and comment on implications and reparability
- Comment on any potential durability problems having regard to specification of the materials, and known general industry practices at the time of construction

### Serviceability

- Examine performance of structures in delivering and maintaining a flat floor

- Consider necessity for confirmation survey to respond to signs of lack of flatness

**Wear and Tear**

- Itemise all items of defect in the structure, floor and wall finishes, and comment on reparability

**Exterior of Building**

- Review all exterior coverings
- Report on condition of the roof and sealants
- Report on availability of a building maintenance unit (BMU)
- Inspection of facade using BMU
- Consider water penetration from all exterior surfaces, both above and below ground

**Building Interior**

- Report on finishes on the interior of the building
- Note presence of cracks in floor or wall finishes, delamination of cladding, poor performance of joint filling materials, condition of tiles in bathrooms, floors and walls, presence of cracks in masonry walls and the like

**Occupational Health and Safety**

- Asbestos survey

**4.0 Mechanical & Electrical Condition**

**4.1 General**

The quality of building services is becoming an increasingly important influence in the value of a property.

**4.2 Condition of Building Services**

The condition of building services is an important factor to be evaluated by a purchaser of property, as it will affect the demand for rental space and the operational costs of the building, with a flow-on impact on the value of the property. Indeed, the quality of the building services is becoming an increasingly important influence in the value of a property, as tenants begin to appreciate the benefits of a “smart” building in terms of productivity and flexibility.

**4.3 Mechanical and Electrical Engineer**

A mechanical and electrical engineer should be engaged to report on the status of the systems within a building, such as:

- heating, ventilating and air conditioning systems
- electrical systems
- fire protection systems
- hydraulics
- lifts
- communication
- security systems

**4.4 Report on Compliance and Cost to Upgrade**

The report should include advice as to the extent of compliance with current regulations and cost to upgrade to comply if systems are currently inadequate.

**4.5 Other Specialists May be Required**

It may be appropriate for other specialists, such as architects, quantity surveyors or building regulation specialists, to also be engaged to report on these systems.

**4.6 Due Diligence Process**

The Due Diligence process should involve:

Review of documentation including:

- architectural drawings
- design drawings for each discipline:
  - heating, ventilating and air conditioning
  - electrical
  - fire protection
  - hydraulics
  - lifts
  - communications
  - security systems
- specifications for each of the above disciplines
- as built drawings for the above disciplines
- maintenance manuals
- maintenance reports and logs
- information in relation to building outgoings

### Inspection of Property

- Inspect property together with building superintendent or other party with experience with the operation of the systems in the building and understanding the maintenance trends
- Talk to occupants

Design Criteria - report on issues such as:-

- air conditioning and heat loads (and after hours capabilities)
- power requirements
- air filtration
- location and maintenance of cooling towers
- life safety systems including sprinkler systems, ventilation for smoke removal, location of fire fighting devices
- flexibility to meet tenants' requirements

Installation - inspect the installation to ascertain:

- consistency between the design and what has been installed
- quality of the installation works
- simplicity of servicing the systems
- years of operation
- life expectancy (if appropriate, report on replacement costs or costs of remedial works).

### Operation and Maintenance

- Review of as built drawings and maintenance manuals to determine how well maintenance and operation has been carried out
- Inspection of maintenance records and logs to ensure there has been regular systematic maintenance of the various systems
- Inspection of records relating to maintenance of fire protection items, e.g. extinguishers, hose reels, fire panels, evacuation systems, etc
- Summary of maintenance contracts and standard of service

## 5.0 Legal Due Diligence

### 5.1 General

The legal aspect of the due diligence process calls for a consideration of the issues relevant to ownership of the property including the ownership

structure, the nature of the title and the various matters listed (GN 3: 5.4) that impact on use, enjoyment and value. In the case of properties which are leased, the legal due diligence process also calls for a detailed review of the lease or leases. Expert legal advice should be obtained in each case. (Note: Legislation relating to property varies from State to State).

### 5.2 Ownership Structures

The following ownership matters should be considered:

Apart from ownership by an individual in his or her own name, there are basically four legal structures that may be used for property ownership, being:-

- company
- trust (unit or discretionary)
- partnership
- joint venture (incorporated or unincorporated)

### 5.3 Joint Ownership

In addition, where interests are being acquired jointly by two or more parties, consideration needs to be given as to whether the owners should be "joint tenants" or "tenants in common".

### 5.4 Importance of Accountants' and Solicitors' Advice

The selection of the wrong ownership structure is likely to have serious implications in terms of the taxation treatment of the investment and costs involved in rectifying the situation may be prohibitive as a result of the likely imposition of stamp duty on the transaction. Accordingly, it is extremely important that advice is obtained from accountants or solicitors regarding the most appropriate ownership vehicle.

### 5.5 Determining Ownership Vehicle

In determining the property ownership vehicle, regard should be had to the following:-

- income tax
- capital gains tax (Australia)
- ability to utilise income and capital losses
- stamp duty (Australia)
- transferability of shares / units
- proposed level of borrowings
- administration and management
- liability of the beneficial owners
- the number and type of beneficial owners.

## 5.6 Types of Title

There are basically four types of title, each of which is briefly described below. When acquiring a leasehold interest, particular care needs to be paid to the terms and conditions affecting the leasehold, including the term of the lease, restrictions on the use of the property, rights to purchase etc.

*Torrens* - This is the modern system of title where a certificate of title issues in the name of the registered proprietor showing all registered interests. This category includes units in "strata" developments.

*General / Old System/Law Title* – In Australia, this is the common law system which was in place before the adoption of the Torrens system by the various States. Pockets of it still remain today. A feature of this system is that "title" is actually a chain of documents tracing ownership backwards from the present owner to either the original Crown Grant or at least to a good "root of title" which, in most jurisdictions, must be at least 30 years old.

*Crown Leasehold* – In Australia this interest is derived from a lease with the Crown which traditionally will be for a long term. The interest may include a right of purchase on the lessee - usually conditional upon the lessee carrying out certain improvements. Since the Wik decision, leasehold interests which do not give exclusive occupancy, are potentially vulnerable to Native Title claims. It should be ascertained:

- whether a claim has been lodged with the NNTT, and/or determined,
- whether it is likely a claim will be forthcoming from potential native title holders
- what the effect of the above is on the activities currently carried out under the lease

*Crown Land* - Vacant Crown Land is also potentially open to a Native Title claim in Australia and Waitangi Treaty claim in New Zealand. Similar inquiries to the first two points above should be made.

*Leasehold* - This is the interest that every lessee acquires whether under a head lease, sub-lease, ground lease, riverbed lease etc.

### Matters Affecting Title and Purchase Price

The following matters should be considered for their effect on Title and Purchase Price:

- Occupation / title boundaries (site survey to determine horizontal and vertical encroachments)

- Mortgages and charges
- Unpaid rates and taxes
- Restrictive covenants
- Easements (expressed and implied)
- State Planning Agreements
- Caveats
- Sewers and drains
- Rules of body corporate (where applicable)
- Leases
- Confirm lettable floor areas (by reference to an accepted method of measurement eg. Property Council of Australia or PCNZ/PINZ)
- Planning status (including rezoning ability, future roads, future flight path, proximity to heritage buildings)
- Heritage status
- Unauthorised structures
- Non-compliance with Building Regulations
- Certificate of Occupancy and classification
- Flood levels
- Notices relating to planning/building matters
- Contamination and hazardous building materials (refer API and PINZ guidance notes relating to contaminated land)
- Retail tenancy legislation
- Notices of resumption
- Quarantine orders (in relation to farm land)
- Filling
- Fencing notices
- Currency of defects rectification rights and plant warranties
- Vegetation protection

## 5.7 Planning Controls / Resource Management

Town Planning matters should be examined.

## 5.8 Value Affected by Town Planning

The value of a property will be directly affected by the town planning/resource management regulations which relate to that property, particularly in so far as those regulations constrain

the development potential of the property. Where it is intended that a property be acquired for the purposes of redevelopment, it is extremely important that detailed inquiries be made to ascertain the planning controls which apply to the particular property by legislation, lease control or some other method.

### 5.9 Use Regulated by Planning Controls

The use to which a property may be put is regulated by the planning controls. The status of a property may vary as follows:

- use as of right - permit not required
- entitlement to permit if premises meets specified requirements
- entitlement to permit if specified conditions satisfied
- prohibited use
- non-conforming use
- amendment of the planning scheme required

#### Issues Affecting Development Potential

There are numerous planning issues which may affect development potential. These include:

- zoning i.e. residential (ranging from single family to high density dwelling), business, industrial, rural
- height controls
- floor space ratio
- transfer of plot ratio
- setback
- overshadowing
- loss of views
- traffic generation
- sight lines
- car parking ratios
- access to the property (proposed road works, traffic islands, restricted highways etc)
- minimum frontages / lot sizes
- density controls / number of employees
- approvals (adjoining owners, cash in lieu payments)
- heritage / conservation issues
- Aboriginal interests / claims

### 5.10 Copy of Development Approval

A copy of the original development approval should be obtained to ensure that the building complies.

#### Foreign Investment Review Board (Australia)

The need for certain proposed real estate acquisitions by foreign interests to be examined by the Foreign Investment Review Board should be considered.

The Foreign Acquisitions and Takeovers Act 1975 is a federal statute regulating foreign investment in Australia. Under the terms of this Act, all proposed real estate acquisitions by foreign interests must be submitted to the Foreign Investment Review Board ("FIRB") for examination, unless the acquisition falls within a specific exemption category.

The Foreign Acquisitions and Takeovers Act defines a foreign interest as:-

- a natural person not ordinarily resident in Australia; and
- any corporation, business or trust in which there is a holding of 15% or more by a single non-resident person or foreign corporation or holdings of 40% or more in aggregate by two or more non-resident persons or foreign corporations.

The exemptions to the requirement for obtaining FIRB approval are set out in the Foreign Acquisitions and Takeovers Regulations and include:-

- Acquisitions of an interest in land on which a dwelling will be constructed where the treasurer has certified that the sale of the interest to foreign persons is not contrary to the national interests (usually conditional on an undertaking from the developer that no more than one half of the units in any development will be sold to foreign interests).
- Acquisitions of industrial or commercial real estate that are wholly and directly incidental to the conduct of the business of the foreign interests.
- Acquisition of direct interest in non-residential commercial real estate with a value of less than \$5 million.
- Acquisitions of residential real estate by intending migrants who have received approval to take up permanent residence in Australia.

- Acquisitions of interest in timeshare schemes where the entitlement of the foreign interest is less than four weeks per year.

### Overseas Investment Commission (New Zealand)

In New Zealand the need for certain proposed real estate acquisitions by foreign interests to be examined by the Overseas Investment Commission, should be considered.

(Note: Both the legislation and rules relating to foreign acquisitions are subject to change)

## 6.0 Taxation Issues

### 6.1 General

Commercial investment properties are generally acquired for the specific purpose of providing short or long term income and capital growth. Prima facie, both income and capital gains are subject to taxation in Australia, and this may significantly alter the after tax rate of return of a particular investment. In New Zealand there is currently no capital gains tax. Both the vehicle, which is used to acquire a property and the manner in which an acquisition is structured and financed may have a significant bearing on the tax effectiveness of the investment, and it is therefore extremely important that expert tax advice is sought prior to entering into a property transaction.

### 6.2 Specific Tax Issues

A range of specific Tax Issues affecting various processes in dealing with property should be examined.

### 6.3 Acquiring Property

Tax Issues on Acquiring Property:

- Ascertain tax depreciable value on purchase of plant and equipment and building
- Determine appropriate allocation of total consideration to plant and equipment (depreciable items should be listed in the contract)
- Application of depreciation deeming provisions to transfers of plant and equipment between parties not dealing at arm's length
- Determination as to whether properties constitute trading stock
- Determination as to whether properties constitute revenue or capital assets

- Deductibility of financing costs

### 6.4 Holding Property

Tax Issues on Holding Property:

- Ascertain level of historical construction costs for purposes of building allowance
- Determine appropriate building depreciation allowance rate
- Consider structural improvements for purposes of building allowance
- Determination of whether fixtures are depreciable and to whom
- Determination of appropriate depreciation rates
- Application of investment allowance to acquisitions of plant and equipment
- Deductibility of financing costs
- Tax deductibility of repairs and particularly initial repairs

### 6.5 Selling Property

Tax Issues on Selling Property:

- Ascertain assessable depreciation balancing charge or tax deductible write-off
- Elections to offset assessable depreciable balancing charge against other plant and equipment
- Ascertain capital gains tax liability on sale of property, plant and equipment
- Application of capital gains tax deeming provisions to transfers of plant and equipment between parties not dealing at arm's length
- Assessability of profits on disposal of plant and equipment as ordinary income
- Disallowance of investment allowance for short term sales
- Ascertain basis of profit realisation for long-term construction contracts
- Assessability and capital gains tax implications of compulsory government acquisitions

### 7.0 Stamp Duty (Australia)

#### 7.1 General

In any property acquisition in Australia, stamp duty is likely to represent a material cost to the purchaser and should be taken into account when evaluating the returns from the property. Stamp duty is levied on legal instruments and, in relation to property conveyancing, will generally be payable on a sliding scale based on the value of the property. (Note: The rate of duty may vary from State to State.) Stamp duty is also payable on leases (being a percentage of the rental payable during the term of the lease) and on loan securities.

#### 7.2 Due Diligence Issues

Issues which may need to be considered for due diligence include:

- Determine appropriate jurisdiction
- Identify dutiable instruments and deemed instruments
- Consider ex gratia, reconstruction and other relief entitlements
- Consider specific exemptions from duty
- Consider specific concessions from duty, such as in relation to off the plan purchases
- Determine rates
- Ascertain stamping requirements for all documentation, including financing and lease documents, with particular emphasis on method of stamping, period for lodgement of documents and period for payment of duty
- When acquiring shares in a company or units in a trust which owns property, regard must be had to the potential application of the land rich entity provisions which may effect the rate of duty payable on such transactions

### 8.0 Locational Influences

#### 8.1 Location Considerations

Locational influences vary according to the type of building. It may be appropriate, particularly in significant commercial property transactions, to commission a suitable qualified consultant to report on the strengths, weaknesses, opportunities and threats (SWOT analysis) in relation to locational

influences. The most important considerations for the major categories of non-residential commercial property are listed below.

#### 8.2 Office Buildings

Location Considerations for Office Buildings:

- Proximity to retail facilities
- Proximity to public transport
- Availability of parking, either on-site or publicly provided nearby
- Proximity to leading hotels and restaurants
- Commentary on surrounding areas including future development and land use, vacancy rates

#### 8.3 Industrial Buildings

Location Considerations for Industrial Buildings:

- Ease of vehicular access to the site
- Proximity to public transport
- Proximity to customers (for minimising transport)
- Proximity to raw materials, supplies and services
- Proximity to vocational training facilities
- Proximity to means of freight transportation (rail terminals, ports, airports)
- Proximity to related industry
- Commentary on surrounding areas including future development and land use, vacancy rates

#### Retail Shopping Centres

Location Considerations for Retail Shopping Centres:

- Population in the primary, secondary and tertiary trade areas
- Demography of trade area population
- Trading mix
- Configuration of the centre
- Any artificial or natural barriers (roads, rivers) which may affect the trade areas
- Ease of vehicular access to the site
- Prospects for competition (both present and future)
- Marketing and promotion

## **9.0 Design Influences**

### **9.1 Design Considerations**

Design influences can affect the ability of a property to operate to its maximum efficiency and effectiveness. Any prospective purchaser should consider engaging the services of a suitably experienced architect to assess the appropriateness of the buildings which are being acquired as well as to assess what capital may be required to rectify any design shortcomings.

### **9.2 Office Buildings**

- Design Influences for Office Buildings:
- Condition of external cladding and ease of cleaning
- Lobby size, configuration, finishes
- Adequate lift facilities (including goods lift)
- Adequate heating and air conditioning
- Column-free floor space (and flexible floor space for tenancy layouts)
- Sound insulated windows
- Adequate car parking
- Adequate security system
- Adequate toilet and shower facilities
- Adequate facilities for the disabled
- Adequate after hours occupation requirements (eg. air conditioning)
- Sufficient floor to ceiling height
- Sufficient stand-by facilities for equipment and/or facility failures
- Compliance with occupational health and safety regulations

### **9.3 Industrial Buildings**

Design Influences for Industrial Buildings:

- Appropriate office to warehouse ratio
- Adequate level of natural light in the warehouse area
- Adequate load bearing capacity of the warehouse floor
- Adequate distance between columns in the warehouse allowing for use of forklift trucks
- Adequate loading and servicing facilities

- Adequate height between spans
- Adequate ingress / egress
- Adequate thickness of driveways
- Adequate room for trucks to manoeuvre once on site
- Ability to install gantries where needed
- Hard stand parking and storage

### **9.4 Retail Shopping Centres**

Design Influences for Retail Shopping Centres:

- Established anchor tenant
- Appropriate tenancy mix between anchor and specialty shops
- Uniform shop fronts and signage
- Width of shopping malls
- Adequate lighting facilities, either natural or artificial
- Appropriate heating and air-conditioning facilities
- Appropriate space allocation to entertainment facilities
- Appropriate sight lines
- Ease of access and egress from retail area to carpark
- Layout to ensure efficient retail operation
- Location of dead frontages
- Provision of adequate car parking and under cover car parking for wet weather conditions
- Provision for expansion

## **10.0 Leases**

### **10.1 General / Legal Issues**

Leases are a vital component in most commercial properties and any due diligence process should include a thorough analysis of all lease covenants effecting the subject property. Issues which would ordinarily be considered include:-

- Financial status of tenant
- Trading strength of tenant
- Whether and to what extent the lease has been stamped
- Term of the lease

- Is there an option for renewal? If yes, has it been exercised?
- Does the lessee have a right of early termination?
- Is the rent a market rent?
- Is the rent based on turnover?
- What provision is there for adjustment or review?
- Can the rent reduce on a review?
- Procedure for rent reviews
- Outgoings recovery, including plant maintenance and replacement
- Repair obligations
- Tenant's obligation to contribute to a promotion fund
- Tenant's obligation to provide turnover information
- Redecoration obligations
- Make good at end of term
- Insurance obligations - lessor/lessee
- Does the lessor have any non-standard obligations?
- Who owns the fit out?
- Control in relation to use
- Restrictions on assignment and sub-letting
- Does lessor have the right to modify or alter the building?
- Does lease deal with issues relating to base building comfort levels / performance criteria?
- Are the termination and damages provisions adequate?
- What are the provisions relating to damage and destruction?
- Are the premises "retail" premises? If yes, does the lease comply with the relevant legislation?
- Are tenancy areas properly defined in the lease?
- Arrears position
- Licence Agreements (eg. parking)
- What security is held:
  - personal guarantees and indemnities

- security deposit
- performance bonds
- bank guarantee?
- Determine whether the lease deals with issues of:
  - contamination
  - hazardous materials
  - ozone depleting substances

### 10.2 Tax Issues

Tax Issues which would normally be considered include:

- Assessability / tax deductibility of lease incentives received / provided
- Assessability / tax deductibility of lease premiums received / provided
- Assessability / tax deductibility of lease surrender payments received / provided
- Timing of assessability / tax deductibility of lease payments received / paid in advance
- Tax deductibility of lease payments
- Categorisation of "lease" as either genuine lease or instalment purchase for tax purposes
- Consider disallowance of interest, depreciation and building allowance tax deductions for assets leased to public bodies and non-residents
- Application of withholding tax for leases involving non-residents.

### 11.0 Contamination – Environmental Audit

Consider the desirability of having an environmental audit of the land and building, covering matters such as contamination, asbestos, air conditioning, filling, underground tanks etc, to be carried out by specialist environmental companies.

## 12.0 General

The process should also involve a review of the following:

- Access to Building Reports
- Condition Report
- Asbestos Report
- Contaminated Land Report
- Plant and Equipment Report
- Depreciation Report
- Current construction contracts, plans, specifications
- List of goods and chattels to pass with the sale
- Ongoing review of Sale Contract.
- Preparation of rental arrears list
- Agreement as to treatment of rental arrears
- Files, books and financial statements held by owners and managing agents
- Access to files
- Ownership of files on settlement
- Site Survey
- A surveyor should be employed to identify the boundaries of the subject property, and horizontal or vertical encroachments and to confirm the status of any improvements in relation to the boundaries.
- Insurance - Details and claims records
- Bill of Sale over tenant's plant and equipment
- Talk to tenants and other occupiers. In many cases their practical experience will be an important indicator of building problems.
- Property Management
- Outgoings
- Review building outgoing
- Sight receipts
- Review outgoing budget

Consider the managerial styles that may be used for a property, for example:

- owner manager
- joint venture manager
- external manger.

The due diligence process should include:

- Interviewing existing property manager and building manager
- Reviewing maintenance and service agreements (management agreements, cleaning contracts, air conditioning contracts, lift contracts). Can they be assigned? Will they be terminated?
- Management staff entitlements such as long service leave, superannuation, holiday pay.

**Annexure 1- Suggested Due Diligence Check List**

ACTIONS	RESPONSIBILITY	COMPLETION DATE	ESTIMATED COST
1.1 Approval to make Conditional Offer	Executive Level		n/a
1.2 Conditional Offer Delivered	Executive Level		n/a
1.3 Acceptance by Owner	Vendor		n/a
1.4 Selection of Consultants	Management Level		n/a
1.5 Consultant Approvals	Executive Level		n/a
1.6 Consultant Meeting	Management Level		n/a
1.7 Consultant Letters of Appointment	Management Level		n/a
2.0 Valuation	Experienced Valuer		\$
3.0 Building Structure	Engineer		\$
4.0 Building Services Performance Testing Mechanical Services Electrical Services Hydraulic Services Fire Services Lifts and Vertical Transportation Security Technical Efficiency Communication Services	Engineer		\$
5.0 Legal Title Town Planning Service Agreements Insurance Licences General Counsel Site Survey Property Management Agreement Contract of Sale Acquisition Structure Settlement	Legal Consultant		\$
6.0 Accounting and Tax Audit Depreciation Allowances	Accountant Quantity Surveyor		\$

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ACTIONS	RESPONSIBILITY	COMPLETION DATE	ESTIMATED COST
7.0 Stamp Duty	Legal Consultant		\$
8.0 Location Influences	Economic and		
Economic & commercial Overview	Planning Consultant		\$
Traffic Management	Traffic Management Consultant		\$
9.0 Design Influences			
Architectural and Town Planning	Architect & Town Planner		\$
Quantity Surveyor	Quantity Surveyor		\$
10.0 Leases	Legal Consultant		\$
11.0 Contamination - Environmental Audit	Environmental Specialist		\$
12.0 Other Influences			
Documentation	Project Manager Audit		\$
Public Relations Audit	PR Consultant		\$
13.0 Final Approval for Purchase	Executive Level		n/a
14.0 Exchange of Executed Contract	Executive Level		n/a
15.0 Settlement of Contract	Legal Consultant		n/a
16.0 Management Systems	Management Level		n/a

Note: The above list of comprehensive actions is merely a guide, but would be endorsed by Auditors for due diligence examination.

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# ANZRPGN 7 PROPERTY INSURANCE MANAGEMENT

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to assist Members to understand the essential elements of managing insurance programs in relation to existing buildings by broadly outlining issues relating to the insurance environment and risk management.

### 1.2 Status of Guidance Notes

Guidance Notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope

This Guidance Note applies to Members who are called upon to advise clients in matters pertaining to the insurance of their properties and, in some cases, arrange the relevant insurances on their behalf. It deals with the management of risk and protection from risk using Insurance as an important element in achieving these objectives. Specifically, the Guidance Note deals with:

- a general background to insurance;
- aspects of risk management;
- relevant classes of insurance; and
- other relevant matters

### 1.4 Not Technical Advice

This Guidance Note does not seek to provide technical advice on specific valuation issues.

### 1.5 Beyond the Scope

Similarly, issues associated with insurances for new construction or major refurbishment projects are beyond the scope of this Guidance Note. Members will need to be aware of these types of insurance

from other sources.

### 1.6 Consultation

Whilst a guidance note of this nature can address the broad issues, it cannot be definitive and you are, therefore, urged to consult with the insurer, an insurance broker or your legal adviser to discuss any aspects requiring clarification or expansion.

### 1.7 Disclaimer

This paper was produced by the Australian Property Institute to provide general information, in summary form to its Members. The contents do not constitute legal advice and should not be relied on as such. Formal legal/insurance advice should be sought in particular matters.

## 2.0 Preamble

### 2.1 Protect From Risk of Loss

Since the beginning of commerce and trade, humankind has sought to protect itself from the risk of loss, be that loss associated with property (real or personal), life or the ability to provide food and shelter for the individual, family or community.

### 2.2 Convey Risk to Another

The need to convey the risk of loss to another party has seen the development of a number of risk transfer mechanisms, the most notable probably being the concept of insurance.

### 2.3 Insurance is a Contract

Insurance is a contract between two parties where, for a consideration (premium), one party agrees to pay for a stipulated loss suffered by the other party. The payment of the claim simply fulfils the contract

### 2.4 Risk Transfer and Risk Combination

Thus, at the heart of insurance is the principle of both risk transfer and risk combination. Risk combination allows the risk to be spread, usually via an insurance fund, over a very large number of individuals or corporate entities.

### 2.5 Common Pool

The combination of many potential risks into a common pool or fund allows the law of averages of large numbers to operate to the benefit of the unfortunate few who suffer loss.

### 2.6 Statistical Data to Predict

With a large number of homogenous items (be they motor vehicles, lives, units or real property, etc) grouped together, it is possible from statistical data to predict within reasonable limits the number and cost of losses that will occur within the group. With this knowledge premiums can be calculated that are needed to pay the losses and the expenses of operating the fund and to provide an acceptable profit.

### 2.7 Offer Long Term Security

So that the insurance fund is able to offer long term security to its policyholders, premiums must be sufficient to enable it to meet both immediate claims and those that arise well into the future. The fund's long term viability is also dependent upon the level of investment income generated, operating expense levels and the sum of returns paid to investors (be those investors shareholders or owners in a mutual organisation).

### 2.8 Premium Rates

Whilst premium rates are determined by many complex factors, most of which are outside the direct control of the purchasers of the insurance protection, property owners can, however, take some actions that will affect the premium they are required to pay.

### 2.9 Modern Risk Management Practices

Modern risk management practices, careful analysis of the risks to be covered, and the level of the risk that the property owner will retain, are but a few of the factors that will determine the amount of money that will be spent on loss prevention and insurance protection.

### 2.10 Insurance Issues

This paper deals with some of the insurance issues that face Members in their management and development of real property.

## 3.0 General Insurance Environment

### 3.1 Premium Rates Fluctuate

Premium rates available to companies and individuals seeking the protection of insurance fluctuate in accordance with both local and international insurance market conditions, the level of natural and man made disasters (ie. claims), the economic climate and business cycles.

### 3.2 Management of Insurance Programs

The management of insurance programs has thus taken on an increased importance for professionals involved in producing satisfactory returns from property investments.

### 3.3 Amount Spent

With the development during the 1980s of very large property assets which in themselves require insurance cover of many hundreds of millions of dollars, the amount spent on property insurance has become very significant, both in aggregate terms and as a cost of operating property portfolios.

### 3.4 Insurance Necessary

Insurance is necessary because it offers:

- security to lenders and other stakeholders;
- comfort to customers;
- continuing of business operations; and
- safeguards to employees' jobs (ie. financial protection following a loss)

### 3.5 Insurance Costs Controlled

To ensure that insurance costs are controlled, it is important that owners and their asset managers are able to demonstrate to underwriters the qualities of their buildings and management controls they maintain.

### 3.6 Risk Management

This is best done by risk management and 'anticipation of risk, rather than by reaction to loss.'

### 3.7 Control Premiums

If this is observed, it will not only assist all property owners to control their risk but also their premiums.

## **4.0 Risk Management Responsibility of Officers and Directors to Owners**

### **4.1 Some Have a Legal Obligation**

Practising effective risk management procedures is not simply a matter of good management, some people have a legal obligation to their employer.

### **4.2 Legal Responsibility**

The officers and directors of a business have a legal responsibility for the proper management of pure risks. Pure risk is the loss of, or damage to, property or injury or death of persons using the property. It can be accidental or fortuitous, foreseen or unforeseen. They have an overall legal duty and a specific obligation to use care and be diligent in the administration of the affairs of the corporation and in the use and preservation of its assets. Courts have recognised that the failure to effect proper insurance coverage, to pay premiums when due, or to keep coverage in force, may well be the basis for personal liability suits against the officers or directors of a business. The legal standard of performance is that officers and directors must exercise the care that an ordinary prudent person would exercise under similar circumstances.

## **5.0 Risk Management**

### **5.1 Process to Identify and Quantify Exposures**

Risk Management of Real Property is the process through which an organisation can identify and quantify its exposures to loss, access priorities and develop strategies to avoid losses or, if they do occur, deal with them effectively.

### **5.2 Benefits**

The benefits of the Risk Management approach are:

- Prior recognition of Real Risks to an Organisation;
- Optimal Insurance/Self Insurance;
- Increased Management Awareness;
- Effective Reporting Mechanism;
- Helps Avoid or Minimise Losses;
- Reduced Cost of Risk;

- Satisfies Due Diligence Requirements;
- Conforms with Best Practice;
- Facilitates Corporate Governance;
- Increased profits;
- Better Management of resources;
- Improved Productivity.

### **5.3 One Objective**

Risk Management has one objective; i.e. to ensure the economic continuity of the goods and services of an organisation whilst minimising the costs of both expected and unexpected losses. The activities of the Risk Manager are influenced by the Owner's general insurance philosophy which can be summarised:

- Eliminate or reduce as far as practicable the conditions and practices may cause insured or uninsured losses'.

Note:

- outsource non-core functions or inappropriate activities;
- transfer contractual liability of consequences, eg. tenants take public liability risk; insurance and/or indemnity is required of contractors working on site or supplying services or goods;
- imposition of insurance, indemnity and hold harmless conditions in agreement with contractors; and
- when premises are rented risks may be transferred from owners to tenants or from tenants to owners, depending on the lease conditions.
- The extent of elimination or reduction affects insurance costs;
- When risk cannot be eliminated or reduced to workable levels;
- Purchase commercial insurance that will provide indemnity for catastrophic losses;
- Either insure or assume those risks not considered to be of major importance to the operating or financial position of the Owner.

### **5.4 Importance and Complexity**

The risk management function continues to grow in importance and complexity. Management is becoming more cost conscious and more aware

of how sound risk management helps to minimise expenses.

### 5.5 Strategy

For this reason, it is always important to have a risk management strategy which can protect tenants as well as the owner and also assist by demonstrating to insurers that the business is aware of potential exposures and is implementing procedures to ensure such exposures are controlled. This will benefit all parties and lead to more economical insurance premiums.

### 5.6 Identifies & Controls Potential Loss

The risk management process identifies and controls potential loss situations which can affect an organisation's financial security, reputation and viability.

### 5.7 Identify Risks

In order to identify the risks, it is important for the owner of the property to be aware of potential hazards and to implement a control to enable management to always be conscious of changes in tenants and likely hazards.

### 5.8 Procedure

The procedure should include risk identification, risk management and risk control.

### 5.9 Specific Risks – Risk Identification

#### Process Systematically and Continuously Identifies

This is the process by which a business systematically and continuously identifies property, liability and personnel exposures as soon as they emerge. Unless these risks are identified, all potential losses will unconsciously be retained by the company.

#### Most Risks Easily Recognised

Most risks are easily recognised, and would be known within an organisation. These should be identified by either the insurance broker or the ownership entity, after discussions with staff and staff should be given on-going support from Management in the identification of risk. The risks shown below are normal within the property industry, and it is in order to insure against perils such as these that an insurance policy is purchased.

- Fire
- Lightning

- Storm and Tempest
- Water Damage
- Flood (not readily available in flood prone areas)
- Sprinkler Leakage
- Explosion
- Business Interruption (including loss of rent)
- Loss of Machinery/Boilers
- Demolition and removal of debris
- Earthquake
- Impact by Vehicles or aircraft
- Malicious Damage
- Theft
- Accidental Damage
- Legal liability to third parties
- Workers' Compensation (compulsory) called 'WorkCover' in some States
- Motor Vehicle (Third Party injury insurance is compulsory).
- Breach of professional duty
- Liability of directors and offices arising out of a wrongful act
- Consultants fees
- Contract works (principal controlled contractor's liability policy)
- Environmental damage
- Pollution

#### Check List

However, to identify all the potential losses, a check list of all assets of the company should be drafted, and a systematic approach used to discover which of the potential losses provide the most exposure to the company. This is best done internally by the person whose responsibility it is to control insurance, or can be carried out by an independent firm, such as a broker/risk management company. Any independent firm should work in liaison with the firm's internal risk Manager when conducting a risk identification survey.

#### Risk Profile

As each property is unique, both as to its operation, usage, location, construction and cash

flow pattern, it is important that a risk profile be developed for each property, ie. Pro-forma profiles may overlook some feature unique to a particular property.

### Exercise Will Correctly Inform

Although this is a time consuming exercise, it is the only means which will correctly inform the company of the risks/exposures it carries, and will:

- identify exposures which can be insured, therefore the exposure is transferred from the company to an insurer;
- where the exposure cannot be insured, management controls can be implemented which will diminish the risk to the company.

### Risks Prioritised

Risks should be prioritised by analysing both the probable frequency of an occurrence and the impact (ie. severity) on the company. Risks that are assessed as having a high likelihood (ie. frequency), together with a high impact, should be fully insured.

### Excess

The starting point is the excess under the policy. This indicates the level of risk the company can absorb.

## 5.10 Risk Management

### Potential Losses Measured

After the risk has been identified, the potential losses must be measured in order to determine their relative importance.

NB. Replacement/reinstatement costs do not necessarily equal market value.

### Calculated Periodically

Asset values should be calculated periodically by consulting professionals who will assess the dollar value at risk to ensure, at the time of a major loss, the value of both property (ie. physical structures excluding land value) and business interruption is adequately insured. This will ensure that the business does not need to fund part of the loss, which could impact on the viability of the organisation. Extra costs may be incurred if regulatory changes are triggered.

### Quantity Surveyor

A quantity surveyor can be used to establish replacement cost estimates. It is generally

believed studies reveal that a significant number of buildings are underinsured. The impact of averaging insurance [GN 22: 9.5] means that exposure previously thought to be insured is now only partially so.

### Engineering Survey

Specialist risk management engineering surveys can be engaged to identify specific, or peculiar exposures at each location.

### Physical Survey

A physical survey, implemented by both management or a risk management consultant, should include a review of:

- management controls
- fire protection systems
- inspection programs for fire hazards and other exposures
- general housekeeping
- staff training
- environmental risks
- security
- emergency evacuation
- bomb threats

Note: extra costs are referred to later in this Guidance Note.

Loss recording is a vital step in the risk management process. If an organisation does not record all losses, it is unable to take an informed decision to carry a risk, ie. higher deductibles, which can minimise premiums.

## 5.11 Risk Control

### Elimination or Minimisation

The aim of risk control is elimination or minimisation. After risks are identified, practical and cost effective recommendations can be made regarding the physical protection of assets.

### Monitored and Investigated

If all losses are monitored and investigated, the organisation is in a position to take effective measures to either eliminate or reduce recurring losses.

### Familiarity Contributes

The organisation is well placed to effectively contribute to risk control due to their familiarity

with the property.

### Tenancy Supervision

Tenancy supervision is also an aspect of risk control and a procedure should be implemented whereby there is regular liaison with tenants to ensure that their standards, or physical protection and housekeeping, are in line with that provided in common areas.

### Controls Influence Premiums

If these controls are achieved, the risk of losses is minimised, which significantly influences premiums.

## 6.0 Risk Financing, Risk Transfer and Insurance

### 6.1 Total Cost of Risk

The Total Cost of Risk includes such items as:

- Capital expenditure on fire protection and security equipment;
- Upgrades to electrical and mechanical plant;
- Repairs and maintenance;
- Insurance policy excesses or deductibles;
- Risk management consultancy fees;
- Insurance premiums; and
- Associated administration costs

The way in which the Total Cost of Risk is absorbed or otherwise paid for can be referred to as Risk Financing.

### Risk Transfer

Risk Transfer of the operational or financial consequences of an event can be effected in several ways, eg:

#### Lease Agreements

Requirement in Lease Agreements that tenants effect Glass and Public Liability insurance.

Note:

- The amount of the policy excess can be greater than the value of the glass;
- Public Liability insurance will generally be restricted to the tenant's operations unless that tenant is the sole occupant;
- Policies should be in the joint names of the Lessor and Lessee;

- Lessor may effect insurance if Lessee fails to insure;
- Lease documents should reflect Lessor's requirements.

### Service Providers

Contacts with service providers to include insurance, indemnity and hold harmless provisions in favour of the owner.

### Purchase of Insurance

Purchase of insurance, ie. transferring the ultimate risk to an insurance company per medium of effecting an insurance policy or policies.

## 7.0 Types of Insurance

### 7.1 Type of Policy Depends on Value

The types of policy or policies of insurance to be effected will to some extent depend on the value of the property. The criteria as to which insurances are appropriate for a given property vary from insurer to insurer but as a general rule:

- Properties with values less than, say, \$1-2,000,000 and perhaps up to \$5,000,000 will be insured under Business Insurance or similarly titled package policies; and
- Properties with values greater than these amounts will generally be insured under individual policies for each category of risk to be covered.

### 7.2 Business Insurance

Business Insurance policies generally offer a range of cover choices and those most relevant to the insurance of property are likely to be as follows:

- Fire, lightning, explosion and other specified perils to cover physical loss or damage to the property caused by those nominated perils;
- Consequential Loss, i.e. loss of gross rentals and increased costs of work arising as a result of a peril insured by the preceding section;
- Breakdown of electrical and mechanical plant and machinery and consequential losses arising there from; and
- Public Liability, i.e. legal liability in respect of claims by third parties for personal injury or death or damage to property arising out of an occurrence in connection with the ownership or occupancy of the property.

### 7.3 Separate Policies for Higher Value Property

The kind of separate insurance policies likely to be effected in the case of a higher value property are as follows:

- Industrial Special Risks (ISR) which insures 'Physical loss or damage (and consequential losses arising there from) not otherwise excluded' - the ISR policy therefore combines and expands upon the first two elements of the Business Insurance policy as above;
- Breakdown of electrical and mechanical plant and machinery and consequential losses arising there from (which are exclusions under the standard ISR policy); and
- Public Liability, i.e. legal liability in respect of claims by third parties for personal injury or death or damage to property arising out of an occurrence in connection with the ownership or occupancy of the property.

### 7.4 Specific Policies

In addition to industrial special risks (ISR) policies on a full reinstatement basis, other specific policies in relation to property can be adopted to suit specific requirements or specific loss categories. The requirement for these will vary according to individual circumstances. These policies include:

- Insurance of contents;
- Loss of master key insurance;
- Capital works insurance as an addition to conventional contract to cover such works as tenancy fit outs or refurbishments.
- Fidelity Guarantee, i.e. misappropriation of money or goods by employees;
- Credit Insurance, i.e. bad debts following tenant insolvency;
- Key person Insurance;
- Professional Indemnity; and
- Directors and Officers Liability;
- Any other appropriate insurance.

### 7.5 Workers Compensation

The requirement for Workers Compensation insurance differs from State to State and Territory to Territory. Care must be exercised to ensure that, if there are any employees, the appropriate insurance or statutory arrangement is put into place.

## 8.0 Issues to Consider in Choosing Insurance Cover

### 8.1 Assessing a Building's Risk

The main criteria for an insurer when assessing a building's risk is:

- The materials used in the construction of the building.
- Compliance with ordinances. For obvious reasons insurers will not provide competitive quotations where a site does not comply with ordinances as the insurer would postulate that the lack of compliance would increase the risk.
- Fire Protection, eg. sprinklers, are always an advantage, as it assists with minimising the risk for insurers and, hence, results in lower premiums.
- Tenancy of buildings. Insurers will always assess the exposure of tenants and quote accordingly, eg. a mechanic is a higher exposure than a bank - this will be reflected in the premium.
- Building security.
- Neighbouring environment - eg. explosives/chemical plant, bushland, etc.
- Limitation of road access.
- Location of premises (eg. on an existing flood plain).
- Compliance with ordinances eg. asbestos contamination (authorised removal is required following an asbestos audit).

### 8.2 Comments at the Planning Stage

Most major insurance brokers and insurance companies are able to provide comments on building design, fire protection and security. Ideally this should be provided at the planning stages, but later if need be. They will also be able to advise on risk management techniques tailored to the individual property.

### 8.3 Three Basic Functions

A core insurance program as discussed fulfils three basic functions for a property owner/manager:

- Conservation of all assets (Property insurance)

- Preservation of income/profits (Consequential loss)
- Protection against liabilities (Public liability)

Note: The extent to which insurance fulfils these functions is subject to the terms, conditions and exclusions of the policy, e.g.

- generally a liability policy will only cover sudden and accidental pollution;
- asbestos is generally an exclusion unless it is in static form.

### 8.4 Extensions to Policies

Taking the above into consideration, there are some extensions to Business Insurance and ISR policies which should be compulsory to any prudent property owner. These are:

#### Indemnity Period

The indemnity period should be long enough to provide for the following in the event of destruction (e.g. by fire):

- planning
- tendering
- approvals
- construction
- letting

### 8.5 Removal of Debris

Removal of debris. At times, the local council tip will not be able to handle all the debris from a building due to either the content (asbestos) or due to the bulk. This may incur very large charges/costs where the debris may need to be removed by specialists and sent to a processing plant which will accept the waste. Always ensure that the insurance limit will adequately reflect the cost of disposal.

As a rule 10% of the value of the asset would be a minimum but this varies dramatically depending on factors such as the height and construction of the building. (Note: Removal of asbestos has extraordinary cost implications and may involve 50-100% of the value of a building).

### 8.6 Reinstatement and Replacement

Always ensure that the policy provides for reinstatement and replacement conditions - including the ability to rebuild on the site where development controls may have changed.

### 8.7 Extra Costs

The policy should include the extra costs of reinstatement, which is the extra costs incurred to comply with any requirement of any Act of Parliament or Regulation, By-Law or Regulation of any Municipal or other Statutory Authority

### 8.8 Increases in Cost of Working

Increases in the costs of working, which covers any reasonable expenses incurred in order to minimise any long-term effect of a loss on profit/revenue, eg. Overtime wages, the costs of leasing other premises, including fees, advertising and promotional expenses.

### 8.9 Flood Insurance

Flood insurance - to cover damage to property caused by flooding. This may be provided subject to strict underwriting guidelines.

### 8.10 Policy Excess

Most policies will be subject to an excess or deductible, i.e. the amount of each loss which must be met by the insured following a claim.

### 8.11 Excess will Vary

The amount of the excess or deductible will vary from insurer to insurer and the nature of the property being insured.

### 8.12 Can Elect Higher Excess

Property owners can elect to assume higher excess or deductible than that being imposed by the insurer although it is recommended that this only be entertained where the insurer is prepared to offer a substantial premium discount in return.

### 8.13 Policy Exclusion

Policy Exclusions: All insurance policies contain exclusions and it is important that owners/managers familiarise themselves with those exclusions applicable to their own policies.

## 9.0 The importance of Valuations and Insurance Average Clauses

### 9.1 Definitions

In the context of insuring property it is important to be cognisant of the definitions which apply to the various types of policy.

### 9.2 Business Insurance

Business Insurance policies generally require separate sums insured to be specified for:

- Buildings, including architects and professional fees (the term 'Buildings' is understood to include the structure itself together with fixed electrical and mechanical plant, sprinkler and fire alarm systems and landlord's fixtures and fittings).
- Contents - in this regard the insurer should be asked to advise if carpeting and floor coverings, for example, would be considered as part of the building or would require a separate sum insured.
- Computer and electrical equipment.
- Costs of demolition and removal of debris.

### 9.3 ISR Policy Covers

An ISR policy covers 'all real and personal property of every description' under a single declared value for each property. Care should however be taken to ensure that the value declared takes all the above items into account.

#### Land Not Included

The value of land is not to be included in either case.

#### Under-insurance

Business Insurance and ISR Insurance are quite different in the way they deal with under-insurance and, irrespective of which policies operate for a particular property or portfolio, care will need to be taken in assessing the sums insured or limit of liability as applicable. Generally properties are insured for their replacement cost and the following aspects should be taken into account.

#### Sum Insured

The sum insured under Business Insurance is the insurer's limit of liability in the event of loss or damage. It is therefore necessary to project the

sum insured nominated at the commencement of the policy period to cater for inflation and other cost variables during the policy period.

#### ISR Policy

An ISR policy does not contain a sum insured per se but has:

#### Declared Value

Declared Value, ie. the estimated value of the property insured at the commencement of the period of insurance - as well as being relevant to the test of coinsurance or average, this amount is utilised for the purpose of premium calculation; and

#### Limit of Liability

Limit of Liability, ie. the maximum liability of the insurer in the event of loss or damage - this need not and should not be the same as the declared value but should represent what the replacement value of the property would be if, for example, it was totally destroyed on the last day of the period of insurance. (Sub-limits are also generally applied to contingencies such as accidental damage, burglary and demolition/removal of debris costs).

#### Coinsurance or Average

However, both Business Insurance and ISR Insurance contain Coinsurance or Average clauses which permit the insurer to reduce the amount of loss if the:

- Sum Insured at the time of loss or damage in the case of Business Insurance; or
- Declared Value at the commencement of the period of insurance in the case of ISR Insurance.

is less than 100%, 90%, 85% or some other specified percentage depending on the insurer's policy wording and/or the value of property concerned.

#### Example

Assuming that there was a 100% Coinsurance or Average Clause in the policy, the following example demonstrates how under-insurance can reduce the amount of a claim.

$$S \times A = \frac{\text{Claimable Amount}}{P}$$

Where

S = the sum insured or declared value in the policy

A = the amount of the loss

P = the correct value of all property

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In this example

S = \$ 50,000

A = \$100,000

P = \$200,000

$\$50,000 \times \$100,000 = \$ 25,000$  (Claim settlement)  
—————  
\$200,000

This has occurred because, in this example, only 25% of the values were selected as either the sum insured or declared value as applicable. Note that the equation would vary in the case of, for example, a 90% or 85% Coinsurance or Average Clause although the underlying principles are the same.

### Ensuring Fully Insured

The best way of ensuring that a property is fully insured is to have the property valued and the policy figure updated on a regular basis. The valuer should be instructed to prepare the valuation so that the valuation accords precisely with the basis of insurance eg. Reinstatement, replacement and extra costs insurance or indemnity value as applicable and include costs of demolition and removal of debris and professional fees. At the very least, if a professional valuer is not to be utilised, it is recommended that reference publications such as Rawlinsons Australian Construction Handbook or Cordells be consulted.

### Sum Insured or Declared Value for Consequential Loss

It is similarly important to direct considerable attention towards assessment of the sum insured or declared value for Consequential Loss insurance - generally thought of as Loss of Rents insurance in the context of the insurance of property. This insurance is also subject to coinsurance or average provisions.

### Indemnity Basis

It is also possible to seek insurance cover on an indemnity basis being either the market value of the building less the land value or the depreciated value of the property. This can, under certain circumstances, provide greater flexibility in the event of a catastrophic loss but may lead to complications in regard to a partial loss.

### Different Levels of Insurance Within One Complex

It should also be noted that different levels of insurance cover can be taken for structures within one property complex but at different levels of risk,

eg. a factory and its outbuildings on the same site where the factory might be under reinstatement conditions, and the outbuildings insured for their indemnity values.

### Public Liability

Public Liability insurance is subject to a limit of liability for any one occurrence ie. the maximum amount the insurer will pay for all claims arising out of the one event. This means that the limit of liability selected must:

- be sufficient to cover all claims from all claimants arising out of the one occurrence;
- recognise that injuries can take several years to stabilise to the point where some claims can be taken to Court - there can be both inflation and escalation in the amounts of damages awarded in the intervening period; and
- take account of the possibility that at least some of the potential claimants will be juveniles and that claims in respect of such persons cannot be finalised until a juvenile reaches the age of 18.
- The most appropriate limit of liability will be to some extent, influenced by both location and occupancy of the property concerned.

### Contract Waivers Recover Loss Against a Third Party

Contract Waivers: When an insurer has agreed to indemnify a company for a loss, it retains the right to recover its loss against a third party if they caused the loss. If the insured party has contractually waived the insurer's right of recovery against another party, the insurance policy can become null and void. The insured party should ensure that he has neither accepted nor waived liability.

### Hold Harmless

At present there are many contracts that are regularly utilised in the commercial environment that contain 'hold harmless', 'waiver of subrogation' or warranty clauses. These can be found predominantly in maintenance agreements and some lease agreements.

### Negotiate a Wording

Prior to signing or recommending any of these agreements, always refer to either the insurance broker or insurer who will either negotiate a wording which is acceptable to all parties or, if this

is not possible, will endorse the contract on either the property or liability policy.

to ensure that the insurance covers are specifically tailored to individual properties and their risk profile.

## **10.0 Conclusion**

### **Not All Exposures Are Insurable**

Not all exposures are insurable events, eg. wear and tear, damage by vermin.

### **Read Insurance Contract**

It is surprising the number of persons who do not read their insurance contract and/or obtain either legal advice or advice from a professional insurance adviser as this is perhaps the only contract that will ensure the ongoing viability of the business if a major catastrophe occurs. Although an insurance policy can be complex to read, it is important to understand, at the very minimum, the policy exclusions and conditions. If any part of the insurance contract causes concerns to the purchaser, they may be able to negotiate changes to policy conditions and wording. However, this can only be accomplished where the insurance purchaser understands the contract.

### **Very Large Programs**

For very large insurance programs, it may be advisable to recommend that the insurance adviser/broker to meet with the owner, the owner's solicitor and the insurer to design (draft) policy wordings and conditions. It is also reasonably common for a nominated loss assessor acceptable to both the owner and insurer to be agreed, as this can facilitate claims settlement when losses occur.

### **New Products and Changes to Taxation Provisions**

Finally, Members should be aware that as with all market sectors, the insurance industry is subject to continual review and there is the potential for significant change in the future. New insurance products regularly become available, and changes to taxation provisions or other Government regulation can effect the utilisation of insurance.

### **Ensure Insurance Covers are Specifically Tailored**

As indicated, this Guidance Note addresses broad issues, relating to the property insurance environment and risk management. However, just as the property market is not homogeneous and each property has different characteristics, so it is with the insurance market and individual policies of insurance. Thus the professional adviser needs

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# ANZRPNGN 8 PREPARING PROPERTY FOR SALE

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide a general reference to preparing real estate for sale. The Guidance Note addresses the steps taken in preparing property for sale prior to the actual commencement of marketing proper. It covers the period of preparation of the physical state of the property for sale together with any required financial or technical information bought together in a selling document prior to the placement of the property on the open market.

### 1.2 Status of Guidance Notes

Guidance Notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope

This Guidance note is applicable to Members involved with most forms of real estate. However, the practitioner should be aware of particular idiosyncrasies which may apply to specialised property e.g. rural holdings, hospitals, nursing homes and other properties of a specialist nature which these notes do not attempt to address.

### 1.4 Schedule

Provided to the rear of the Guidance Note is a schedule of various types of property and an indication of the more specific information which must be assembled when preparing a particular property use for sale.

### 1.5 Preparation of Property

The preparation of the property as covered by this Guidance Note relates to aspects of both physical appearance and accumulation of information

required to provide the market with an immediate description of the asset it is considering to purchase. The information assimilated for the marketing material should be accurate given the responsibility imposed by Section 52 of the Trade Practices Act and preferably, all information should be verified by the Vendor's written certification of its accuracy. Matters relating to title should be requisitioned from the vendor's solicitor so that appropriate documents can be considered and be available for perusal. These could include title search, zoning certificate and current survey report.

## 2.0 Physical Preparation of the Property

### 2.1 Importance of Physical Presentation

The physical condition or state of presentation of the property is generally speaking, very important in achieving the highest possible price. A positive first impression is essential to maximising value, as the buyer is aware that a well-maintained property will not require maintenance expense in the early period of ownership. Pre disposal planning should be agreed with the Vendor and individually tailored to each property's need.

### 2.2 Areas Requiring Physical Attention

The practitioner should identify areas requiring physical attention, list items of physical deterioration, poor state of repair or areas of untidy appearance and discuss these with the vendor with the objective of rectification.

Issues may include:

- Upgrading the external appearance, which may include cleaning, minor repairs, repainting or landscaping maintenance.
- Attention to obvious maintenance requirements such as water damage, cracking to walls, repairs to roofing or down pipes, estate road resurfacing and numerous other possibilities should be noted for discussion.

### 2.3 Redevelopment Potential

Exceptions however do exist where a property has redevelopment potential and the “run down” condition of the improvements would have little effect on the value of the property with the possible exception to a reduction in price due to cost of demolition or removal. In this instance the buyers focus would be more on the characteristics of the location and land itself rather than the condition of the improvements thereon.

## 3.0 Preparation of the Property’s Financial Details

### 3.1 Soundness of Income

The most critical issue in preparing property for sale where it is an investment is the soundness of the income produced by the property. The length of leases, tenant profile and terms and conditions of the leases, including building outgoings, are all issues of paramount importance to the investor.

### 3.2 Tenancy and Lease Status

In preparing a property for sale the practitioner should review a property’s tenancy and lease status and undertake the following checklist to ensure that the property is presented in its best financial position. Be aware of a potential owner occupier who may be looking for space to occupy in a partially vacant building.

### 3.3 Occupancy Levels

- Fully leased property is the most attractive to the broader investment market. If vacancies exist, and the vendor can allow the time, it would be prudent, in order to maximise the selling price, to delay the sale to lease the property.
- If vacancies exist, the owner should be advised of the chances of re-leasing the premises, expected market rental level, and time frame for re-leasing the property.

### 3.4 Tenancy Security

- Ensure that all leases have been signed, stamped and/or registered, and that a comprehensive set of leases is available for scrutiny by potential buyers.
- Ensure that all personal or bank guarantees have been obtained and copies of each are attached to the leases.

- Provide a resume of the tenant(s) business history, number of outlets and other available information as this will assist in the purchasers acceptance of the security.

### 3.5 Lease Tenures

- If lease terms are about to expire, endeavours should be made to secure either new leases or lease renewals over existing tenancies.
- At the very least enter into correspondence with existing or potential tenants to provide a positive outlook as to the future letting of space which may otherwise appear as potential vacancy.

### 3.6 Re-negotiation of Unsatisfactory Lease Terms

- If there are undesirable lease terms and conditions that detract from the value or saleability of the property, it is desirable in the pre-sale period to re-negotiate lease terms, which are more commercially acceptable. This could relate to outgoings provisions, rent reviews or rental levels, for example.

### 3.7 Preparation of Tenancy Schedule

Cross-reference the tenancy schedule with the lease documentation (if available) to ensure that the tenancy schedule presents an accurate record of the leasing status of the property. The tenancy schedule should include at least the following vital information:

- Description to identify the area leased, eg. Shop number, floor level, suite number etc.
- Lessee’s name, (including trading name).
- Area leased in square metres.
- Gross or net rent per annum (including rate per \$/m<sup>2</sup> pa).
- Lease commencement and expiry dates.
- Lease rent review dates and method of rent review ie market rent review or fixed increase or CPI adjustment.
- Tenant’s proportion of recoverable outgoings.
- Comments in relation to particular items of variation of a tenant’s lease to the standard lease, eg. non recovery of certain outgoings.
- Who owns fit-out and if included in sale.

### **3.8 Other Sources of Income**

Details of other sources of income should be summarised. These could include:

- Carparking
- Naming / signage rights
- Licence agreements
- Telecommunication agreements/licences

### **3.9 Outgoing Schedules**

- These can be provided either in the form of past actual outgoings or budgeted outgoings and preferably a combination of both.
- The outgoings budget should identify each item of outgoings together with the annualised amount of past actual outgoings and future budgeted outgoings.
- Trends can be established and analysed if several previous years' outgoings are obtained.

### **3.10 Arrears Schedule**

- This document will provide the Member with an opportunity to address problem tenants with the vendor to ascertain the impact of arrears on the expected achievable price and/ or a program of back rent collection prior to placing the property on the market for sale.
- Every effort should be made to minimise arrears prior to the property being offered to the market otherwise the poor record of tenant payment could have a negative effect on price and marketability.

### **3.11 Depreciation Allowances**

Purchasers of commercial, retail and industrial properties often require information on both building and plant and equipment, depreciation allowances in order to assess the property's after tax payment earning potential. This is a specialist area requiring input from accountants or quantity surveyors specialising in this subject.

### **3.12 Overseas Purchasers**

This situation will require Foreign Investment Review Board approval in Australia and Overseas Investment Commission in New Zealand.

## **4.0 Marketing Strategy and Budget**

### **4.1 Target Market Determines Marketing Strategy**

The target market determines the marketing strategy. For smaller properties there is a greater reliance on brochure mail out, enquiries from advertising and signboards. The larger properties require greater emphasis on direct presentation of the property to identified prospective purchasers.

### **4.2 Discussion with Vendor**

The marketing strategy requires discussion with the vendor in relation to the recommended marketing campaign / procedure and associated costs.

### **4.3 Marketing Costs**

Depending on the marketing strategy adopted, costs may be incurred in relation to a combination of the following:

- Media production
- Advertising costs
- Website
- E-mail
- Internet
- Brochure / video production and cost of circulation
- Cost of producing a comprehensive information memorandum
- Cost to the preparation and erection of signage.
- Mailing and courier costs
- Photographic costs
- Travel expenses
- Cost of other specialists consultants advice (if required)
- Cost of auction venue (if required)
- Auctioneer's fee (if applicable).

### **4.4 Budget**

The marketing budget for a sales campaign will depend on the marketing strategy recommended. There is no direct correlation of the size of the marketing budget to the property but generally the larger the property's dollar value the greater the marketing budget.

There should be a schedule of the agreed marketing strategy as to which newspapers or chosen modes of advertising were agreed to including the agreed dates, costs and the length of the advertising campaign.

### 5.0 Method of Sale

#### 5.1 Decided in Consultation With Owner

The method of sale is decided in consultation with the owner and is determined as part of the marketing strategy. A recommendation as to the method of sale is based on the following factors:

- Potential competition
- Dollar value of the property
- Target market
- Competing properties
- Timing of sale
- Requirements of the vendor
- Complexity of the property
- Confidentiality requirements of the vendor
- State of the market

#### 5.2 Methods

The method of sale will generally comprise one of the following main methods:

- Private treaty
- Public auction
- Public tender
- Calls for expressions of interest.

#### 5.3 Variations

There are also other methods which may apply e.g. international tender, minimum sealed bid, informal tender and declared minimum price tender. The Member would adopt the most appropriate method of sale having determined market demand and target market.

#### 5.4 Primary Methods

The four primary methods of sale are described hereunder:

#### 5.5 Private Treaty

This method of sale requires an opinion of price. Pricing a property for sale may be unacceptable to

the vendor in a rising or falling market. However, providing a price estimate allows the market to judge the vendor's expectations and determine whether or not the vendor is genuine.

#### 5.6 Flexible

The option of private sale allows flexibility in sale terms and conditions and allows each party the opportunity to negotiate to its best advantage. There is no exclusivity afforded to any purchaser. However, the process may be prolonged if the vendor is unrealistic on price expectation.

#### 5.7 Popular at Lower End of Market

##### Public Auction

This method of sale remains popular at the lower end of the market. It may be less suited to larger investment properties but this will depend on your markets' practices. It is less popular with off shore investors whom may not have the ability to attend or the market knowledge necessary to give confidence to bidding at auction. In all cases, purchasers have already procured finance are required to undertake their enquiries prior to auction and therefore bid unconditionally. The benefit of the auction system is to provide a sales outcome to achieve the maximum price through competitive bidding.

#### 5.8 Outcome within Defined Time

The auction system can provide a sales outcome within a defined time period on sales terms acceptable to the vendor, usually an unconditional contract, with 10% deposit and settlement in 30 to 60 days depending on the common practice adopted in your state.

#### 5.9 Seen as Fairest for Estates and Forced Sales

The system is also seen and recognised by the courts as the fairest method for property disposal, especially for deceased estates and "forced sales".

#### 5.10 Unconditional Disadvantages

However, as mentioned there are potential purchasers that are either uncomfortable with the auction process or are unable to bid under an unconditional contract. They may have the ability to pay a higher price with the opportunity to vary the contract in a minor way. The practitioner's judgement as to target market and level of competition for a property is therefore vital to the successful outcome of an auction.

### 5.11 Confidential Offer

#### Public Tender

The Public Tender process allows purchasers to submit a confidential offer without fear of it being disclosed to competing parties. Offers are in the form of an unconditional contract prepared by the vendor's solicitors and are accompanied by a refundable deposit. Tenders are irrevocable and remain open for acceptance by the vendor for a set period of time. The time period for acceptance is determined having regard to issues like expected level of competition and complexity of the offering. The time frame enables vendors to compare offers, seek clarification or any variations to the terms of an offer, and extract the highest possible purchase price from the marketplace.

### 5.12 Used where Propriety is Paramount

Sale by Public Tender is the formal step beyond Expressions of Interest. It is used in situations where propriety is paramount eg. Government offering property for sale and where the best price is generally accepted on uniform terms and conditions. It is used in the case whereby a property is likely to be keenly sought by a number of purchasers.

### 5.13 An Initial Calling

#### Expressions of Interest

This involves a sale method incorporating an initial calling for Expressions of Interest with suitably qualified parties identified from this initial stage either being subject to direct negotiation following closing of the Expressions of Interest or invited to participate in a further closed bid to determine the most acceptable offer.

### 5.14 Benefits

This method provides the following:

- Greater reliance on due diligence in assessing the property prior to offer.
- National and International market acceptance due to the opportunity to participate in the first stage of the process with limited time and costs associated.
- Flexibility in terms offered can often influence the purchase price. Expressions of Interest allow variations to a standard contract of sale enhancing the prospect of maximisation of price to the vendor.

- Confidentiality of information to the invited bidders.

### 5.15 Two Staged Process

A two staged Expressions of Interest process works as follows:

- The property is offered publicly to the investor market, and interested parties are invited to submit by a nominated date an Expression of Interest form confirming their interest, capability and price range.
- From the Expressions of Interest, suitably qualified parties are selected and invited to submit, on a due date, a formal bid. Final bids would be in the form of a contract.

The highest bidder (having regard to conditions and capability) is then accepted by the vendor and the balance of deposit paid.

## 6.0 Preparation of Disclosure Material

### 6.1 Due Diligence an Integral Part of Preparation

For larger properties in particular, due diligence has become an integral part of an offer to purchase and subject to the outcome of this activity will determine the purchasers preparedness to proceed to an unconditional contract. The due diligence package is now an integral part of the preparatory work for preparing property for sale. If the vendor is unwilling to address this issue before sale, and extended selling period is almost certainly assured.

### 6.2 Extent and Complexity Varies

The extent of material exhibited generally becomes more significant and complicated as the property's value increases. The due diligence information should include all relevant information relating to the property that is likely to impact on the purchaser's decision to proceed to settlement.

### 6.3 Recommended Prior to Marketing

Due Diligence information is often assembled after commencement of Marketing. As this process has gained particular relevance (and could potentially de-rail the transaction) it is recommended that preparation of the due diligence material be undertaken prior to commencement of marketing. The Member then has the opportunity to advise the owner of any adverse issues that could effect

both the potentiality of sale and achievable price. It is important to address these issues prior to sale than them becoming an insurmountable obstacle to settlement. It is better that all detrimental issues are dealt with prior to offering the property for sale.

### 6.4 Due Diligence Items ANZRPNG 6

Following is a list of Due Diligence items that are appropriate for inclusion in a "due diligence package":

- Easement Documentation - copies of easement documents and easement plans identifying the location of any easements on the property, the grantee, and requirements of that easement on the property and the owner.
- Leases - copies of all leases on the property or part thereof.
- Encumbrances - all encumbrances on title should be disclosed and relevant evidence provided.
- Contamination - a contamination report from the relevant State Government Department showing the status of the property. If the status indicates the property is contaminated or likely to be contaminated it is important to undertake further testing to provide a contamination report, including the extent of the contaminants and the cost of clearing the site. It may be necessary to undertake decontamination work (remediation) prior to marketing the property.
- Heritage / Land Use Issues - if a property is subject to a Native Title or Waitangi Tribunal claim, information regarding this land claim must be provided. If the property is listed as having some heritage significance, information relating to this must be identified and provided. It is further advisable to include any local government registration as this could have an impact on future dealings with the property.
- Main Roads / Local Government - Any requirements by either of these authorities for road widening, truncation or dedication must be identified and information provided.
- Flood Information - a flood report from the relevant local authority should be provided showing any history of inundation of a property due to flooding.

- Outgoings - an audited report on previous years' outgoings together with the current year's outgoings budget is important to provide an accurate outgoings estimate.
- General Rates and Land Tax Assessment Notices – it is important to include the most recent notices.
- Depreciation Information – both Building and items subject to Depreciation Allowance should be scheduled to provide the purchaser with knowledge of possible deductions against income for tax purposes.
- Council Compliance Certificate – inclusion of this document confirms absolutely Council's approval of the completed development at the time of construction.
- Approvals - any related approvals to the site for development or other future redevelopment.
- Other Reports - any other property reports that are relevant to the property and are likely to influence the purchaser's interest in the property and / or the sale price. This should include a full copy of building plans, any relevant site or soil reports, building structure reports, services reports, engineers reports, etc.
- Other Issues – refer ANZRPNG 6 Performing Due Diligence for guidance on other issues which may be applicable in certain circumstances.

Obviously the type and size of the property will influence the amount of relevant information. For instance, a residential house is unlikely to have any leases encumbering the property and much of the other information detailed above will probably not be appropriate

## 7.0 Marketing Material and Tools

### 7.1 Budget Determines Extent

The marketing strategy and budget will determine the extent of marketing material but in most cases the marketing tools available to the Member will be a combination of:

- Signage
- Advertising
- Brochure / video presentation

- Property information memorandum
- E-mail
- Internet
- Website

### 7.2 Due Diligence Material

The due diligence material would normally be at an accessible location for inspection by prospective purchasers. This could be the vendor's agent's offices or vendor's solicitor's offices.

### 7.3 Information Memorandum

The information memorandum is the most comprehensive marketing tool and addresses the following aspects of the property: -

- Location
  - Issues to be addressed are: -
- Accurate description of the property's location
- Proximity to public transport and amenities
- Quality of surrounding development including description of surrounding uses.
- Benefits of the location to the particular property eg. a high profile site has a considerable volume of passing traffic, an elevated site has unrestricted views, etc.
- Ease of ingress and egress.
- Photograph

The inclusion of a quality photograph highlighting the key aspects of the property is one of the strongest marketing tools available. The photograph should be digital to allow greater flexibility.

- Title Description

The full legal description should be inserted in the document with a photocopy of the title document if possible. Title description would give details of the lot, registered plan, parish and county together with land area and dimensions. This information provides the purchaser with an accurate identity of the property being acquired.

- Building Description

This description can be brief or comprehensive depending on the nature of the asset being sold. Obviously a detailed description gives the purchaser a better understanding of the asset being acquired. Items for mention include, date of

construction, date of additions or refurbishment, extent of built area, style of architecture, building construction methods, materials and finishes, services and maintenance.

- Land Description

Provides the purchaser with an understanding of the physical nature of the land, street access, services and particular features of the site, whether beneficial or adverse, which enable a full understanding of the nature of the land being acquired.

- Tenancy Information

Of more relevance to an investment property, the tenancy profile information and tenancy schedule give a full break down of tenancy information. Income, Outgoings and Financial Analysis complete the picture for the purchaser.

- Financial Details

Information as described under the heading "Preparation of the Property's Financial Details" would be provided in the information memorandum.

- Property Plans

Inclusion of floor plans and elevational drawings is desirable if available.

- Statutory Information

In addition to the financial information provided on an investment property there is usually the inclusion of council rates and tax information.

- Town Planning/Resource Management

This section of the report would cover such aspects as: -

- Current zoning
- Permitted development
- Status of existing uses
- Alternate consent uses and prohibited uses.
- Details of specific approvals obtained and certifications of any completed development.
- Detail of any external issue that is likely to affect the value of the property eg. land resumption due to road widening.
- Market Commentary

The information memorandum for larger properties, particularly of an investment nature can incorporate information on trends in rental values, property yields, competing property, comparable

sales and economic factors which may affect the future likely returns of the property. This, however, is at the discretion of the agent and client. In any event it is prudent for prospective purchasers to make their own enquiries.

### 8.0 Commencement of Marketing

#### 8.1 Conclusion of Preparation

Prior to the commencement of marketing a due diligence review of all information to become public needs to be conducted to ensure accuracy.

The commencement of marketing which may be confirmed by formally placing the property on the open market, press release, or the appearance of the first advertisement offering the property for sale; signifies the conclusion of the preparation of the property for sale.

##### FOOTNOTE:

These notes have been prepared for general guidance. It is acknowledged that various State Governments have similar but not always identical legislation and consequently the practitioner is required to be aware of relevant legislation and local customs in applying these notes eg many of the items set out under headings such as "Preparation of Financial Details" and "Preparation of Disclosure Material" are covered in Victoria in the Vendor's Statement, prepared by the vendor's solicitor pursuant to Section 32 of the Sale of Land Act. The vendor's solicitor will generally liaise with the vendor and the appropriate authorities in collating the material. Nevertheless the practitioner should be familiar with the above prescription in Preparing Property For Sale and should not deviate from scrutinizing the process to ensure that a comprehensive professional and successful outcome is facilitated.

### SCHEDULE

Property Type	Specific Information Required in Preparing Property for Sale
<i>Commercial</i>	<p>Supply / demand statistics</p> <p>Car parking ratios</p> <p>Lift and air conditioning performance criteria and maintenance details</p> <p>Ceiling heights</p> <p>Ownership of fixtures and fittings</p> <p>Asbestos report</p>
<i>Shopping Centres</i>	<p>Trade area statistics and demographics information</p> <p>Percentage rental and turnover rent history.</p> <p>Door counts and other pedestrian traffic statistics</p> <p>Expansion potential of the existing centre</p> <p>Tenancy mix in regard to attraction to shoppers and a proportional breakdown of anchor tenants, national chain specialty shops and sole traders</p> <p>Accessibility, transport and car-parking interface • Arrears history Industrial</p> <p>Contamination report</p> <p>Transportation infrastructure</p> <p>Onsite heavy vehicle movement and access</p> <p>Height and clear span dimensions</p>
<i>Short Stay Accommodation</i>	<p>Trading history</p> <p>Projected performance</p> <p>Performance guarantees</p> <p>List of FF &amp; E together with ownership and age</p> <p>Related facilities and profit centres, eg. food and beverage, conference and recreational</p> <p>Occupancy levels</p> <p>Average room rates</p> <p>Customer profile</p> <p>Licensing issues</p>

<i>Residential Project Marketing</i>	Demonstration suite Finishes options Furniture and fittings package Body corporate provisions Details of common property
<i>Residential</i>	Street appeal Presentation and physical condition Potential for re-characterisation and/or extension Access to amenities
<i>Development Land</i>	Town planning Services available Indicative feasibility Architectural and other layouts/plans Any approved development material Alternate use studies

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# ANZRPGN 9 PROPERTY DEVELOPMENT MANAGEMENT AND 'TERMS OF APPOINTMENT'

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to provide a checklist for Members engaged in Development Management whilst also providing a pro forma 'Terms of Appointment' for those acting as a consultant to a development project.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope

This Guidance Note applies to Members appointed as Development Manager in the role of the Principal's representative in the development process, including the initial concept, feasibility and design, obtaining approvals, documentation, construction, compliance, co-ordination of leasing and sales campaigns, (or any part or parts of this development process). It should be used in conjunction with other guidance notes and practice standards which are either over-arching or directly applicable to the type of property, purpose or issues involved.

## 2.0 Development Projects

### 2.1 Diverse Range

There is a diverse range of property development projects undertaken. These mainly include:

- Subdivisions

- Housing Estates
- Commercial
- Retail
- Industrial
- Hotels and Resorts
- Infrastructure

These projects may be new, redevelopment, refurbishment, strata, etc.

#### Managed by Highly Trained Professionals

It is important that this development process is managed by highly trained professionals who understand property development and the principles of delivering the right development, in the right location, at the right time.

## 3.0 The Role of the Development Manager

### 3.1 Responsibilities

The Development Manager's responsibilities are mainly in the following areas:

- Manage the process of defining the client's project goals and objectives.
- Acting as the representative and certifier of the Principal in the co-ordination of all professional, technical, administration and other services to be provided.
- Prepare Consultants briefs, analyse proposals, fees submissions and make recommendations.
- Appointment of Consultants on behalf of the Principal.
- Manage the process of achieving the client's stated goals and objectives.
- Carrying out the functions described in the following "Checklist", either directly or through appropriate consultants.

### 3.2 Broader Development Management Role

It is intended this paper be used as a guide to the broader development management role. It is not intended to be used for the purpose of project or construction management and supervision.

## 4.0 Development Consultancy Checklist

### 4.1 List of Duties

The following is a check list of duties for a development project and may involve the appointment of specialist consultants.

#### Project Site Acquisition/Consolidation

- Negotiations with vendors
- Instruction of Solicitors, Valuers, Surveyors, Town Planners, etc
- Pre-purchase investigations
- Contamination Report
- Due diligence [ANZRPNG 6]

#### Preliminary Feasibility Study

- Preliminary Market Research
- Town Planning/Resource Management Criteria
- Design Criteria
- Services (water, sewerage, drainage, etc.)
- Legal (title, easements, etc.)
- Defining Highest and Best Use Options
- Value Management Exercise on options
- Preliminary Financial Analysis and Cash Flow
- Development Management Strategy and Program

#### Concept Design and Planning

- Design Brief
- Global Planning
- Testing Design Options
- Liaison with Authorities
- Initial Dilapidation Report
- Detailed Site Analysis
- Environmental Audits and Impact Statements
- Insurances (Building, Public Risk, Professional Liability, etc.) [ARPGN 1]

- Appointing Development Team\*
- Redefine Client's Goals and Objectives

(\*Architects, Builders, Engineers, Quantity Surveyors, Town Planners, Surveyors, Environmental Scientists, Solicitors, Selling, Leasing and Managing Agents, Valuers, Financiers, etc.)

#### Financial Feasibility

- Financial Analysis
- Sensitivity Analysis
- Competitive Analysis
- Finance Establishment
- Marketing Options
- Project Cash Flow
- Project Time Charts

#### Approvals

- Liaison with Statutory Authorities
- Liaison with Community, Resident Action, etc
- Development/Building Approvals
- Rezoning Applications
- Court Appeals
- Strata and Stratum Title, Dual Occupancy, Community Title, Cluster, Title, etc.
- Land Subdivision Approvals

#### Pre-Construction

- Value Management Assessment
- Liaison with Existing Tenants
- Working Documents/Alternative Procurement Methods
- Appointing Builder/Construction Manager
- Tender Process
- Environmental Controls
- Construction Staging
- Cost Control and Accounting Systems

#### Construction

- Dilapidation Report
- Monitoring Construction/Variations
- Site Meetings
- Construction Finishes
- Cost Control and Budgets

- Recommendation Progress Payments
- Environmental Controls
- Tenant Co-ordination

#### **Fitout**

- Engaging Tenant Coordinator
- Tenancy Negotiations Overview
- Liaison with Occupants
- Appointing Interior Architects/Designers
- Appointing Builder/Fitout Specialist

#### **Completion & Occupation**

- Defects Liability Management
- Handover To Owner
- Certificate of Compliance
- Liability and Retention Bonds/Defect Periods
- Construction Manual(sub-contractors, specifications, etc)

#### **Leasing and Marketing**

- Leasing/Sales Strategy
- Appointment of Leasing/Selling Agents
- Supervision of Marketing Campaigns
- Rents, Terms and Conditions
- Leases Documentation
- Advising on Sale Prices

## **5.0 Development Management Fees**

### **5.1 Percentage Basis**

The most common method of fee is charged on a percentage basis on the total development cost (including land, building, interest, etc.). This usually ranges between 1% - 3% depending upon the complexity and size of the project.

### **5.2 Methods**

The main methods of calculating fees include:

- Percentage Fees
- Hourly Rates
- Fixed Fee
- Maximum Guaranteed Fee in Agreed Scope of Works

- Incentive Fee
- Disbursements
- Default Interest (in the case of not being paid on time by the Principal).

A detailed schedule is set out in the attached Terms of Appointment (see Appendix).

## **6.0 Feasibility Study**

The Development Manager should prepare a feasibility study, time planning program and cash flow including a financial analysis at the beginning of the appointment. This can be used as the basis of the Development Plan and Strategy for the project and be regularly reviewed during the project. All assumptions should be clearly set out.

## **7.0 Meetings**

It is preferable that the Principal and Development Manager meet at least monthly. The Development Manager should arrange and conduct the meeting, the keeping of records and issuing of minutes including responsibility for actions and a client status report.

## **8.0 Consultancies**

The Development Manager can advise and make recommendations to the Principal on the appointment of and terms of agreement with Consultants. The Development Manager's advice should include details of professional indemnity insurance.

## **9.0 Terms of Appointment**

### **9.1 Guide for Appointment**

The attached Terms of Appointment (see Appendix) is provided as a guide for Members and their clients for the appointment in the role as a Development Manager.

### **9.2 Not All Inclusive**

It is not intended to be an all inclusive agreement but a guide for an agreement between a development manager and his/her client.

## **10.0 Caution**

### **10.1 Guide Only**

This paper is intended as a guide only and all parties should seek their own legal advice as to the basis of specific agreements.

**APPENDIX TERMS OF APPOINTMENT OF DEVELOPMENT MANAGEMENT CONSULTANT**

BETWEEN THE DEVELOPMENT MANAGEMENT CONSULTANT:

[Name of Company] ..... ('the Consultant')

ACN .....

[Registered Address] .....

.....

Represented by ..... ("Development Manager and the Consultant's Representative")

AND THE CLIENT:

[Name of Company] ..... ('the Client')

ACN .....

[Registered Address] .....

Represented by ..... ("the Client's Representative")

**1. Date of Issue**

This Memorandum was issued to the Client by the Consultant on

This ..... day of ....., 20 .....

representation, warranty or condition made by either party prior to the date hereof is expressly excluded except as may be required to establish the date of appointment of the Consultant if such appointment occurs separately from or independently of, this document.

**2. Scope and Intention of this Document**

- i. The purpose of this Memorandum is to confirm the appointment of the Consultant by the Client on a retainer to undertake development management work on terms encompassing or exclusively defined by the following terms and conditions.
- ii. The Client may accept or ratify these terms and conditions either by executing this Memorandum or by other actions described in Clause 4 which may have the effect of confirming the appointment of the Consultant on these terms.
- iii. Upon the happening of the events described in Clause 4 and subject to the operation of that Clause, the Client shall be deemed to have accepted the terms and conditions set out in this Memorandum as applying from the starting date which is established under Clause 3 and these terms shall be binding on the parties from that date.
- iv. This Memorandum shall be dated by the Consultant as at the date of issue of the Memorandum to the Client and that date is not necessarily the date of commencement of the terms of this Agreement.
- v. Where acceptance or ratification by the Client of these terms and conditions occurs by execution of this Memorandum or separately in writing, any statement,

- vi. The terms and conditions contained in this Memorandum which are expressed to be essential may not be varied by either party except in writing signed by both parties.

**3. Starting Date**

The terms of this Agreement are effective and operate to govern the appointment of the Consultant by the Client on the earliest of the dates that correctly appear in either a. or b. or c. below :

- a. The parties agree that the Consultant commenced work at the request of the Client on the following date, namely .....  
 .....  
 [insert date that instructions to start were received or that work started, otherwise leave blank]  
 Or: [delete Clause as applicable]
- b. This appointment shall commence on the following date, namely on .....  
 .....  
 [insert date only if agreed in negotiations, otherwise leave blank]
- c. The date after receipt by the Client of this Memorandum upon which the Consultant is

requested by the Client to commence or continue work in respect of the project or property the subject of this Memorandum, whether such request is made with reference to or independently of this document.

#### 4. Acceptance or Ratification by Client

- i. The Client shall have accepted or ratified the terms and conditions as set out herein either:
  - a. Upon execution of this Agreement by the Client whereupon Clause 4.ii below applies; or
  - b. By conduct of the Client amounting to confirmation or acceptance made at any time after receipt by the Client of this document, whereupon Clause 4.iii below applies.
- ii. In further definition of Clause 4.i.a. above, upon execution by the Client, this document sets out conclusively the agreement between the parties.
- iii. In further definition of Clause 4.i.b. above, even if this document is not signed by the Client, where the Client utilises the services of the Consultant concerning the subject project or property without first expressing non-acceptance of the offer implicit in this Memorandum, a Consultancy Agreement will, to the extent that the context and circumstances permit, come into existence between the parties on the terms and conditions as set out in this Memorandum. If the Client excludes some but not all of the terms and conditions set out herein, and the terms and conditions that remain contain an actionable agreement, the offer remains open to acceptance by conduct of the Client on those terms and conditions that remain.

#### 5. Term of Appointment

- i. The term of appointment is for either:
  - a. Such reasonable period as may be required by the Consultant to undertake the work as specified herein and as otherwise requested by the Client.  
  
Or: [delete wording not required]
  - b. The appointment shall terminate either on the happening of the following event or at the expiration of months/years, whichever shall first occur.  
  
Event referred to:
    - ii. In the event of there being any extraordinary delay in implementing the brief for reasons beyond the control of the Consultant, the term of the appointment shall be extended by the period of any such delay. [delete if not applicable]
    - iii. The term of this appointment shall be extended by

any period of delay due to a stand down occurring under Clause 27.

#### 6. Nature of Appointment

- i. The Consultant is engaged as an independent contractor and the relationship of employer and employee is expressly excluded as between the client and the consultant or any person engaged by the consultant including the Development Manager and the Consultant's Representative.
- ii. The Consultant takes complete responsibility for employment and engagement by it of the Development Manager and indemnifies the Client in respect of any claim for remuneration the Development Manager may make against the Client related to or arising from the employment of the Development Manager.

#### 7. Representatives and Authority

- i. The Client is represented by the person whose name appears in Item 3 of Schedule 1 to whom full responsibility for the subject property and the proposed development has been delegated by the Client including the power to provide instructions to the Development Manager and the Consultant and to vary or waive the terms of this Agreement.
- ii. The Consultant is represented by the person whose name appears in Item 2 of Schedule 1 in all aspects relating to the interpretation and implementation of this Agreement and that person is the sole person responsible for any variation, terms, amendment or addendum to this Agreement made on behalf of the Consultant.
- iii. The Consultant appoints the person whose name appears in Item 1 Schedule 1 as Development Manager and makes this person available to undertake all of the development management work on behalf of the Consultant required under this Agreement.
- iv. The Consultant and the Development Manager shall report to and accept directions and supervision at all times from the Client's nominated representative or such other person as may be duly authorised by the Client's nominated representative and or the Client to provide such directions or supervision.
- v. Either:
  - a. The Consultant may substitute another person as Development Manager only with the consent of the Client whose consent shall not be unreasonably withheld.  
  
Or: [delete Clause not applicable]

- b. It is an essential term of this Agreement that the person whose name appears in Item 1 of Schedule 1 shall remain as the Development Manager throughout the life of this Agreement.

**8. Qualifications and Experience**

- i. A resume of the qualifications and experience of the Consultant is attached as Schedule 2.
- ii. A resume of the qualifications and experience of the Development Manager is attached as in Schedule 3.

**9. Subject Property**

- i. The street address of the property which is the subject of this Agreement is: .....  
.....  
.....  
.....  
.....
- ii. The legal or title description of the property the subject of this Agreement is: .....  
.....  
.....  
.....  
.....
- iii. Survey Plan - attached/not attached

**10. General Description of Proposed Development**

- i. Type of Development .....  
.....  
.....
- ii. General Description .....  
.....  
.....  
.....
- iii. Number of Storeys .....  
.....
- iv. Proposed Gross Floor Area (where applicable) .....  
.....
- v. Residential (where applicable)  
1br 2br 3br Other  
No. ....  
Size (m=) .....
- vi. Car parking  
No. spaces ..... No. Enclosed .....  
No. Open .....

- vii. Other Details  
.....  
.....  
.....  
.....  
.....

**11. Development Consent Authorities**

- i. The Consent Authority with power initially to approve the proposed development is: .....  
.....  
.....  
.....
- ii. If the above Authority refuses the proposed development, a right of appeal or review lies with: ..  
.....  
.....
- iii. Other relevant authorities whose consent may be required: .....  
.....  
.....  
.....

**12. Planning Instruments**

- i. a. The relevant planning instruments controlling the development potential of the subject property are: ...  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
Or: [delete wording not required]
- b. The relevant planning instruments as disclosed in the attached Certificate issued by the relevant Consent Authority. [Section 149 in NSW]
- ii. Other relevant planning policies or controls: .....  
.....  
.....  
.....

**13. Development Brief**

- i. The Client's objectives in relation to the design and implementation of the proposed development are referred to as "the Brief".
- ii. The Client and the Consultant undertake to the

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extent that each is able, to ensure that the Brief specifies:

- a. The expected or agreed time frame for the happening of critical events;
  - b. The scope of works to be undertaken by the Consultant including any foreseeable additional work due to possible contingencies; and
  - c. Any other essential or agreed assumptions.
- iii. The Brief as it stands as at the date hereof is set out in Schedule 4.
- iv. If Schedule 4 is blank at the date hereof:
- a. The Brief may be inferred from all relevant matters communicated between the parties prior to the date hereof, whether orally or in writing, or both.
  - b. The Client may require that the Consultant prepare the Brief and any document prepared by the Consultant which gives effect to this instruction, becomes the initial Brief.
- v. The Client may vary the Brief at any time provided that:
- a. Any such variation is given to the Consultant in writing; and
  - b. If the variation involves a material or substantial change in either the time frame, scope of works or agreed assumptions, the parties undertake to review the fees payable under Clause 17 and to try to reach an agreement to adjust these amounts to figures that are considered appropriate under these circumstances to be in keeping with any increase or decrease in the scope or complexity of the task. In the event of failure to agree upon any such adjustment, or in the case of arbitration of this issue under Clause 29 where a party does not accept the determination which is made, either party shall be entitled to terminate this Agreement whereupon Clause 28 shall apply.
- vi. The Client undertakes, as far as is possible to provide advance warning of changes to the Brief and to discuss with the Development Manager the implications and effects of any such change including the expectations of the Client in relation to any review of the fees payable under Clause 17.

### 14. General Nature of Work to be Undertaken

The work to be undertaken by the Consultant comprises:

- i. Provide the Client with advice that may reasonably assist the Client to make management and investment decisions directed towards maximising the asset value

of the subject property and or maximising the profits of the Client from the subject property.

- ii. In the case of new development schemes or variation of existing schemes:  
Use its professional skill and expertise to attempt to obtain approval where appropriate from the relevant Consent Authority for a development scheme or schemes for the subject property which:
  - a. Maximises the development potential of the site.  
And or  
Maximises the residual land value of the site when analysed using a Feasibility Study based on reasonable assumptions.
  - b. Takes account of relevant market factors.
  - c. Takes account of the physical capability and constrains of the site.
  - d. Takes account of planning and development controls.
  - e. Complies with the Brief issued by the Client.
  - f. Follows the express instruction of the Client ("standing instructions") whether in variation of the Brief or otherwise.
  - g. To the extent that the Brief issued by the Client or the standing instructions of the Client compromise or conflict with the objectives stated in a. to d. above, the Brief or the instructions shall prevail.
- iii. In the case of construction:
  - a. To ensure the production of detailed working documents and specifications.  
[insert own details]
- iv. In the case of disposal:  
[insert own details]
- v. In the case of detailed costings being required:  
[insert own details]
- vi. In the case of a market study being required:  
[insert own details]
- vii. In the case of feasibility studies being required:  
[insert own details]
- viii. Other  
[insert own details]

### 15. Specific or Special Duties

Specific or Special duties are as set out in Schedule 5 hereto.

**16. Standing Instructions**

- i. The Client may issue instructions from time to time relating to the carrying out of this consultancy which must be followed by the Consultant except where any such instruction is inconsistent with this Agreement.
- ii. Such instructions shall be referred to as the "Standing Instructions". These instructions shall be recorded by the Development Manager when and as issued and shall be maintained in a register of all such instructions.

**17. Fees and Disbursements Payable**

- i. The Development Manager shall be entitled to a fee for those services as follows:
  - a. Percentage Fee (based on the total cost of the development including land, building interest, OR percentage of Gross sales) ..... %  
This is payable in equal monthly instalments estimated to be \$ ..... pcm  
(Payments may also be paid on a staged basis if specified)  
OR
  - b. Rates per Hour:
 

Executive Director	\$ ..... per hour
Development Manager	\$ ..... per hour
Assistant Development Manager	\$ ..... per hour
Other	\$ ..... per hour

 OR
  - c. Fixed Fee \$ .....
  - d. Incentive

The Development Manager may be paid lump sum payments upon achieving certain objectives (e.g Re-zoning, Development Approval, Practical Completion, etc).

- e. Fee Upon Termination  
In the event of termination by the Client under Clause 28 or upon the ruling of an Arbitrator under Clause 29, the Consultant shall be paid a termination fee as specified in Clause 28.
- f. Disbursements  
The Consultant will be reimbursed by the Client for:
  - Telephone and fax expenses including mobile telephone expenses incurred during business hours and at other times if for work related purposes.

- Travelling expenses including fuel expenses incurred in the use of a motor vehicle during business hours and for work related purposes.
- Accommodation where reasonably required or where the project is more than 50 kilometres from the office of the Consultant.
- Photographs, plan printing and document production costs.
- Such other disbursements as may be approved by the Client from time to time.
- Such other disbursement costs as specified below.  
\$ .....
- ii. In the event that the scope or complexity of the brief increases, the Consultant shall:
  - a. Undertake any additional work that may be required at the hourly rates specified in Clause 17.i.b.  
OR
  - b. Give notice to the Client that in lieu of a. above, any additional work shall be undertaken only if the Client agrees to increase the amounts or rates payable under 17.i.a., c. or d. (as may be applicable) in proportion to any such increase in scope or complexity.
- iii. Nothing in Clause 17.ii. shall limit the rights of either party to re-negotiate the fees payable in the event of a material or substantial change in the Brief as set out in Clause 13.v.b.
- iv. The rates set out in Clause 17.i.b shall be increased annually in line with any annual increase in inflation during the year immediately before the relevant date, as published by the Australian Bureau of Statistics in the CPI or such other appropriate indice.

**18. Standard of Conduct**

- i. The Development Manager and the Consultant shall at all times exercise proper or reasonable care in the performance of the duties under this Agreement.
- ii. Work undertaken under this Agreement must always be of a good professional standard.
- iii. The Consultant shall use its best endeavours to perform this Agreement and either:
  - a. The Consultant will try at all times to elicit or promote the best possible outcome for the Client but does not warrant to obtain any particular result.  
Or: [delete Clause not applicable]
  - b. The Consultant warrants that it will procure or achieve the following result by the date specified.

Result Warranted .....

Result Date By: .....

- iv. The loss claimable against the Consultant for failure to procure or achieve the above result by the date specified shall not exceed the total remuneration payable under this Agreement.

**19. Duty to Report**

- i. The Development Manager representing the Consultant will report to the Client on a regular basis and otherwise as may reasonably be requested by the Client.
- ii. The Development Manager and where applicable the Consultant shall seek the directions of the Client on a regular basis and at any time where by the standard of prudent management, it would be appropriate to seek such direction on any relevant issue including but not limited to issues such as the conduct of negotiations for development or building approval, any change in design, change in materials or specifications or documentation, problems arising during contract negotiations or administration, matters affecting construction progress, weather or industrial delays, supply logistics, variations, quality problems, budget changes, cash flow, marketing and leasing and tenancy co-ordination.

**20. Duty Not to Bind Client**

Neither the Development Manager nor the Consultant shall bind the Client to any legal or commercial obligation nor sever or vary any Contract involving or affecting the Client without the express authority of the Client.

**21. Duty to Communicate**

- i. The Development Manager shall keep the Client fully informed of all significant events affecting or concerning the development when and as the Development Manager becomes aware of such events.
  - (a) The Client shall be entitled to communicate with the Development Manager between 7 am and 9 pm on weekdays and 9 am and 5 pm on weekends and holidays.
  - (b) The Development Manager will be available for communication with the Client whenever it is reasonable and practicable to do so between the hours referred to in sub-paragraph (a) of this sub-clause.
- ii. The Development Manager shall promptly suggest in writing to the Client such variations to the Brief or to any standing instructions applicable to the

development as the Development Manager considers from time to time may be desirable or necessary.

**22. Duty to Control and Direct Others**

- i. The Development Manager representing the Consultant is required to direct and have the care and control of other Consultants involved in the development as directed by the Client.
- ii. Except to the extent otherwise agreed between the parties, the Consultant is not responsible for the appointment of any other consultant or for the payment thereof or for any delay or error occasioned by any such consultant, these matters being the sole responsibility of the Client.

**23. Normal Work Load**

The Development Manager shall be available to work on the tasks required or envisaged by this Agreement as follows:

- i. The Development Manager shall undertake work in performance of this Agreement at such times and for such periods as the Consultant considers as may be reasonably required to complete this Agreement.
- ii. The Development Manager shall during the period of this Agreement, work either:
  - a. A minimum of hours per week.Or: [delete where applicable]
- b. An average not less than hours per week.
- iii. The Development Manager shall be available at any time reasonably required by the Client.

**24. Holidays and Leave**

The Development Manager may be absent from active duties on the following occasions and at such time the Consultant shall not be liable to make a replacement person available:

- i. The Development Manager shall be entitled to be absent for the purpose of holidays to a maximum of four (4) weeks per annum to be taken at such times agreed between the Client and the Consultant.
- ii. The Development Manager shall be entitled to be absent from duties on all public holidays so designated in this State.
- iii. The Development Manager shall be entitled to be absent from duty whilst on sick leave for any continuous period not exceeding 10 working days provided that the Consultant must advise the Client of such absence and produce to the Client a Medical Certificate upon request. In the event of sickness exceeding 10 working days, the Consultant shall

make an alternative person of comparable skill available in place of the Development Manager unless exempted from this requirement by the Client.

**25. Health and Medical Condition**

- i. A condition of appointment is that the Development Manager is of good health sufficient to fulfil all reasonable duties.
- ii. The Development Manager must submit to any independent medical examination as may reasonably be required by the Client.

**26. Other Employment or Business**

- i. The Development Manager shall not engage in any other employment or business activity during the continuance of the appointment without the prior approval in writing of the Client whose approval may be given or withdrawn at any time without reasons given.
- ii. The Consultant and Development Manager may during the period of this Agreement take instructions from any other client and be involved in any other development project except where there may be any possible conflict of interest with this Agreement.
- iii. In any event, the Consultant and or the Development Manager must disclose to the Client all other Consultancy appointments relating to projects or properties the undertaking of which that may reasonably be expected to have some bearing on the performance by the Consultant under this Agreement:
  - a. Forthwith, if that other consultancy is current.
  - b. Hereafter, prior to entering any other such consultancy.
  - c. At any time whenever a possible conflict of interest comes to the attention of the Consultant and or the Development Manager.

**27. Stand-Downs**

- i. The Client may suspend this Agreement at any time that the Development Manager cannot usefully be employed because of any strike, mishap, closure of business or stoppage of work or for any other cause for which the Client cannot reasonably be held responsible. This does not break the continuity of this appointment for the purpose of entitlements.
- ii. Upon recommencement following any stand down under this Clause, the Consultant shall be entitled to a reasonable allowance for start up costs payable on an hourly rate (in addition to the amounts to which the Consultant is otherwise entitled under Clause 17).

**28. Termination**

- i. This Consultancy may be terminated by either party for any reason by serving on the other party Notice of Termination in accordance with this clause.
- ii. A Notice of Termination shall specify the date on which this Consultancy is to terminate and the reason if any for such termination, and must be served on the other party personally or by registered mail at the last known or published address of that party.
- iii. In the event of termination by the Client without there having been any Default by the Consultant of a fundamental term of this Agreement:
  - a. If the basis of remuneration includes payment under Clause 17.i.b. (hourly rates), upon termination without default by the Consultant the Client shall pay to the Consultant \$
  - b. If the basis of remuneration includes payment under Clause 17.i.a. or c. (percentage fee or fixed fee), upon termination without default by the Consultant the Client shall pay to the Consultant \$
  - c. If the basis of remuneration includes payment under Clause 17.i.e. (incentive), upon termination without default by the Consultant the Client shall pay to the Consultant \$
  - d. Paragraphs a, b and c above operate independently and any amounts payable thereunder are payable cumulatively.
- iv. In the event of termination by the Client following a default by the Consultant of a fundamental term of this Agreement:
  - a. If the basis of remuneration includes payment under clause 17.i.b. (hourly rates), upon termination the Client shall pay to the Consultant notwithstanding any default, any amount due up until the termination takes effect.
  - b. (1) If the basis of remuneration includes payment under Clause 17.i.a. (percentage fee) or 17.i.b. (fixed fee), upon termination the Client shall pay to the Consultant notwithstanding any default, reasonable remuneration in respect of the work performed up to the date of termination.
  - (2) The amount of such reasonable remuneration shall be agreed between the parties or, failing such agreement, shall be determined by an arbitrator appointed by the parties or failing agreement by the parties, by the President of the API at the request of either party.

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- (3) In determining the amount of such reasonable remuneration, the parties or the arbitrator as the case may be, shall have regard only to:
- a) The totality of the work required to be performed under this Agreement by the Consultant.
  - b) The percentage of that total work which has been completed by the Consultant.
  - c) Any additional work performed by the Consultant.
  - d) The quality and competence of the work performed by the Consultant.
  - e) The time spent on the work performed by the Consultant.
  - f) The level of remuneration to the Consultant under this Agreement.
  - g) Any other amounts payable to the Consultant pursuant to this Agreement.
  - h) Any other relevant factors including (but not limited to) the difficulty and complexity of the assignment; the value if any added to the profitability or asset value of the Client as a consequence of the work of the Consultant and the nature of the default by the Consultant.
- (4) The Client shall be immediately entitled to payment of incidental expenses incurred in appointing another Consultant to complete the work.
- (5) Other than as provided in Clause b(4) hereof, the Consultant shall not be liable for any loss or damage suffered by the Client as a result of the breach or the termination, whether directly or indirectly and the Client hereby agrees to indemnify and keep indemnified the Consultant in respect of any claim for such loss or damage.
- v. In the event of termination by the Consultant the Client shall pay the Consultant forthwith such amounts under Clause 17.i.b. (hourly rates) and 17.i.f. (disbursements) as may be due to the Consultant. Where termination by the Consultant follows a change in the Brief and failure by the parties to agree on adjusted fees as described in Clause 13.v.b., the Client shall also pay the Consultant the amounts specified in Clause 28.iii.a., b., c. & d.
- vi. Notwithstanding any other provision, this Consultancy may be terminated summarily by the Client for reasons of dishonesty, gross incompetence or neglect of duty, proven criminality involving minors, violence and or dishonesty of the Consultant or the Development Manager, effective upon receipt by the Consultant of a Notice of Termination given under this Clause that states the reason which reason is true.

### 29. Dispute Resolution

If any dispute or grievance concerning this appointment arises, it must be dealt with in the following manner:

- i. A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- ii. The matter in dispute specified in the notice must be discussed between the nominated representatives of the parties in an attempt firstly to settle the matter.
- iii. If the matter is not resolved within seven (7) days or within such further period as the parties may agree, the dispute or grievance must be submitted for mediation by a Mediator appointed by the parties or failing agreement for such appointment, a Mediator appointed by the President of the Australian Property Institute (API);
- iv. The mediation shall be conducted in accordance with Mediation Guidelines published by the Australian Commercial Disputes Centre Limited (ACDC) or its successor excluding those guidelines dealing with selection of the Mediator;
- v. If after mediation the dispute has not been settled, the dispute shall be submitted to arbitration conducted in accordance with the ACDC's Arbitration Guidelines the terms of which are deemed to be incorporated into this Agreement;
- vi. The parties agree to submit the dispute to arbitration and, if so agreed, to abide by the rules of arbitration administered by the ACDC and will accept any determination made by arbitration subject to any right of appeal on a matter of procedure or law that may be available except if Clause 13.v.b applies in which case either party may refuse to accept the outcome of arbitration;
- vii. Until the matter is determined by mediation or arbitration, or until this Agreement is terminated, the work required under this Agreement must continue at the direction of the Client; and
- viii. The parties must co-operate to ensure that these procedures are carried out expeditiously.

### 30. Confidentiality

- i. The parties must not divulge or use, either for their own benefit or that of others, any confidential information acquired during this appointment. Confidential information refers to any information (written or oral) which is not publicly available and this obligation extends beyond the date the Consultant ceases work for the Client under this Agreement.

- ii. The Consultant must not communicate information of any kind relating to the Client, the Board of Directors, shareholders, Managing Director or General Manager of the Client to staff of the Consultant or to persons outside the Client except as is necessary for the business and objectives of the Client.
- iii. The Development Manager shall not engage in discussions nor communicate with any Member of staff or contractor of the Client concerning the terms of this Agreement or specific details of the work being undertaken pursuant to this Agreement.

**31. Copyright**

- i. All plans, reports, drawing, printed and handwritten documents produced by the Consultant relating to the proposed development shall remain the property of the Client except where otherwise agreed by the Client (e.g Architect’s copyright).
- ii. The Consultant shall be entitled to retain a copy of all such plans, drawings, reports and the like for its own records.
- iii. Copyright in all plans, drawings, reports, documents and the like is vested in the Client subject to such other rights that may exist.
- iv. Copyright in any method or system devised by or owned by the Consultant including any software program, worksheet or spreadsheet shall remain vested in the Consultant.

**32. Notices**

Notices other than notices of termination may be served by either parties by fax subject to machine printed proof of transmission being retained by the sender and being produced on request to the receiver. Notice of termination must be served personally or by mail at the last known or published address of the other party.

**33. Guarantee**

- i. The performance of the obligations of the Client are guaranteed by the following natural person:  
..... (“the Guarantor”)
- ii. The Guarantor unconditionally guarantees the due and punctual performance, any obligation of the Client to pay moneys to the Consultant which are payable.
- iii. This guarantee is a fundamental term of the appointment.
- iv. This guarantee is:
  - a. A principal obligation and is not ancillary or collateral to any other right or obligation.

- b. To be enforced against the Guarantor with/without the Consultant first exhausting any remedy it may have against the Client.
- c. Is a continuing guarantee for all moneys payable as and when the same ought to be paid and for the due and punctual performance by the Client of its financial obligations to the Consultant.
- d. Is irrevocable and will remain in full force and effect until the Consultant has received all moneys due and payable to it by the Client.

**34. Essential Terms**

The following clauses of this document and the annexes thereto are essential terms of this Agreement;

- i. Those clauses expressed to be essential terms.
- ii. Clauses 2, 3, 4, 5, 7.I., 17, 18, 20, 28, 29, 30, 32, 33, 34
- iii. The following clauses;

[Insert Clause No. of any other essential term]

.....

**35. Some Agreed Terminology**

In the interpretation of this document except to the extent the same is excluded or contrary to the construction or intended meaning taken in its context:

- i. This Memorandum shall be referred to as “The Consultancy Agreement” which is further abbreviated in this document as “the Agreement” or “this Agreement”.
- ii. The natural person whose name appears in Item 1 of Schedule 1 shall be referred to as “the Development Manager”.
- iii. Any reference to “the Consultant” is a reference to the Development Management Consultant.
- iv. Any reference to a duty or obligation of the Development Manager is also a reference to the duty or obligation of the Consultant and vice-a-versa.
- v. The Client and the Development Management Consultant may be referred to as “the parties”.
- vi. Any reference to a “person” means a natural person.
- vii. Any reference to “mediation” is a reference to a private negotiation between the parties before an independent third party (the Mediator) as further described in Schedule 6.
- viii. ‘Extraordinary delay’ means delay which is not expected by the parties at the date of this Agreement

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or is outside any time frame for the happening of events agreed between the parties but excludes any delay that does not impact on the critical time path as expected by or as has been agreed between the parties.

### OFFER & ACKNOWLEDGMENT BY CONSULTANT

I offer the appointment on the terms and conditions set out above and acknowledge that I agree to be bound by these:

Signed: .....

Name Printed: .....

Date: .....

Address for Notices: .....

### ACCEPTANCE & ACKNOWLEDGMENT BY CLIENT

I accept the appointment on the terms and conditions set out above:

Signed: .....

Name Printed:.....

Date: .....

Address for Notices:.....

### ACKNOWLEDGMENT & ACCEPTANCE BY GUARANTOR

I guarantee the performance of the Client under this Agreement.

Signed: .....

Name Printed:.....

Date: .....

Address for Notices:.....

### NOTE: SCHEDULES TO BE ATTACHED

Schedule 1	Nominated Representatives
Item 1 -	The Development Manager
Item 2 -	The Development Management Consultant's Representative
Item 3 -	Client's Representative
Schedule 2	Curriculum Vitaé of Development Management Consultant
Schedule 3	Curriculum Vitaé of Development Manager
Schedule 4	Development Brief
Schedule 5	Specific Duties
Schedule 6	Mediation (attached)

### SCHEDULE 6 – MEDIATION

- Mediation is a private negotiation between the parties before an independent third party (the Mediator). It is not open to any other party.
- The Mediator's role is to manage the communication process and assist the parties to resolve the dispute.
- A mediation is generally an informal process.
- The Mediator opens the hearing and invites the person who has requested help to present an outline of the facts. The other party will then be asked to respond.
- Either party may present a proposal to resolve the issues at any time during the mediation.
- The Mediator has no legal jurisdiction to issue orders or give directions. His role is to assist the parties to reach an agreement.
- Following negotiations an agreement may be reached or alternatively the parties may seek an adjournment to consider matter raised in the mediation.
- If agreement is reached during a mediation, a Mediation Agreement should be signed by both parties and the Mediator. The Mediation Agreement is then binding on both parties.
- The cost of the mediation, and sometime the meeting place should be shared equally by the parties.
- In some cases mediation may be unsuccessful. Should this occur, the Mediator will certify that the mediation has failed and if one or both parties requires, the matter may be referred to the Australian Commercial Disputes Centre Limited for a determination by arbitration.
- To the extent that any of the matters set out above are contrary to or inconsistent with the Mediation Guidelines from time to time of the Australian Commercial Disputes Centre Limited ACN 003 042 840 or its successor ("the ACDC"), the ACDC Mediation Guidelines shall prevail.

# ANZRPNGN 10 LEASING AGENT SERVICES

## 1.0 Introduction

### 1.1 Purpose

Members providing Leasing Agent Services must do so to the standard of professionalism and skill required and consistent with membership of the Institute and with compliance to law

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

This Guidance Note applies to Institute Members providing Leasing Agent Services to Clients. It must be used in conjunction with other practice standards and guidance notes that are either over-arching or directly applicable to the type of property, purpose or issues involved.

### 1.4 Client

In all cases, 'client' shall mean building owner, landlord, lessee or their appointed representative.

## 2.0 Professional Conduct

### 2.1 Standards of a Technical Nature

Members shall abide by any principles or standards of professional conduct of a technical nature laid down in the By-Laws of the Institute's Constitution.

### 2.2 Code of Ethics

Members must at all times conduct themselves in accordance with the standards set out in the Institute's Code of Ethics.

### 2.3 Legislation

Members shall act in accordance with relevant legislation.

## 3.0 Client Relationship

### 3.1 Clients Instructions and Best Interests

Members shall at all times act in the best interests of the client and in accordance with the client's instructions.

### 3.2 Confirm Instructions in Writing

Upon appointment to act for the client, the Member shall immediately confirm in writing to the client the basis of the appointment, the scope of services the Member will provide to the client, and the basis of the fee structure for those services unless covered under a previous agreement.

### 3.3 Frequent and Regular Communication

The Member shall on a frequent and regular basis, or as agreed between Member and client, communicate to the client the progress being made in respect of the instructions issued to the Member.

### 3.4 Act Promptly and Efficiently

The Member shall at all times act promptly and efficiently in the servicing of the clients instructions.

### 3.5 Notice of Illegal or Unethical Concerns

If receiving an instruction from the client, which the Member believes to be illegal or unethical, the Member shall communicate such concerns to the client in writing as soon as possible.

## 4.0 Leasing Agency Appointments

### 4.1 Claim to Act

No Member shall claim to act for a client unless appointed in writing to do so.

### 4.2 Methods of Acting

The Member, when accepting an appointment to act as Leasing Agent for the client shall act generally by one of the following methods:

- Sole agency or exclusive agency appointment
- Co-ordinating or Joint Agency
- General or open agency appointment

### 4.3 Act for Tenant

Where the Member is appointed to act for a tenant, their client shall be deemed to be the tenant and the Member shall not seek a fee from anyone other than the tenant, and shall disclose to all parties that they act for the tenant.

### 4.4 Not Claim to Act Unless Appointed

No Member shall claim to act for a tenant unless appointed in writing to do so.

### 4.5 Not Contact Client of Sole Agent

No Member shall directly contact the client of another agent where that agent has been appointed to act on the basis of either a sole or exclusive or a co-ordinating agency (unless they are also the joint coordinating agent) or have unequivocal consent from the appointed agent to do so.

### 4.6 Not Undermine Another Member

No Member shall seek to undermine the reputation or the ability of another Member.

### 4.7 Not Claim Agency Where None Exists

No Member shall claim to have an agency appointment in the knowledge that no such appointment exists.

### 4.8 Conflict of Interest

The Member must disclose to their client any actual or potential conflict of interest that may arise as a result of their appointment.

## 5.0 Leasing Agency Practice

### 5.1 Seeking to Nominate a Tenant

Any Member seeking to nominate a tenant for a property shall do so to the appointed agent unless the property is available by way of an 'open' or 'general' agency and then the nomination shall be to the client.

### 5.2 Accepting Nominations

Members as sole or coordinating agents may accept nominations from outside agents at their

discretion, but generally shall accept nominations of tenants with whom they have had no prior contact.

### 5.3 Written Nominations

Members shall effect all nominations in writing. Upon receipt of written nomination from an Introducing Agent, Members shall immediately confirm acceptance to Introducing Agent in writing.

### 5.4 Nominations from Agents Exercising Control

In general, Members shall accept nominations only from those agents that can demonstrate, or exercise control over the nominated tenant, by way of a physical inspection of the property.

### 5.5 Joint Coordinating Agent

Where appointed as a joint coordinating agent, the Member will confer with their joint agent prior to accepting any nominations from outside agents.

### 5.6 Tenant Introductions

Where a Member has introduced a tenant to one or more properties by way of nominations or direct introduction, and is not appointed to act for the tenant, that Member must act in the best interest of the lessor and must not advise the tenant or proffer any advice that may be contrary to the lessor's best financial or other interests.

### 5.7 Fee Structure

When nominating or accepting nominations, Members shall confirm the basis of the fee structure applicable for the nomination if successful.

### 5.8 Consent for Inspection

No Member shall inspect a property with a tenant without the consent of the client or the appointed agent.

### 5.9 Commercial Viability of Prospective Lessees

Where a Member has reasonable grounds for questioning the solvency or commercial viability of any party introduced as a prospective lessee of the property, the client should be so advised.

## **6.0 Marketing**

### **6.1 'For Lease' or Other Marketing Board**

No Member shall place a 'For Lease' or other marketing board on a property without client consent, or where another agent has been appointed as sole or co-ordinating agent.

### **6.2 Not Advertise Lease Without Consent**

No Member shall advertise a property as being for lease without client consent.

### **6.3 No Inspection Without Prior Consent**

No member shall conduct an inspection of a tenancy without the prior consent of the tenant in occupation.

### **6.4 Property Information**

Members shall present property information on the basis of fact and not on assumption and shall endeavour to provide full details of the premises to be leased and the lease terms.

### **6.5 Confidentiality**

In spite of the absence of any specific confidentiality provision within the Agency Agreement, a Member shall not issue any press release without the client's written agreement. Any agreement so granted is a specific agreement to the form of words or content that has been submitted to the client for approval.

## **7.0 Other**

### **7.1 Pay Fees Promptly**

Members shall pay fees to nominating agents promptly following payment of their own fees by the client.

### **7.2 Fee on Basis of Written Agreement**

Members must base their fees on the basis of the written agreement with their client and must not seek to knowingly overcharge or take false profits.

### **7.3 Account to Co-ordinating Agent**

When acting as the nominating agent, unless instructed otherwise by the sole or co-ordinating agent, Members must account to the sole or co-ordinating agents for their fees and not to the client direct.

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