PLATINUM
ACCELERATOR











MODULES
6-9

PLATINUM
ACCELERATOR

MODULES
6-9

TABLE OF CONTENTS

MODULE 6: FEASIBILITY & REVERSE FEASIBILITY

MODULE 7: CONTRACTS & DUE DILIGENCE

MODULE 8: FINANCE & JOINT VENTURES
APPENDIX 1: JV CHECKLIST
APPENDIX 2: GST PROPERTY & MARGIN LENDING SCHEME

MODULE 9: PURCHASE & SALES STRATEGY
APPENDIX 3: BODY LANGUAGE TABLES

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

Terms of Coaching Agreement and Disclaimer

The Success Accelerator Mastermind is a service that provides personal coaching to individuals and groups. The client is aware that coaching is in no way to be construed or substituted as “personal advice”.

Whilst coaches will at all times exercise their best professional efforts, skills and care of ensuring the client is coached to meet their real estate and investment goals, the client understands and acknowledges the coach will not be liable legally or otherwise, for the actions the client may or may not undertake as a result of the coaching sessions and program.

The client takes full responsibility in the decisions they make after being coached as well as the consequences. The client enters into this coaching agreement with full understanding that there is no guarantee of results and the client is responsible for any action they take based on their investment goals.

This program provides general advice, coaching and support information only. Before making any major financial or investment decisions, we recommend the client seeks advice from a professional that is suitably qualified to give you personal advice based on the investment decision. The presenters/coaches of this program make no guarantee, representation or warranties and accepts no responsibility or liability on your investment choices and decisions.

© Copyright Dymphna Boholt

Dymphna Boholt has copyright of this publication. Other than for the purposes of and subject to the conditions prescribed under the Copyright Act, no part of it may in any form or by any means be reproduced, stored in a retrieval system or transmitted without prior written permission of Dymphna Boholt.

PLATINUM
ACCELERATOR

MODULE
6

FEASIBILITY & REVERSE FEASIBILITY

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

PLATINUM
ACCELERATOR

Feasibilities

For some of you who are coming from finance and accounting backgrounds, some of this section might be teaching you how to suck eggs, however it is still worthwhile reviewing everything in this module. Even as an accountant, over the years you pick up bad habits. Even if you are well versed in project management and doing feasibility study costings, there might well be some tips in here to make sure your feasibility studies are accurate, timely and efficient.

What is a Feasibility Study?

Basically a feasibility study is the financial mapping of a deal. Everyone focusses on the bottom line, but in reality the importance and accuracy of the bottom line is totally dependent on every line above it. If you put rubbish in, you're going to get rubbish out. I want to approach this module from the very basic, and whilst you have been provided with the Ultimate Feasibility Study Program, which serves as a good checklist and feasibility program for myriad strategies, it is best if you really understand what goes in behind each one of those calculations. So let's start from the very beginning.

There are two components which need to be addressed in a feasibility study (or just for 'feasibility' for short). The first is 'profit', as a result of selling your end product and the second is 'cash flow', as a result of keeping. Any good feasibility study program should be able to compare a 'hold property' versus a 'sell property' and determine which strategy is better.

A feasibility is simply an accounting of the ins and outs of a project, whether that be rental income less expenses on a hold property or sale price less the cost of development for a sell property. Sounds easy, doesn't it? The trick is knowing what those figures actually are and making sure you've budgeted for everything involved.

From an operational perspective you will inevitably have two levels of feasibilities. The first is a quickie. A 'quickie feaso', is just a rough estimate on the numbers on the deal to give some indication on whether it's worth pursuing and taking through to full feasibility level. A full feasibility is of course nailing down all the income and expenses in great detail and having the expenses backed up by written quotes. The dilemma of the quickie feaso, particularly if you've never done one before, is where do I start? How do I know what to put in for the strategy costs, purchasing and selling costs, construction etc.? That's why in the early stages unless you've been doing full feasibilities on a number of projects even as practice you won't know what standard costs you might have on a project to throw into a quickie. This is why we are going to start this module by looking at detailed feasibilities first, and will then address quickies once you've got your head around full feasibilities.

Another distinction that needs to be made is the difference between doing a feasibility to assess a deal, versus doing a feasibility for funding or a feasibility for a presentation for joint venture partners. Let's start with analysing deal feasibilities.

Sell Projects

Let's start with the end product. What is my finished product/property going to sell for? In analysing this, you need to be realistic. It's no good looking at every deal with rose coloured glasses. However, on the flipside there is no point in being so conservative on everything that no deal will ever work. There was a 'Platinum' student from Canberra that just couldn't seem to make a deal work at feasibility stage. On looking at his feasibility studies, it was apparent his conservative nature was coming through on every single item. He discounted sale prices by 10-20% and increased all costs by 10-20% just to be conservative. Now whilst his conservatism can be admired, this killed every single deal he ever looked at. You're now going to ask, "Is he an accountant?" The answer is no, he is a computer programmer.

The best way to determine the sale price is to look at sold properties equivalent to what you will be selling. So if you are doing a subdivision and hoping to sell a block of land, you should look at land sales similar to what you are producing in your target area. Another good pointer here is to look at how long land in your target area takes to sell. Similarly, if you're doing a strata deal and producing individual units for sale, determine what one bedroom, two bedroom units etc., sell for in your target area, and how long

they take to sell? The reason for stressing how long they take to sell is because your feasibility study is going to have to account for holding costs on the project.

Holding costs is the interest you are paying on any monies expended to do the project. Your initial analysis will include searching sold properties on RealEstate.com and domain.com. Your secondary analysis will involve contacting real estate agents in your target area, including those real estate agents that have sold similar properties in your target area, and asking them questions such as; how long did it take to sell XYZ property? What was the feedback in selling XYZ property? Do they have any advice for you regarding numbers of bedrooms, fit-out, standard of presentation, design, land size etc. that may assist you in producing the product to meet the market?

It is better not to take a great deal of advice from the real estate agent that is trying to sell you the deal, but to deal with agents who don't have a vested interest in the deal at this point. They may well want to sell the deal when you ultimately complete it but they have no immediate financial gain for providing that advice. If the purchase is for a hold property it's the rental management agents you need to be speaking to, as they will very quickly tell you what rents best, what size, what area, what fit-out etc., and they are a very good, unbiased mediator in your decision making process.

While we are on sales, we should now think about the whole sales process, and selling price is only part of the story. The second part is the expenses of selling property. Here's where you need to make a list and estimate costs of things such as agent's commissions, advertising and marketing campaigns, auctioneer costs, setting up of websites, brochures, potentially staging, photographer, etc.

When it comes to feasibilities, you are at least going to need a basic working knowledge of Excel. An Excel spreadsheet is simply a smart piece of paper. Once you put the formulas in, it will automatically add up, subtract etc., even when you change the input number. If this is not your skill, perhaps you could go and do a TAFE course or online course and learn the basics or search YouTube videos for the basics. Here is a simple extract from a spreadsheet that has been done to show you the formulas. You need to start creating your own. When you create your own – even if you just use it to do your quickie feasos – you understand all the components that go into deal making a bit better.

The Excel spreadsheets below have been constructed as a guide for building your confidence in doing feasibilities and enhancing your skills in doing due diligence. These examples are NOT designed to substitute your own due diligence, as every deal is different.

	A	B	C	D
1	**Feasibility Template - Small Subdivision**			
2	**- Display Only**			
3				
4	**White = Enter Data**			
5	**Orange = Blocked Formula Cell**			
6	**Sales**			**$**
7	Sale of Existing (House)			380000
8	Sale of New 1 (Land)			210000
9	Sale of New 2			0
10	Sale of New 3			0
11	Sale of New 4			0
12	Rental Income while holding (6 mths)			7200
13				597200
14	**Sale Costs**			
15	Commission - House			11400
16	Commission - Land			6300
17	Legals - House			1100
18	Legals - Land			1100
19				19900
20				
21	**Net Sales Income**			**577300**
22				

Depending on your strategy, make a short list in the space provided on the types of expenses and estimate costs associated with selling your target strategy.

We've now got our end product sorted and sold. We now need to go back to the very beginning and think about all of the costs associated with purchasing the deal and doing the deal.

Purchase Costs

Other than the actual purchase price, there are a number of costs associated with the purchase. Unfortunately, unlike many other countries, Australia has a large and onerous obligation on Stamp Duty, among other costs. Some of the purchasing costs you will need to consider and account for are as following:

Purchase Price

Stamp Duty

The best way to calculate Stamp Duty is to go onto the Office of State Revenue website for your particular target State and there will be a calculator where you can put in your purchase price and it will calculate Stamp Duty owing on the deal.

Structure Setup

The last thing you want to be doing is buying an investment in your own name. The cost to setup a basic company/trust structure will normally be around $2,000-$2,500).

Legal and Conveyancing

Depending on the complexity of the deal and how much advice you require around the deal, legal fees will normally range in the order of $1,000-$2,000. These fees typically include the required searches on the property as well as settlement fees.

Borrowing Costs

You may need to add in application fees, valuation fees, mortgage registration fees, and/or fees that the broker may charge. The best way to determine this is to ask your strategist for an indication in this regard.

Mortgage Insurance

If you are borrowing more than 80% of the value of the property, this will need to be accounted for, particularly on a hold property. Even though you don't pay the mortgage insurance from cash, it is normally capitalised (added to) in the loan amount.

Here is the next part of the Excel spreadsheet. At this point I want you to start creating your own template.

	A	B	C	D
22				
23	**Purchase Costs**			**$**
24	Purchase Price			380000
25	Stamp Duty			19000
26	Legals			1500
27	Borrowing Costs			600
28	Mortgage Insurance			0
29	Structure Set Up			1200
30	Other			0
31				0
32	**Total**			**402300**
33				

Operating Costs

Under operating costs, segregate out those expenses that relate to owning a property.

These expenses would include:

- Rates
- Water
- Body Corporate
- Insurance
- Management Fees (if a hold property)
- Vacancies (if a hold property)
- Repairs (if a hold property)
- Interest on the Mortgage

Cashflow is affected by the amount of interest paid on the mortgage, and this will depend on whether you are paying 'interest only' (IO) or 'principal and interest' (P+I). Clearly interest only allows for greater cash flow in the short term, which is better if your intention is to sell the property. Even on a hold property, consider committing for repayment to be lower and therefore interest only. If you are considering interest and principal, ensure you have a conversation with your mortgage broker to understand what impact that decision will have on your lending for the deal after this.

However, the choice as to which one you have is not always in your hands and sometimes in order to get the loan you will have to take out a P+I. If you're having trouble calculating principal and interest loan repayments, go to the Investor Loans Network website, or any financial institutions website and put your numbers and term of the loan into their calculator and it will tell you what the repayments will be.

The duration of the deal is important when calculating the interest amount. Clearly a 6 month deal will cost half the interest of a 12 month long deal, hence duration needs to be included in the calculations.

You should be able to be reasonably accurate on these figures as quotes and costs are easily obtained.

	A	B	C	D
34	**Operating Expenses per Year**			**$**
35	Rates			3000
36	Water			500
37	Body Corporate			0
38	Insurance			800
39	Management Fees			576
40	Repairs and Maintenance			0
41	Land Tax			0
42	Other			0
43	Interest on Mortgage			
44	- Length of Loan (Months)	12		
45	- Interest Rate	4.8%		
46	- Bank Loan	402300		19310
47				
48	**Total**			**24186**
49				

Strategy Costs

When it comes to strategy costs, what you have to do is systematically think through the strategy process and make a list of each of the processes that your deal is going to go through.

If you don't know what these are, or you simply need to make sure you have covered everything, the best thing here is to review the checklists in later modules of income and growth strategies. This section of your feasibility is going to be a living, breathing document and you should have a template of feasibility that you use and keep updated with each deal that you do, or each conversation that you have with another investor or property-related professional. For example, you might chat to another student, or town planner who is talking about needing a traffic report, or a hydraulics engineer to look over something, and you might think, "Well, that's not on my feasibility."

This is where you then add it to your template so that next time you use your feasibility template, at least that cost is there to remind you to ask the question, "Do I need a traffic report and/or hydraulics report etc.?"

The 'Ultimate Home Study Program' has a very good and extensive checklist for developments and subdivisions as well as a detailed renovation 'guestimator' spreadsheet, which can be used as a foundation for your feasibility template.

What we have described so far is you creating a basic template for your particular strategy. This can be done either on a piece of paper (which is not recommended) or on an Excel spreadsheet. Where you might do a feasibility on a piece of paper, to add up all of your expenses and take them away from your sale price to work out what your profit is, you do exactly the same thing on an Excel spreadsheet, except it remembers all the formulas. So if you change one or two figures it will automatically correct and adjust the end result without having to add everything up again.

Clearly, Excel spreadsheets can be made more complicated than this, and pre-programmed to do more complicated things than this, however, if you are just looking to use it to determine profitability, not much more than just simple math and knowledge of the program is required. It is really important for you to have an understanding of creating your own feasibilities per deal even if you choose to use the pre-programmed feasibility software in your Ultimate Home Study Course.

The advantage of knowing the basics first is that when you use the Ultimate Feasibility Study Program, you understand how it works and you can use it as a checklist for income and expenses. There are a number of webinars on the Ultimate website on how to use the feasibility study software and John Bone who helped create the program is very good with answering any queries regarding its operation.

	A	B	C	D
50	**Strategy Expenses - House Renovation**			
51	Paint Exterior and Interior			7000
52	Upgrade Bathroom			8000
53	Upgrade Kitchen			6000
54	Upgrade Light Fittings			600
55	Polish Floor Boards			2500
56	Landscape Front and Rear			1200
57	Rubbish Removal			600
58	Window Coverings			600
59	Make Good Repairs			1500
60	Miscellaneous			2000
61				
62	**Total Renovation**			30000
63				

	A	B	C	D
64	**Strategy Expenses - Subdivision**			
65	Site and Contour Survey			1200
66	Drafting Plan of Subdivision			1500
67	Engineering Design			1500
68	Town Planning Report & Lodgement			2000
69	Council Lodgement Fees			1500
70	Operations Works Approval			1500
71	Water Main Connection			2000
72	Sewer Connection			2500
73	Drainage and Stormwater			3000
74	Power Pole Install			800
75	Power Connection			500
76	Phone Connection			500
77	Fencing			5000
78	Concrete Driveway			5000
79	Concrete Footpath			3000
80	Final Survey Plans			1200
81	Title Department Lodgement & Legals			1000
82	Council Contribution (Headworks Fee)			8000
83	Miscellaneous			2000
84				
85	**Total Subdivision**			43700
86				
87	**Total**			73700

	A	B	C	D
89				
90	**Marketing Costs**			
91	Advertising and Mkt'g			1000
92	Auction Costs			0
93	Photographer			600
94	Staging			2000
95	Website			200
96	Other			0
97				0
98	**Total**			3800
99				
100				
101	**Interest on Strategy & Marketing Costs**			
102	- Length of Loan (Months)	9		
103	- Interest Rate	4.8%		
104	- Bank Loan	77500		2790

Net Profit or Loss

This is where we simply take our sales less our operational and strategy costs to give us our profit or loss on the project.

Next is a basic template for a subdivision, which you can add to and change as needed. If you are doing a renovation or a strata deal or construction you would simply change the heading to suit.

	A	B	C	D
107	**Total Net Income from Sales**			**577300**
108				
109	**Value of Property Held**			**0**
110				
111	**Total Project Value**			**577300**
112				
113	**Total Expenses**			**506776**
114				
115	**GST Adjustment**			
116	**GST on Sale (Land Only)**	**12182**		
117	**GST Paid on Costs**	**6427**		**5755**
118	**(Assumes 20% cost base for new land)**			
119				
120	**Total Profit / Loss on Project**			**64769**

This is only a guide – the numbers will vary from council to council and State to State. You can see how the template systematically works through the deal. The varying sections have been boxed up so you can understand each of the components.

Analysis Calculations

As a rough guide from an analytical perspective on a small deal like this one, having a % Return on Project Costs (or Profit on Costs) after interest but before tax of around 15% is pretty good. It give you a bit of wiggle room to make a few mistakes and still come out with a profit on the deal and of course a truck load of learning.

When you are looking at bigger deals and in particular construction of multiple dwellings a % Return on Project Costs of 20% would be where you need to be – preferably 25%. The banks and financiers of this style of deal are looking for a return of 20% or higher in order to finance that style of deal.

Another important consideration is the % Return on Funds Contributed to the Project, otherwise known as Cash on Cash Return. This accounts for the amount of cash you put into the deal to make the expected profit. The higher the figure the better, with 100% indicating that you doubled your money, for example, your $100,000 invested into the project produced $100,000 profit.

	A	B	C	D	E	F	G
155	**Analysis Calculations**						
156							
157	**% Return on Funds Contributed for Sale Project (Cash on Cash Return)**						34.24
158							
159	**% Return on Project Cost (Profit on Costs)**						12.78
160							

Please note that the GST calculation in this spreadsheet is specific to this example deal. You need to familiarise yourself with the "Margin Scheme" and other GST options according to your specific circumstances with your accountant.

All considerations towards tax should be undertaken with your accountant as part of your own due diligence.

To further assist you, the feasibility for the same deal has been listed – but this time instead of the actual numbers, the formulas are shown behind the shaded cells.

	A	B	C	D
1	**Feasibility Template - Small Subdivision**			
2	**- Display Only**			
3				
4	**White = Enter Data**			
5	**Orange = Blocked Formula Cell**			
6	**Sales**			**$**
7	**Sale of Existing (House)**			380000
8	**Sale of New 1 (Land)**			210000
9	**Sale of New 2**			0
10	**Sale of New 3**			0
11	**Sale of New 4**			0
12	**Rental Income while holding (6 mths)**			7200
13				=SUM(D7:D12)
14	**Sale Costs**			
15	**Commission - House**			11400
16	**Commission - Land**			6300
17	**Legals - House**			1100
18	**Legals - Land**			1100
19				=SUM(D15:D18)
20				
21	**Net Sales Income**			=D13-D19

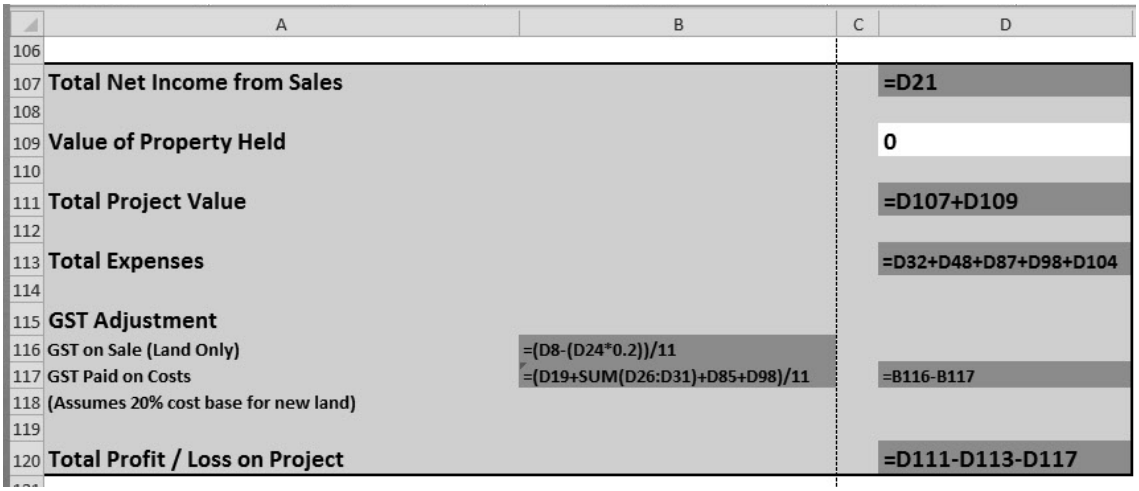
	A	B	C	D
22				
23	**Purchase Costs**			**$**
24	Purchase Price			380000
25	Stamp Duty			19000
26	Legals			1500
27	Borrowing Costs			600
28	Mortgage Insurance			0
29	Structure Set Up			1200
30	Other			0
31				0
32	**Total**			=SUM(D24:D31)
33				

	A	B	C	D
34	**Operating Expenses per Year**			**$**
35	Rates			3000
36	Water			500
37	Body Corporate			0
38	Insurance			800
39	Management Fees			576
40	Repairs and Maintenance			0
41	Land Tax			0
42	Other			0
43	Interest on Mortgage			
44	- Length of Loan (Months)	12		
45	- Interest Rate	0.048		
46	- Bank Loan	=D32		=(B46*B45)*B44/12
47				
48	**Total**			=SUM(D35:D47)

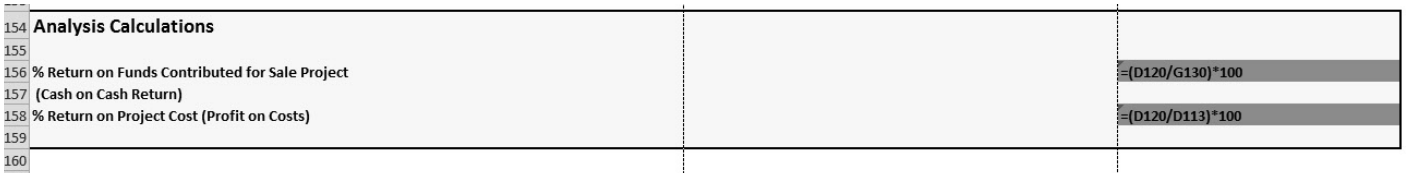
	A	B	C	D
49				
50	**Strategy Expenses - House Renovation**			
51	Paint Exterior and Interior			7000
52	Upgrade Bathroom			8000
53	Upgrade Kitchen			6000
54	Upgrade Light Fittings			600
55	Polish Floor Boards			2500
56	Landscape Front and Rear			1200
57	Rubbish Removal			600
58	Window Coverings			600
59	Make Good Repairs			1500
60	Miscellaneous			2000
61				
62	**Total Renovation**			=SUM(D51:D61)
63				

	A	B	C	D
64	**Strategy Expenses - Subdivision**			
65	Site and Contour Survey			1200
66	Drafting Plan of Subdivision			1500
67	Engineering Design			1500
68	Town Planning Report & Lodgement			2000
69	Council Lodgement Fees			1500
70	Operations Works Approval			1500
71	Water Main Connection			2000
72	Sewer Connection			2500
73	Drainage and Stormwater			3000
74	Power Pole Install			800
75	Power Connection			500
76	Phone Connection			500
77	Fencing			5000
78	Concrete Driveway			5000
79	Concrete Footpath			3000
80	Final Survey Plans			1200
81	Title Department Lodgement & Legals			1000
82	Council Contribution (Headworks Fee)			8000
83	Miscellaneous			2000
84				
85	**Total Subdivision**			=SUM(D65:D84)
86				
87	**Total**			=D62+D85

	A	B	C	D
88				
89				
90	**Marketing Costs**			
91	Advertising and Mkt'g			1000
92	Auction Costs			0
93	Photographer			600
94	Staging			2000
95	Website			200
96	Other			0
97				0
98	**Total**			=SUM(D91:D97)
99				
100				
101	**Interest on Strategy & Marketing Costs**			
102	- Length of Loan (Months)	9		
103	- Interest Rate	0.048		
104	- Bank Loan	=D87+D98		=(B104*B103)*B102/12
105				



	A	B	C	D
106				
107	**Total Net Income from Sales**			=D21
108				
109	**Value of Property Held**			0
110				
111	**Total Project Value**			=D107+D109
112				
113	**Total Expenses**			=D32+D48+D87+D98+D104
114				
115	**GST Adjustment**			
116	GST on Sale (Land Only)	=(D8-(D24*0.2))/11		
117	GST Paid on Costs	=(D19+SUM(D26:D31)+D85+D98)/11		=B116-B117
118	(Assumes 20% cost base for new land)			
119				
120	**Total Profit / Loss on Project**			=D111-D113-D117



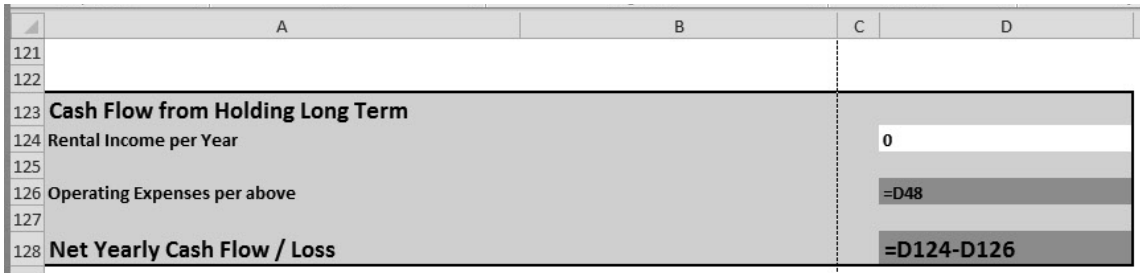
154	**Analysis Calculations**		
155			
156	% Return on Funds Contributed for Sale Project		=(D120/G130)*100
157	(Cash on Cash Return)		
158	% Return on Project Cost (Profit on Costs)		=(D120/D113)*100
159			
160			

Cash Flow

If at the end of the deal the objective is to keep and rent out for positive cash flow, your feasibility also needs to address operational cash flow. In this section you will create a basic operating cash flow, which will include rental less operational expenses leaving you a net cash flow or loss for the year.

Below is an example of how a simplified feasibility might look as a guide for you to create your own. The formulas have been exposed so you can see how the spreadsheet works. Take some time to play with this and create one for yourself, even if you only use it as an initial analysis tool.

The formulas for this analysis might look something like this.



	A	B	C	D
121				
122				
123	**Cash Flow from Holding Long Term**			
124	Rental Income per Year			0
125				
126	Operating Expenses per above			=D48
127				
128	**Net Yearly Cash Flow / Loss**			=D124-D126

Holding and Revaluing

Of course, then the next issue to consider if you are planning on keeping part or all of the project, is what the refinance situation will be. Ideally you would want to pay out existing debt on the property as well as pay back any money you have contributed to the deal. If the new valuation is high enough there may even be sufficient redraw funds to do both of the above and still have some extra money/equity available for the next deal.

To this end there is a little revaluation analysis below just to show you how these calculation might work.

	A	B	C	D
136	**Revalue Calculations on Hold Projects**			
137				
138	Estimated Revalue of Hold Project			0
139				
140	Estimated LVR on Revalue			0.8
141				
142	New Loan on Revalue			=D138*D140
143				
144	Loans to be Paid Out on Revalue			=F130
145				
146	Net Sales Income			=D21
147				
148	Estimated Revalue Cash Available			=D146-D144+D142
149				
150	Funds Originally Contributed			=G130
151				
152	Extra Funds for Investment			=D148-D150

Please note - this is just a guide.

You need to create your own spreadsheets for your own deals – as this will really teach you the process and give you a much deeper understanding of the feasibility/profitability of your deals.

Once you really GET this – then using pre-programmed feasibility software such as the Ultimate Feasibility Study Programme we give you as part of the Ultimate Program, are easier to use, understand, and model for your deals and projects.

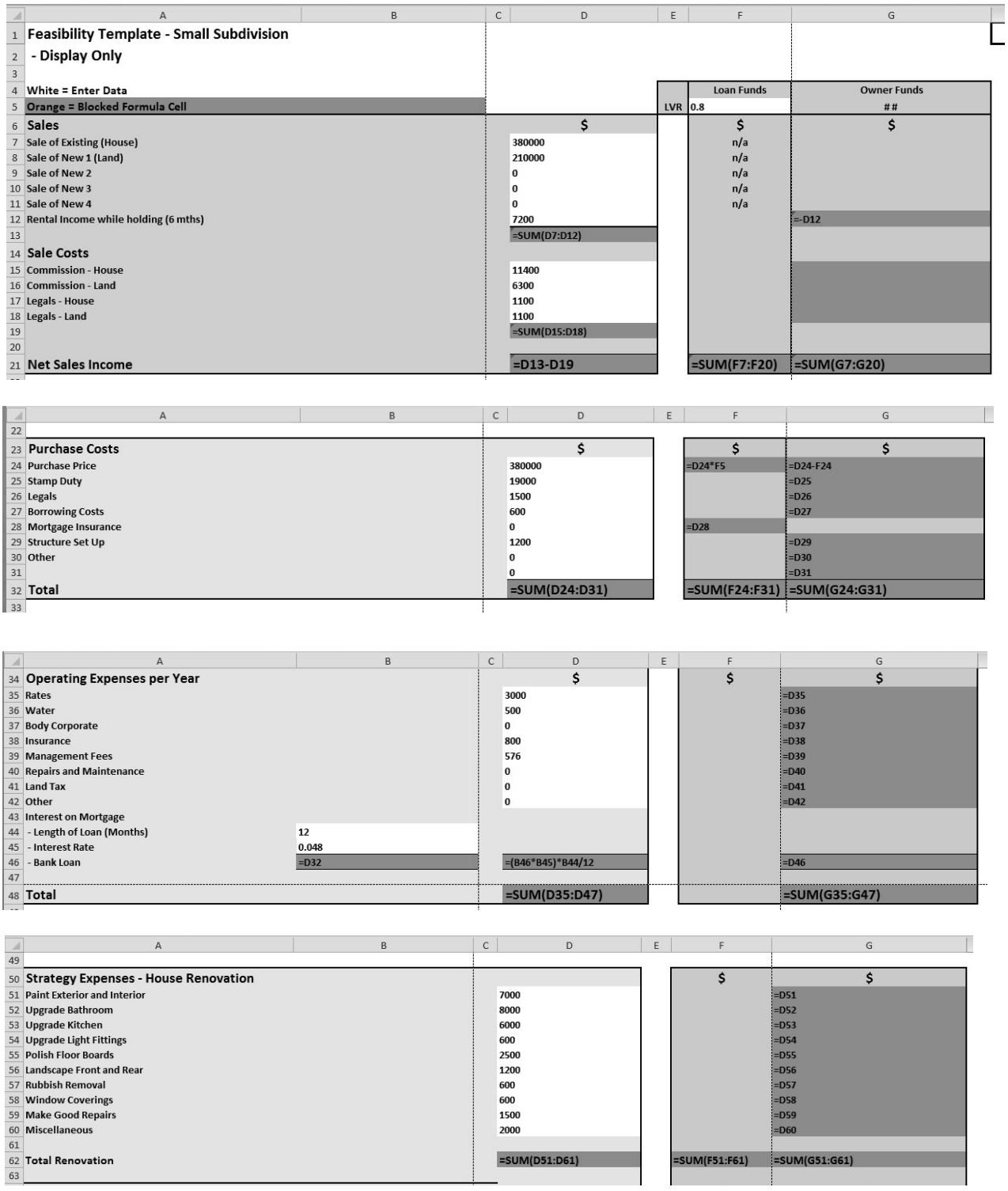
Feasibility for Funding

The next thing to think about now that you have your head around the basic numbers of the deal is who pays for what.

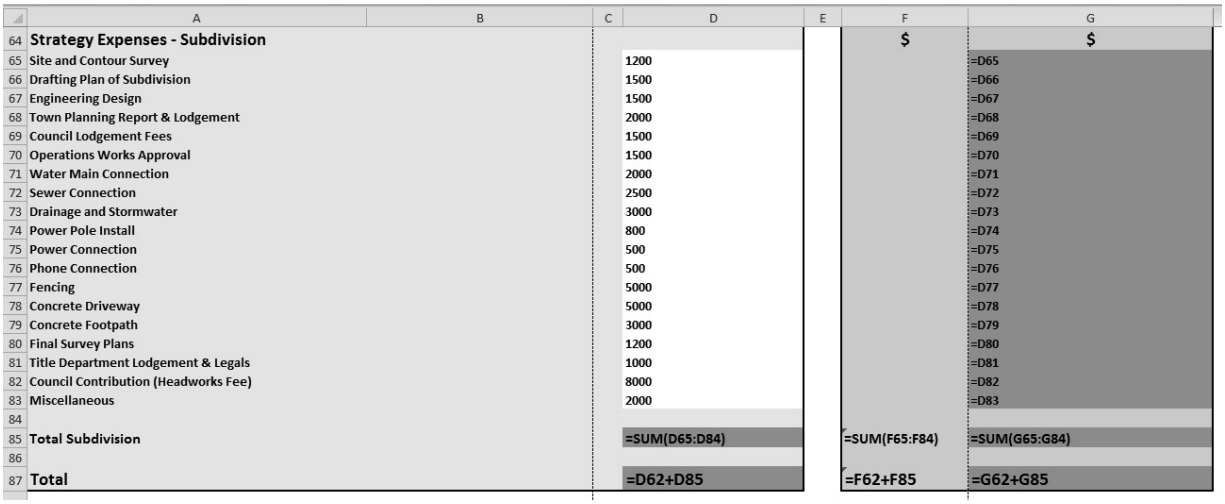
In line with your learning to date, you are ready to extend your spreadsheet to include two columns. One will say bank funding and the other will say own funds contributed.

If the deal you are doing is with a joint venture partner who is contributing the funds to do the deal, then you will need to make sure your investment partner has the required available funds to meet the total of this column.

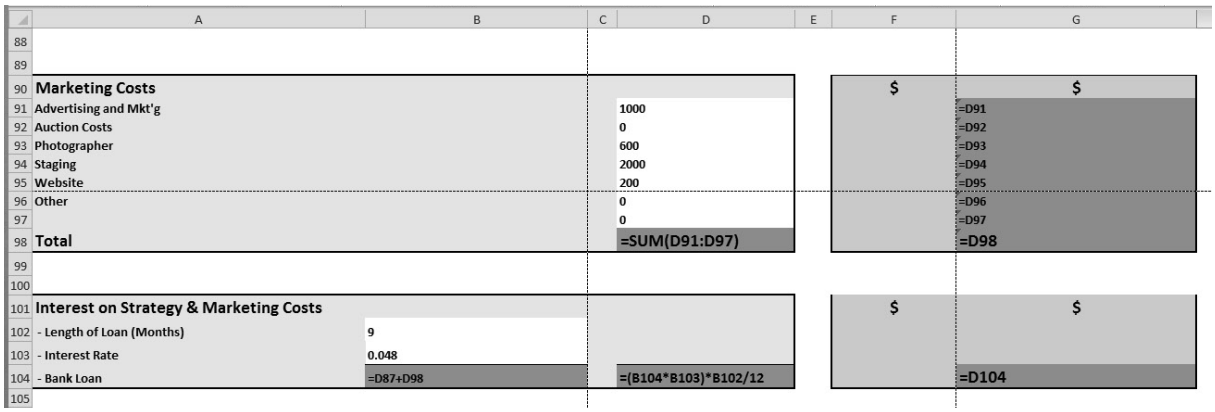
This is how the extension to your spreadsheet might look for the subdivision example.



	A	B	C	D	E	F	G
1	**Feasibility Template - Small Subdivision**						
2	**- Display Only**						
3							
4	**White = Enter Data**					**Loan Funds**	**Owner Funds**
5	**Orange = Blocked Formula Cell**				**LVR**	**0.8**	**##**
6	**Sales**			**$**		**$**	**$**
7	Sale of Existing (House)			380000		n/a	
8	Sale of New 1 (Land)			210000		n/a	
9	Sale of New 2			0		n/a	
10	Sale of New 3			0		n/a	
11	Sale of New 4			0		n/a	
12	Rental Income while holding (6 mths)			7200			=-D12
13				=SUM(D7:D12)			
14	**Sale Costs**						
15	Commission - House			11400			
16	Commission - Land			6300			
17	Legals - House			1100			
18	Legals - Land			1100			
19				=SUM(D15:D18)			
20							
21	**Net Sales Income**			**=D13-D19**		**=SUM(F7:F20)**	**=SUM(G7:G20)**
22							
23	**Purchase Costs**			**$**		**$**	**$**
24	Purchase Price			380000		=D24*F5	=D24-F24
25	Stamp Duty			19000			=D25
26	Legals			1500			=D26
27	Borrowing Costs			600			=D27
28	Mortgage Insurance			0		=D28	
29	Structure Set Up			1200			=D29
30	Other			0			=D30
31				0			=D31
32	**Total**			**=SUM(D24:D31)**		**=SUM(F24:F31)**	**=SUM(G24:G31)**
33							
34	**Operating Expenses per Year**			**$**		**$**	**$**
35	Rates			3000			=D35
36	Water			500			=D36
37	Body Corporate			0			=D37
38	Insurance			800			=D38
39	Management Fees			576			=D39
40	Repairs and Maintenance			0			=D40
41	Land Tax			0			=D41
42	Other			0			=D42
43	Interest on Mortgage						
44	- Length of Loan (Months)	12					
45	- Interest Rate	0.048					
46	- Bank Loan	=D32		=(B46*B45)*B44/12			=D46
47							
48	**Total**			**=SUM(D35:D47)**			**=SUM(G35:G47)**
49							
50	**Strategy Expenses - House Renovation**					**$**	**$**
51	Paint Exterior and Interior			7000			=D51
52	Upgrade Bathroom			8000			=D52
53	Upgrade Kitchen			6000			=D53
54	Upgrade Light Fittings			600			=D54
55	Polish Floor Boards			2500			=D55
56	Landscape Front and Rear			1200			=D56
57	Rubbish Removal			600			=D57
58	Window Coverings			600			=D58
59	Make Good Repairs			1500			=D59
60	Miscellaneous			2000			=D60
61							
62	**Total Renovation**			**=SUM(D51:D61)**		**=SUM(F51:F61)**	**=SUM(G51:G61)**
63							



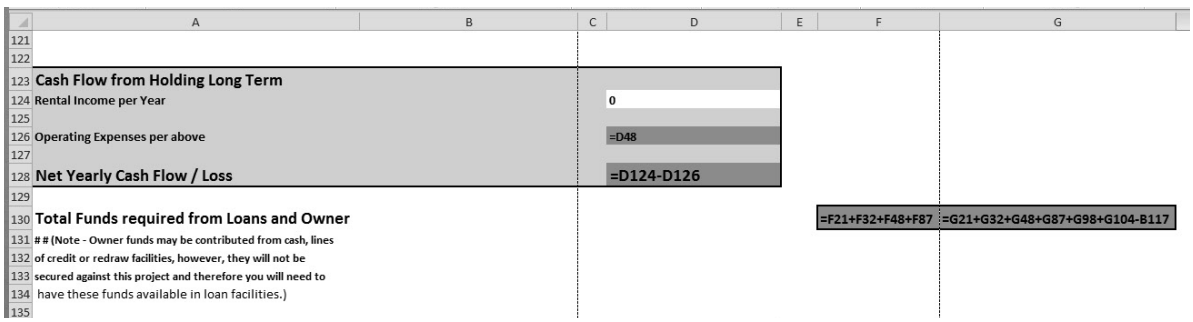
	A	B	C	D	E	F	G
64	**Strategy Expenses - Subdivision**					$	$
65	Site and Contour Survey			1200			=D65
66	Drafting Plan of Subdivision			1500			=D66
67	Engineering Design			1500			=D67
68	Town Planning Report & Lodgement			2000			=D68
69	Council Lodgement Fees			1500			=D69
70	Operations Works Approval			1500			=D70
71	Water Main Connection			2000			=D71
72	Sewer Connection			2500			=D72
73	Drainage and Stormwater			3000			=D73
74	Power Pole Install			800			=D74
75	Power Connection			500			=D75
76	Phone Connection			500			=D76
77	Fencing			5000			=D77
78	Concrete Driveway			5000			=D78
79	Concrete Footpath			3000			=D79
80	Final Survey Plans			1200			=D80
81	Title Department Lodgement & Legals			1000			=D81
82	Council Contribution (Headworks Fee)			8000			=D82
83	Miscellaneous			2000			=D83
84							
85	**Total Subdivision**			=SUM(D65:D84)		=SUM(F65:F84)	=SUM(G65:G84)
86							
87	**Total**			=D62+D85		=F62+F85	=G62+G85



	A	B	C	D	E	F	G
88							
89							
90	**Marketing Costs**					$	$
91	Advertising and Mkt'g			1000			=D91
92	Auction Costs			0			=D92
93	Photographer			600			=D93
94	Staging			2000			=D94
95	Website			200			=D95
96	Other			0			=D96
97				0			=D97
98	**Total**			=SUM(D91:D97)			=D98
99							
100							
101	**Interest on Strategy & Marketing Costs**					$	$
102	- Length of Loan (Months)	9					
103	- Interest Rate	0.048					
104	- Bank Loan	=D87+D98		=(B104*B103)*B102/12			=D104
105							



	A	B	C	D	E	F	G
106							
107	**Total Net Income from Sales**			=D21			
108							
109	**Value of Property Held**			0			
110							
111	**Total Project Value**			=D107+D109			
112							
113	**Total Expenses**			=D32+D48+D87+D98+D104			
114							
115	**GST Adjustment**						
116	GST on Sale (Land Only)	=(D8-(D24*0.2))/11					
117	GST Paid on Costs	=(D19+SUM(D26:D31)+D85+D98)/11		=B116-B117			
118	(Assumes 20% cost base for new land)						
119							
120	**Total Profit / Loss on Project**			=D111-D113-D117			



	A	B	C	D	E	F	G
121							
122							
123	**Cash Flow from Holding Long Term**						
124	Rental Income per Year			0			
125							
126	Operating Expenses per above			=D48			
127							
128	**Net Yearly Cash Flow / Loss**			=D124-D126			
129							
130	**Total Funds required from Loans and Owner**					=F21+F32+F48+F87	=G21+G32+G48+G87+G98+G104-B117
131	# (Note - Owner funds may be contributed from cash, lines						
132	of credit or redraw facilities, however, they will not be						
133	secured against this project and therefore you will need to						
134	have these funds available in loan facilities.)						
135							

	A	B	C	D	E	F	G
136	**Revalue Calculations on Hold Projects**						
137							
138	Estimated Revalue of Hold Project			0			
139							
140	Estimated LVR on Revalue			0.8			
141							
142	New Loan on Revalue			=D138*D140			
143							
144	Loans to be Paid Out on Revalue			=F130			
145							
146	Net Sales Income			=D21			
147							
148	Estimated Revalue Cash Available			=D146-D144+D142			
149							
150	Funds Originally Contributed			=G130			
151							
152	Extra Funds for Investment			=D148-D150			
153							
154	**Analysis Calculations**						
155							
156	% Return on Funds Contributed for Sale Project						=(D120/G130)*100
157	(Cash on Cash Return)						
158	% Return on Project Cost (Profit on Costs)						=(D120/D113)*100
159							
160							

Just to show you the spreadsheet without the formulas showing and to see the actual figures required, next is the same spreadsheet without the formulas.

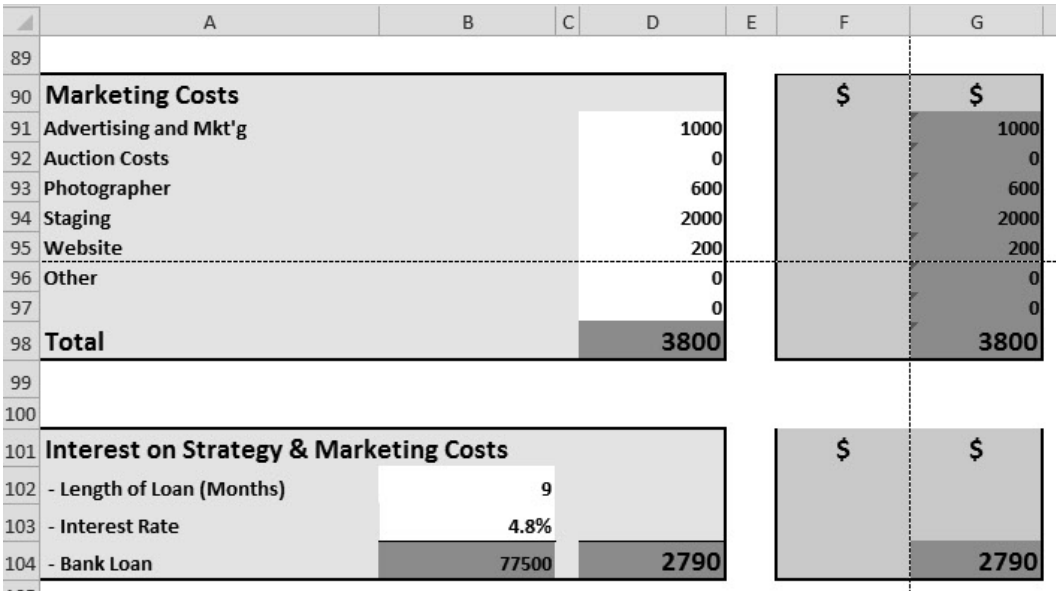
	A	B	C	D	E	F	G
1	**Feasibility Template - Small Subdivision**						
2	**- Display Only**						
3							
4	**White = Enter Data**					**Loan Funds**	**Owner Funds**
5	**Orange = Blocked Formula Cell**				**LVR**	**0.80**	**##**
6	**Sales**			**$**		**$**	**$**
7	Sale of Existing (House)			380000		n/a	
8	Sale of New 1 (Land)			210000		n/a	
9	Sale of New 2			0		n/a	
10	Sale of New 3			0		n/a	
11	Sale of New 4			0		n/a	
12	Rental Income while holding (6 mths)			7200			-7200
13				597200			
14	**Sale Costs**						
15	Commission - House			11400			
16	Commission - Land			6300			
17	Legals - House			1100			
18	Legals - Land			1100			
19				19900			
20							
21	**Net Sales Income**			**577300**		**0**	**-7200**
22							

	A	B	C	D	E	F	G
22							
23	**Purchase Costs**			**$**		**$**	**$**
24	Purchase Price			380000		304000	76000
25	Stamp Duty			19000			19000
26	Legals			1500			1500
27	Borrowing Costs			600			600
28	Mortgage Insurance			0		0	
29	Structure Set Up			1200			1200
30	Other			0			0
31				0			0
32	**Total**			**402300**		**304000**	**98300**
33							

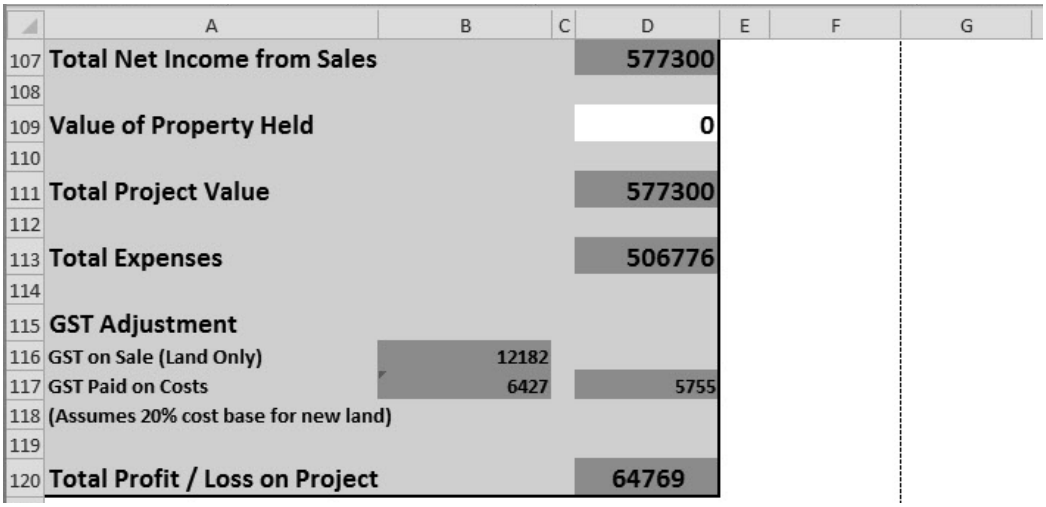
	A	B	C	D	E	F	G
34	**Operating Expenses per Year**			$		$	$
35	Rates			3000			3000
36	Water			500			500
37	Body Corporate			0			0
38	Insurance			800			800
39	Management Fees			576			576
40	Repairs and Maintenance			0			0
41	Land Tax			0			0
42	Other			0			0
43	Interest on Mortgage						
44	- Length of Loan (Months)	12					
45	- Interest Rate	4.8%					
46	- Bank Loan	402300		19310			19310
47							
48	**Total**			24186			24186
49							

	A	B	C	D	E	F	G
50	**Strategy Expenses - House Renovation**					$	$
51	Paint Exterior and Interior			7000			7000
52	Upgrade Bathroom			8000			8000
53	Upgrade Kitchen			6000			6000
54	Upgrade Light Fittings			600			600
55	Polish Floor Boards			2500			2500
56	Landscape Front and Rear			1200			1200
57	Rubbish Removal			600			600
58	Window Coverings			600			600
59	Make Good Repairs			1500			1500
60	Miscellaneous			2000			2000
61							
62	**Total Renovation**			30000		0	30000
63							

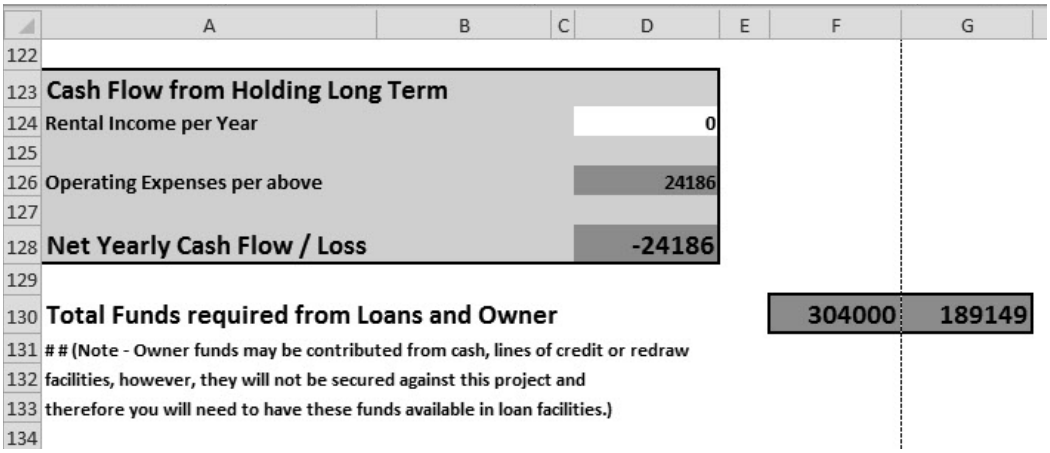
	A	B	C	D	E	F	G
64	**Strategy Expenses - Subdivision**					$	$
65	Site and Contour Survey			1200			1200
66	Drafting Plan of Subdivision			1500			1500
67	Engineering Design			1500			1500
68	Town Planning Report & Lodgement			2000			2000
69	Council Lodgement Fees			1500			1500
70	Operations Works Approval			1500			1500
71	Water Main Connection			2000			2000
72	Sewer Connection			2500			2500
73	Drainage and Stormwater			3000			3000
74	Power Pole Install			800			800
75	Power Connection			500			500
76	Phone Connection			500			500
77	Fencing			5000			5000
78	Concrete Driveway			5000			5000
79	Concrete Footpath			3000			3000
80	Final Survey Plans			1200			1200
81	Title Department Lodgement & Legals			1000			1000
82	Council Contribution (Headworks Fee)			8000			8000
83	Miscellaneous			2000			2000
84							
85	**Total Subdivision**			43700		0	43700
86							
87	**Total**			73700		0	73700



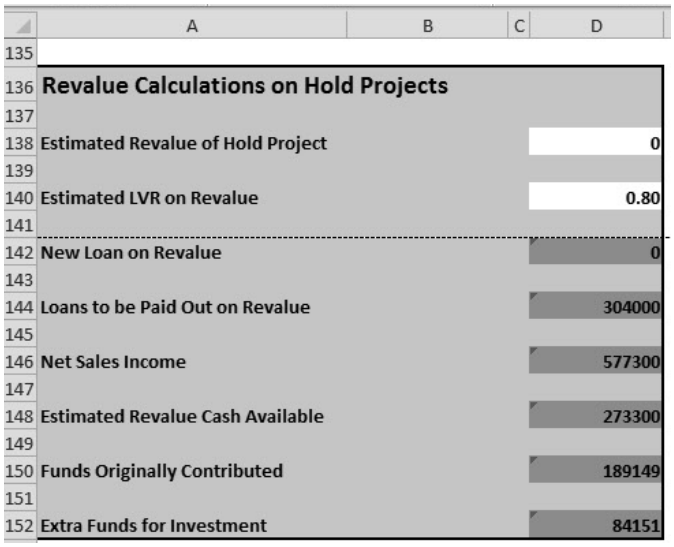
89						
90	**Marketing Costs**				$	$
91	Advertising and Mkt'g		1000			1000
92	Auction Costs		0			0
93	Photographer		600			600
94	Staging		2000			2000
95	Website		200			200
96	Other		0			0
97			0			0
98	**Total**		3800			3800
99						
100						
101	**Interest on Strategy & Marketing Costs**				$	$
102	- Length of Loan (Months)	9				
103	- Interest Rate	4.8%				
104	- Bank Loan	77500	2790			2790



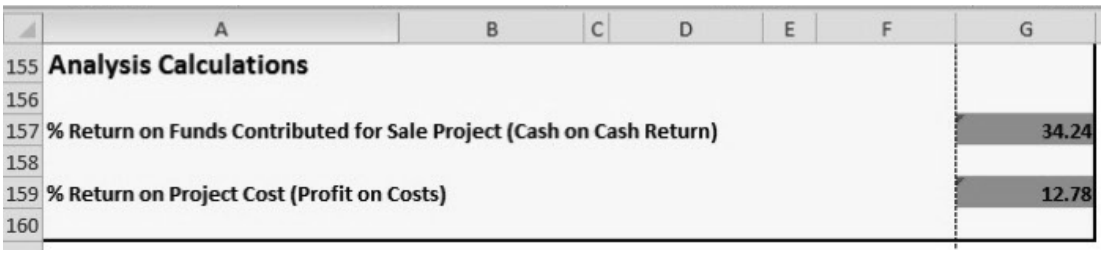
107	**Total Net Income from Sales**		577300			
108						
109	**Value of Property Held**		0			
110						
111	**Total Project Value**		577300			
112						
113	**Total Expenses**		506776			
114						
115	**GST Adjustment**					
116	GST on Sale (Land Only)	12182				
117	GST Paid on Costs	6427	5755			
118	(Assumes 20% cost base for new land)					
119						
120	**Total Profit / Loss on Project**		64769			



122						
123	**Cash Flow from Holding Long Term**					
124	Rental Income per Year		0			
125						
126	Operating Expenses per above		24186			
127						
128	**Net Yearly Cash Flow / Loss**		-24186			
129						
130	**Total Funds required from Loans and Owner**				304000	189149
131	# # (Note - Owner funds may be contributed from cash, lines of credit or redraw					
132	facilities, however, they will not be secured against this project and					
133	therefore you will need to have these funds available in loan facilities.)					
134						



	A	B	C	D
135				
136	**Revalue Calculations on Hold Projects**			
137				
138	Estimated Revalue of Hold Project			0
139				
140	Estimated LVR on Revalue			0.80
141				
142	New Loan on Revalue			0
143				
144	Loans to be Paid Out on Revalue			304000
145				
146	Net Sales Income			577300
147				
148	Estimated Revalue Cash Available			273300
149				
150	Funds Originally Contributed			189149
151				
152	Extra Funds for Investment			84151



	A	B	C	D	E	F	G
155	**Analysis Calculations**						
156							
157	% Return on Funds Contributed for Sale Project (Cash on Cash Return)						34.24
158							
159	% Return on Project Cost (Profit on Costs)						12.78
160							

Presentation Feasibility

A presentation feasibility doesn't have any of the figures changed from what we've done already, but what it does have is these figures put into a mini business plan. Just like any good business plan, a joint venture presentation business plan has structure and there are some basic guidelines you would need to follow. The following is a list of headings and descriptions which you would need to create in order to present to another investor so they can make an informative decision on whether they would like to joint venture with you.

The first step is designed to gain interest in the property deal without divulging exactly what or where the deal actually is located. If you are looking at doing a joint venture deal there are a numbers of ways to approach the situation. Experience has taught me that the successful joint ventures come from solid relationships and good communication. To this end it is a good idea to start talking to friends and other I Love Real Estate community members about their interest in perhaps doing something together and to start to collect contact details of people who might be interested – either as a JV partner or simply to pass deals on to them for a spotter's fee.

If you are considering charging a spotter's fee for deals, then you may need to be licensed in your State and may need to complete a real estate agent course of some type and be registered.

Presentation of the deal is everything. It's just like selling the property. You are selling yourself as well as the deal to a potential joint venture partner. Obviously the deal has to work and be profitable, but then just like a sale it has to be marketed. If no one knows about the deal or it is poorly presented, then it won't get done.

At first glance the potential investor/joint venture partner needs to

- be able to quickly see the deal,
- know how much money is required to do the deal,
- have an estimate of profit,
- have an estimate of timeframes to do the deal.

An example of what this might look like on the subdivision example we have been using could be as follows.

Please understand this is just a guide and you can use you own flare to create something far more interesting.

Picture of the Deal
No Address

Summary

Subdivision – (Insert State & Region)

Purchase Price $ 380,000

Description

Simple subdivision deal, cosmetic renovation required on existing house. Good demand in area for housing and vacant land

Funds required to complete the deal (approx.)	$190,000
Estimated profit	$ 65,000
Estimated timeframe	12 months

Full feasibility study and details of the property are available to interested parties

Phone or email xxxx xxxx

This particular example doesn't have enough profit in the deal to do a joint venture deal as the funds required to complete are too high to have to split the profit. However, it could be a spotter deal to pass on to someone. Remember, this example is just a made up example.

From here you would call for anyone with interest in the property to contact you directly. Depending on how sensitive the deal is, you may wish to have interested parties sign a non-disclosure document before providing full details, or secure the property first with a conditional contract or an option agreement if possible prior to releasing details. For a small deal like this one – you might just act on the honour/karma principal.

Notes

PLATINUM
ACCELERATOR

Reverse Feasibilities and Reverse Engineering

A reverse feasibility is basically starting from the end product and working backwards. A better name for this process is 'reverse engineering'. The very best way you can learn any new strategy is to find a deal that has already had that strategy completed and reverse engineer it. This means – find out what it sold for, estimate the selling costs, commission etc., do searches on the property to establish which consultants and/or tradespeople worked on the deal, determine their respective costs, find out what the owner paid for the property and bingo, you can work out what profit they made on that deal within a reasonable degree of certainty.

Sounds easy doesn't it? Well, it sort of is.

Let's start from the top.

Sale Price

Sale price is pretty easy to determine. Look up the sold section of RealEstate.com.au or ring the agent and ask. If a property isn't sold yet, estimates can be gained from looking at comparable properties sold in the area.

Selling Costs

Selling costs are easy to estimate. You're basically going to have advertising and marketing, legal expenses and commissions. If you work on a rough figure of 2.5% for commissions you will generally be on the high side.

Strategy

This is where your resourcefulness comes into play. A good way to start is to do a Google search on the address of the property and put '.pdf 'at the end of the address. This search (and you may have to go through a couple of pages), will show you all PDF documents lodged with, or held by a government department. There documents will include everything from police reports, survey reports, soil testing reports, engineering reports, development applications, traffic reports, basically anything that has ever been lodged with a government department on that particular property. There are a few exceptions with this, and that will be in a few small, regional archaic councils that haven't quite got the internet figured out yet.

From here it's a matter of wading through the varying reports and compiling a list of consultants that have worked on that property. The length of the list will depend on what the strategy is. For instance, on a development deal, the list is very long. In fact, I was reading in the newspaper about a very large development application for a waterfront resort where the documents lodged with the council totalled 150,000 pages – WOW! A strata title deal might only have a handful of consultant's documents, and a construction deal might only have the building application lodgement. It's important to open these documents, read them and list all the consultants.

For a simple build you might only find the building application being lodged. By opening up the document you will then be able to see who the builder was, who the soil testing guy was, who the plans were drawn up by etc., etc.

From here you jump on the phone and talk to all the varying consultants and ask them about the deal. This is where your people skills come into play. If you just ring up and ask, "How much did you charge to do the surveying on that property?" they are probably going to say, "Who the hell are you," and, "Rack off!"

Whereas, if you rang up and said, "I noticed you worked on such and such a property, and I'm looking to do a very similar deal in the area, would you mind giving me some kind of guide to pricing on a similar deal. I'm just doing my figures on a number of properties and want to make sure I've got my feasibilities right. I really like what you did on 'such and such' a property and I'd like to create a similar result".

Taking this approach, you are more likely to get the answers you require. You then sit back and think through that particular strategy, who has to be involved and what is the process? Use the checklists in the modules provided, enter in all known costs from your discussions with the consultants and estimate the ones you don't know. This will give you a reasonably accurate strategy cost total.

Sometimes a lead consultant such as a town planner, an engineer or an architect may be able to give you a rough guide on the costs of the other consultants as well.

Original Purchase Price

This is where programs such as Investar and APM are useful as they will normally give you the history on the property. If you use the property search and enter in the address you will be able to see the previous activity on that property which will include prior sales. Other programs that give this type of information are Price Finder and RP Data. You will then have to add on an estimate for Stamp Duty costs and legal expenses, but this is pretty easy to estimate by using the Office of State Revenue website and throwing in a few thousand dollars for legal expenses. Sometimes just doing a Google search on the address of the property will bring up old listings and if the agents haven't done their job properly you can see the old sales data.

Profit or Loss

Now comes the good part – take your sales less your selling expenses, less your strategy costs, less your purchase costs and that equals your profit or loss.

By the time you have done this on three or four completed deals, regardless of what strategy you are reverse engineering, you will have a very sound understanding of the implementation process and costs of that particular strategy in your target area.

Three or four of these reverse engineering calculations and you will be able to sit back and analyse the results. If one deal made $150,000 and the next one made $20,000 in the same area and all things being equal you have got to ask yourself why. This is why doing multiple reverse engineering calculations will give you confidence that your figures are reasonably accurate.

As an exercise, pick a strategy that you are interested in and find a completed deal in your target area that has implemented that strategy. Using the basic feasibility study program you have created in the previous part of this module, reverse engineer that finished deal.

If you really want to know how to do that strategy and be confident on the costs, don't just do it once, do it three or four times on different deals.

Good luck and have fun.

Happy reverse engineering!

Notes

PLATINUM
ACCELERATOR

MODULE
7

CONTRACTS & DUE DILIGENCE

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

PLATINUM
ACCELERATOR

Contracts

We are now well into the program and by now it is hoped that you are at the point of signing contracts to purchase deals, and for some of you, you will already be at the point of selling. So in this module, contracts will be covered in more detail. In addition to covering purchase and sale contracts though, we will look at other types of contracts that you are likely to come across, at least in the early stage of your investing, including property management contracts, build contracts, joint venture contracts, and option contracts.

One of the most important aspects with any contract is that you pay attention to the detail and you read every word of the contract and make sure that you understand what it means. If you do not understand something, you MUST address this with your solicitor and seek clarification. While this will take you the longest time for the first contracts that you review, I can assure you that you will get quicker. Please though, do not take the attitude that you are paying good money to your solicitor, real estate agent, builder and property manager, and therefore, they should know what they are doing, and you shouldn't have to read the detail. This is just not the case, because the buck stops with you and you need to understand the detail to ensure that you are in control of the process and understand what you are committing yourself to by signing the contract.
When you are purchasing a property and signing a purchase contract, critical to this process is conducting detailed due diligence on the property. So as part of this module, the various types of due diligence that should be undertaken will be detailed. Definitely not every aspect will be relevant for every deal, but we want to cover as many aspects as possible.

PLATINUM
ACCELERATOR

Purchase Contract

A purchase contract and a sale contract are in fact the same legal document. It just depends on the role you play in the process; whether you are the buyer or the seller.

Your perspective will differ between these two roles and your treatment of the clauses in the contract will also differ. In each role, you want the contract to be written, as much as possible, in your favour. So if you are the buyer you want it to be written in your favour as the purchaser, and if you are the seller you want it written in your favour as the seller. For this reason the two contracts will be dealt with separately so that the clauses can be viewed from each perspective - the purchaser on a purchase contract and the seller on a seller contract.

Purchase contracts differ between the States because of the differences in legislation (see example below). Despite that, the general components of a purchase contract are the same and this will be covered in more detail below. Understanding what comprises a purchase contract is important because if you get the detail wrong, you could potentially lose a deal as a result. So let's go through the various components.



REIV

LAW INSTITUTE VICTORIA

Contract of Sale of Real Estate

Property address

SIGNING OF THIS CONTRACT

SIGNED BY THE PURCHASER

Print name(s) of person(s) signing

SIGNED BY THE VENDOR

Print name(s) of person(s) signing

IMPORTANT NOTICE TO PURCHASERS

Buyer's Name

The name that you specify as the buyer on the contract needs to be the correct entity name that you intend to own the property. For this reason, if you are buying in a structure, you need to have that structure already set up, and you need to know the exact entity name to be able to reflect that on the contract. It is essential that you clarify the name with your accountant and solicitor, because it is not necessarily obvious, and because it differs between States. For example, as a general guide, if you are buying in a company trust structure, the purchasing entity entered on the contract in Queensland would be XYZ Pty Ltd as Trustree for The ABC Trust. In NSW and VIC for the same company trust it would be only the company that appears on title.

If the purchasing entity reflected on the contract is wrong, or for whatever reason you choose to change it after the contract has been signed by both the buyer and seller, this can be a pain and could cost you double Stamp Duty (except for Victoria where the contracts have assignment clauses and can be changed up to settlement time, although practically any change would have to be way before that as mortgage and

titling documents would have to also be changed to the correct name). In other States you will need to completely cancel the current contract, called rescinding the contract, and then create a whole new contract.

The seller needs to agree to this, and if they don't you will not be able to change it without paying double Stamp Duty. If they do agree, they will also likely make you pay for their solicitor's costs as well as your own. If you do not legally rescind the contract you end up having to pay Stamp Duty twice, both on the old contract and the new – and you definitely do not want to do that, so make sure you get your entity right from the start and always have a spare entity sitting vacant ready for your next purchase just in case that cracker of a deal comes along.

Property Address

The main thing to be aware of with the property address on the contract is to double check that it is correct, especially the lot, plan, and title number. You would be amazed at the number of times there can be an error made in this information. Also if there are multiple lot numbers, then ensure they are all correctly listed. Checking the lot size is important too because again it may be different from what might have been listed on the agent's advertisement for the property. Maybe this is in your favour, but maybe not, and if it is the latter, then you want to know about it sooner rather than later.

Exclude Fixtures

When a property is being sold, basically anything that is fixed in place in the property is classed as a fixture, down to the dishwasher, air-conditioning units, blinds and curtains. Double check this section of the contract to confirm that anything you expected to be left in the property when you purchase it, is not noted as an exclusion in this section. If it is, you should consider negotiating on this.

Included Chattels

Anything in a property that is not classed as a fixture is classed as a chattel. This can include, furniture, personal effects, ride on lawn mowers, machinery in the shed or garage to name a few. Depending on what you have negotiated regarding these chattels, this should be noted in this section. Be careful though if items have been listed here that in fact you do not want, because if left in the contract, they will be your responsibility come settlement. This could cost you money to remove or get rid of them, or equally, they could earn you money if they have value and you could sell them.

Deceased estates are a common example of where this clause is commonly used because sometimes the sellers just want it sold and that includes the effects left in it. Acreage properties are another example because often there is machinery associated with the upkeep of the property and you may want to include this in the property sale.

Make sure the description of the item is detailed. I had a bad experience with this when a contract I was settling on included a ride on mower and it was written into the contract that the ride on mower was to be included in the sale. Well at settlement I did get a ride on mower but not the same ride on that was there on inspection. The one at inspection was probably a $15,000 machine and the one at settlement was a crapped out old second hand one. Lesson learned!

Other things to be careful with are built in coffee machines and steam ovens. Although they are built in and therefore should be included as fixtures, it is preferable to have them specifically mentioned as inclusions as the seller's idea of a fixture sometimes varies from the definition.

Title Encumbrances

Title encumbrances include things like registered easements and covenants on the title. They are very important as they can significantly affect what you can do on the property, and therefore double checking this section of the contract is vital. Equally, if you are aware of encumbrances but they are not noted on the contract, this raises alarm bells and needs to be addressed with your solicitor. Maybe you have been given incorrect information, and in fact there are no restrictions on the title, and this could be to your benefit, therefore you need to seek clarification on this.

Tenants – Leases

If the property is currently under lease or has tenants in place then this needs to be reflected on the contract. If you intend for the tenants to remain on after you have settled, then you want to ensure that their leases are included in this section, because if it is left blank, then you technically may have no tenants in place when you come to settle. Alternatively, if you require vacant procession on settlement, you want this to be reflected here, with the lease dates finishing prior to settlement and vacant possession noted.

Deposit

The deposit section of the contract will list the amount of deposit that is being paid to essentially hold the property. From your perspective as the buyer, your aim is to pay as little as possible as a deposit, because this is cash that you will not have access to for the period of the contract, as it generally sits in the real estate agent's or solicitor's

trust account. It is also advisable to try to negotiate for the deposit not to be paid until the contract is countersigned by the seller, as this in itself keeps the money in your bank account for that little bit longer, plus it avoids the hassle of having to arrange a refund of the deposit if for whatever reason agreement cannot be made and the seller does not countersign the contract.

Another good idea is to only put down a smaller amount as deposit on signing with the balance being paid upon the contract going unconditional or exchanging in the case of NSW. Again this means the money is in your bank account for longer. Generally the agent will want a 10% deposit. This is not mandatory. Basically the agent will try and get enough deposit to cover his commissions so that he is not chasing money at settlement and can simply pay over any amount held in his trust account to the vendor at settlement. I normally negotiate a 5% not 10% deposit pay on the contract going unconditional as this will still well and truly cover the agent's commissions and is still substantial enough to satisfy the vendor of your seriousness when signing.

Purchase Price

The purchase price section of the contract is where the offer price is listed. If there is negotiation on price, this section of the contract may be crossed out and a new price written. If this is the case, it is essential that any changes are initialled by all parties, and it is only once all parties have agreed to the price and all have initialled the change that it is in fact agreed upon.

Finance

The finance section of the contract is relevant when you are seeking finance to complete the sale, and the contract is subject to you receiving approval for that finance. Because you want to maintain as much control as possible, you want to ensure that the contract reflects that the financier has to be to 'your satisfaction'. This is because if you don't put this wording in, and you can't get bank finance from your preferred financier and choose to cancel the contract on this basis, there in fact could be a situation where the seller offers you finance at a ridiculously high interest rate or under unfavourable terms, and you may be forced to complete the sale on the basis of this finance offer.

Similarly, you want the finance amount to also reflect that it is to 'your satisfaction' for the same reason. With regards to the date allowed for finance, ensure that this is a sufficient amount of time based on your mortgage broker's recommendation.

Another point to be aware of is that if you intend to use the finance clause to get out of a contract, some solicitors will request evidence that your finance has in fact been declined. If you do not have this evidence you will need to be prepared with a response.

The normal finance period you want on your contracts is 21 days. Some vendors baulk at this and want only a 14 day finance clause so try changing it to 14 'working days' which almost gives you 21 days anyway. If this doesn't work then agree to the 14 days and by the time the 14 days comes up the vendor has mental invested in you and you buying the property and if you are almost there with your approval the vendor will normally grant you an extension anyway.

For NSW purchases the process is a little different and as conditional clauses are not common although can actually be negotiated into contracts but it takes quite a bit of re-education on the side of their solicitor. In NSW the process of exchanging contracts is the point at which the contract goes unconditional. And remember that until exchange in NSW the seller can actually still sell the property to another party. Its call 'gazumping'!

Building & Pest

Similar to the finance clause, you want the building and pest clause to state that the inspection is to the buyer's satisfaction. Again this is because you want the control to decide if you are happy or not with the condition of the property, and also the amount it may cost you to rectify any problems.

For example, if you have allowed a certain amount of money to repair minor damage to the roof, but in fact the building inspection suggests that the whole roof needs to be replaced immediately and this is going to cost significantly more, and much more than your budget allows, then you may want to pull out of the contract on that basis. If this is the case, you want the flexibility to be able to make that decision.

It is advisable to attend the building and pest inspection yourself if possible. The reason for this is that you will be able to clarify with the inspector the severity of any issues. This is relevant because in the inspector's reports, everything can sound critical and urgent. For example, the report may say that the roof needs replacing, but if you are onsite during the inspection then you can clarify that in reality there may only be pin size holes in the roof, and it could easily last another 5 years. If you cannot be present at the inspection, then you definitely should phone the inspector after you have read the report, in order to make these same clarifications.

It can be common for an inspection report to list a huge raft of issues, which sound quite alarming, but in fact the inspector verbally says that the house is actually quite good. Remember, the inspector needs to cover him/herself legally, and so they will highlight every little item.

Also remember that the building and pest inspection may be an opportunity for you to renegotiate on the purchase price, if there are previously unidentified issues found during the inspection. Certainly if the seller is motivated to sell, they will be more willing to negotiate.

Electrical Safety Switch & Smoke Alarms

This section of the contract should be completed by the seller or their agent, and is just something that you need to double check. You definitely want both smoke alarms and safety switches to be installed otherwise it will just be an expense to you.

Pool Safety

Similar to above, the pool safety section of the contract will be completed by the seller and you just want to check, because you do not want the liability of an unsafe, uncertified pool, or if you are taking on this liability, you want to do it knowingly.

Neighbourhood Dispute Resolution

This section is again one that should be pre-completed by the seller, but definitely worth checking. It covers the situation where an application has been lodged or an order made by a civil tribunal or court, typically with respect to a tree on the property. It is equally as relevant though if there are other disputes at play, for example fences, retaining walls etc.

Settlement Date

This is where the date of settlement is noted, usually by the buyer. Depending on the nature of the deal it may be preferable to have a long settlement (otherwise referred to as a delayed settlement), but in other situations a short settlement may be preferable. This is entirely down to whatever you have been able to negotiate with the buyer. Certainly if you intend to do work on the property, or lodge council applications, the longer you can delay settlement and keep the money in your bank account the better. Obviously it also gives you time to take measurements, get quotes, maybe even get things made if you are doing a renovation, or to get designs done, reports prepared, and applications lodged if you are seeking council approval.

On the contract, include the number of days until settlement e.g. 90 days from contract settlement or from contract going unconditional, rather than putting in actual date, e.g. 20th September, and this is because it may take several days for all parties to countersign the contract, or to negotiate the terms, and if that is the case, the date listed will already be out of date and not in your favour.

Special Conditions

A contract of sale can be as individual as two parties agree to, and it is in the special conditions section that the deal specific clauses that you have negotiated will be reflected. Just remember though that the more special conditions you impose with your offer, the less favourable the offer is likely to be. This is particularly the case if you are operating in a hot market that is moving quickly and where there is a lot of competition from other buyers. In this situation, adding lots of conditions can be to your detriment. When there are no special conditions listed – we call this a 'clean contract'!

There will not be an exhaustive review of special conditions here, but rather just a touch on some of the more common and readily used. Certainly you should be having every special condition professionally written by your solicitor though, as this is a legal contract and not to be taken lightly. In fact it is dangerous to include a clause that has not been vetted by your solicitor, because it could in fact be used against you if it hasn't been written correctly.

The type of special conditions you use might be:

Early Access

If you intend to access the property and commence works prior to settlement.

Access to Take Measurements

If you intend to access the property to take measurements, or to complete a contour survey, but not actually commence any permanent works.

Due Diligence

This is a catchall clause that gives the buyer a period of time to complete their due diligence on a property before the contract goes unconditional. The timeframe that you include in this clause is obviously relevant because it needs to be long enough to give you the time to do your research, but not too long that it puts the seller off.

Seller to Sign Application Documents

This is relevant if during the contract period you intend to lodge development or building applications. These applications need to be signed by the current property owner, and so if you have not included this condition in the contract, the seller could choose not to sign the documents, and you would have to wait until settlement, when you become the legal owner to lodge them. The contract might also have powers of attorney clauses for the buyer to sign such documents although this is usually more common in option agreement than in contract.

Removal of Rubbish and Debris

This is particularly relevant if there is a lot of rubbish at the site, like car bodies, personal effects under the house, or piles of rubbish, and you want them removed by the seller before you settle.

Soil Test

This is relevant if you are buying vacant land to construct on.

Margin Scheme

This is important to include when you are purchasing a property, because it confirms that both the buyer and seller agree that the margin scheme applies to the sale and that the sale price includes GST if it is relevant.

Solicitors Approval

This clause states that the contract is conditional on the buyer's solicitor's approval of the contract and all its conditions and clauses. As the purchaser, it can be used as a way to buy yourself time to ensure that all the contract details are correct.

Signing Contract

Before you sign the contract it is important that you have consulted with your solicitor on who should be the signatory and how it should be written. This has particular relevance when you are purchasing the property in an entity name, like a company trust structure or Self- Managed Super Fund. The States may differ, so you need to know if you are signing as the Enduring Power of Attorney for that entity and how that needs to be written on the contract.

Other Documents that Form Part of a Sale Contract

In most States there will be additional documents attached to the contract that provide the buyer with detailed information regarding the property. The name and contents of the documents differ between the States and so I will outline them briefly below. Please note though, that legislation changes regularly and so you need to engage with a licensed solicitor in the State where the property is being sold, and have them represent you in the process.

Victoria - Section 32 – Vendor's Statement

In Victoria, the additional document to the sale contract is called a Section 32, otherwise known as a Vendor's Statement. As the name suggests, this document is prepared by the vendor or more specifically the vendor's legal advisor, and it tells potential purchasers certain things about the property title, that they wouldn't necessarily find by just inspecting the property, but that they should be aware of before signing the contract.

It covers such things as mortgages and 'charges' over the land, covenants, and easements and any other restrictions on title, the zoning, declaration if it's in a bushfire prone area, information regarding building permits issued in the past 10 years, particulars of owner-builder warranty insurance, disclosure of any notices or orders issued by the authorities regarding fencing, road-widening, sewerage etc., if there is access to the property by road, information on services connected to the property, and the outgoings on the property including the rates and if applicable the body corporate fees.

It is very important that you have your solicitor review this document prior to signing the contract, and if there is incorrect or insufficient information, that you bring this to their attention. If you have not received this document with the contract, this should raise alarm bells, because it legally must be provided. It is not acceptable for the vendor to include in the contract a special condition that says that the sale is subject to the vendor providing the purchaser with a copy of the Section 32. Section 32 is considered the most comprehensive vendor disclosure statement in the country, with the equivalent documents in the other States being less comprehensive.

What is not included is specific information on the condition of the buildings, whether they comply with building regulations, and the accuracy of the title measurements, hence a building and pest inspection is still highly recommended. Also recommended is a search of the council records regarding illegal structures, and confirmation of the property boundary, the measurements, encroachments and the like. We do cover these in more detail in the due diligence section in the second half of this module.

New South Wales – Schedule 1 Prescribed Documents

In New South Wales, the additional document to the sale contract is called Schedule 1 Prescribed Documents. These are prepared by the seller's solicitor / conveyancer, and generally include copies of deeds and restrictions on the use of the land (easements, rights of way, restrictions, covenants etc.), details of any mortgages on the property, and any outgoings or other charges that may apply, a drainage diagram showing the location of any sewer lines, a copy of the Certificate of Title confirming that you own the property, and a copy of the plan for the land. A zoning certificate, otherwise known as a Section 149 Certificate (S149) also needs to be included, which is issued by local council and shows planning controls and other things that may affect the property, such as any proposed road widening. It is compulsory for the sales agent to have a copy of these documents before marketing a property for sale.

Australian Capital Territory

In the ACT, certain documents and reports must be provided by the vendor to potential purchasers before the property is offered for sale. The information covers such things as an assessment of the physical condition of the property structure, an asbestos assessment report, and a statement of any provisions that may influence or restrict what can be done to a property regarding development. Vendors are also required to provide an energy efficiency rating statement, and a pest inspection report.

South Australia – Form 1 Disclosure Statement and Western Australia – Seller's Disclosure Statement

Similar to the other States above, South Australia's Form 1 Disclosure Statement must be provided to a buyer prior to signing the contract. In contrast, in Western Australia, it is not compulsory for the Seller's Disclosure Statement to be provided to prospective purchasers, although it is generally provided to the selling agent. Both documents would include such information as building restrictions and copies of any permits issued for work carried out, a copy of the title including boundary measurements, mortgage details, and outgoings associated with the property.

Queensland, Northern Territory and Tasmania

Currently there is no requirement under legislation for a seller to provide relevant information about a property to a potential buyer, beyond what is already covered in the sale contract and that must be disclosed by a body corporate. For this reason, doing your own due diligence and having your solicitor complete relevant searches in a timely manner is essential.

Cooling Off Periods

A cooling off period is a period of time that allows a buyer to change their mind about purchasing a property after they have signed a purchase contract and only face a relatively small fee (e.g. 0.25% of the purchase price), as long as it is in written and submitted within the required timeframe. Cooling off periods that form part of a sale contract, also differ between States due to differing legislation. For example in Western Australia and Tasmania there are no cooling off periods. In other States they do exist, but differ in the number of days. They differ between an auctioned property and a private sale property, and they can even differ depending on the size of the property, and whether a buyer's agent is involved. Clearly it's important to understand the regulations in the State that the property is being bought.

Other Aspects Relevant to Purchase Contracts

There are just a couple of other items to be brought to your attention regarding purchase contracts.

The first is to ensure that as soon as you sign a purchase contract, you take out ***insurance*** on it. If there is a building on the site you would take out Building Insurance, whereas if it is vacant land, you would take out Public Liability Insurance. This is because in both instances, you become legally liable for the property on signing the contract (except in Western Australian where liability passes to the buyer at settlement).

You should also ***inspect*** the property a day or so prior to settlement or on the day of settlement to ensure that the property is as you expect it to be. Check the chattels you agreed to be left in the contract are still there. Check that the fixtures that were excluded have been taken, and if anything else that wasn't agreed to has been taken or changed. Have the old car bodies in the yard been removed, assuming this was part of your contract?

There was a case where the sale property had an in-ground swimming pool and on inspection the day before settlement, the pool was found to be only half full. On further investigation, it was found that there was a crack in the concrete pool and the owner had been topping up the water level the whole time to make it look normal. Clearly the seller didn't expect a pre-settlement inspection and had moved out and stopped topping up the water level.

Another thing to consider is when you find a property that you would have bought except it has a contract on it already, you can always put a ***back up contract*** on the property. What this does is alerts the seller of the property that there is another

interested party if the current purchaser can't get finance or wants extensions to the conditional period then the seller may be less lenient and take up your offer.

The final comment to be made is regarding the ***legal searches*** that would be completed by your solicitor. For example, the Main Roads Department search and contaminated land search. Often people don't want to spend the money on these searches until they know the contract is unconditional, and they are definitely going ahead with the purchase. The problem with this strategy is that if anything unexpected is revealed in these searches, it may be too late for you to get out of the contract because you are now unconditional, and in reality it may now cost you a lot more money. So instead, it is advisable that you have these searches done during the conditional phase of the contract.

Go onto your State Real Estate Institute website and print out a copy of the standard contract and have a thorough read. If you have any questions about anything, ask your coach to help.

PLATINUM
ACCELERATOR

Sale Contract

In this section, the sale contracts will be looked at from the perspective of you being the seller, and so we want to ensure that the contract is prepared in your favour. This will not be gone into in as much detail as in the previous section when you were the purchaser, because in reality your solicitor or real estate agent will be preparing the contract and so you should have already checked that all the pre-completed details are correct. What we are focusing on here is reviewing the details that the purchaser will complete.

Buyer's Name

When the buyer is an entity like a company, trust, or Self Managed Super Fund, you need to confirm that they have completed the entity name correctly and that the signatory is in fact authorised to sign. If these details are incorrect, this may leave the contract open and subject to being gotten out of, which of course is not what we want as the seller – we want the contract to be as water tight as possible.

Deposit

When you are the seller obviously you want to hold as large a deposit as possible, so as to give the buyer more incentive to settle. If the amount is too low, then they do not have a lot to lose if they pull out of the contract. Remember though that the deposit is fully refundable if the buyer exits the contract during the conditional period based on one of their set conditions. Even if they pull out of the contract once unconditional, you may have to take them to court to be able to claim on the deposit. A way to get around this as the seller, is to include a special condition in the contract that says that the deposit becomes non-

refundable and is released to the seller once the contract goes unconditional. Maybe this is something you could consider adding to the contract if the buyer is negotiating with you on terms and you need something to be able to bargain with from your end.

Special Conditions

Another special condition that is of value from the seller's perspective is the ***Sunset Clause***. A sunset clause states that in the event of another offer being received, the first buyer has a set period of time (say 72 hours) to go unconditional on the contract, otherwise their contract ceases and the new purchaser can enter into contract. This is a particularly useful clause for the seller to request if the buyer's offer is subject to fairly onerous conditions like being subject to the sale of another property, or subject to a lengthy due diligence period. It gives you, the seller, flexibility to continue to market the property or consider other offers even while still having a contract in place.

Obviously as the seller, you want to ensure that all the other clauses and timeframes in the contract are as tight as possible. You want their timeframes short for inspections, finance and settlement, their deposit as large as possible, and their other conditions not too onerous, and as much as possible in your favour.

Disclosure Document

As a seller there will be situations where you want to sell a property prior to having legal title. An example of this is selling off the plan and selling prior to construction, or selling prior to the titles department having issued title on the newly created property, whether it is a unit development or subdivision. In this instance, the sale contract needs to also include a disclosure document that sets out the details of the property. This document will be compiled by your solicitor, but will involve information from your surveyor and body corporate manager to name a few, and it needs to be compiled earlier in the process than it would if you were going to contract after titles had been issued.

As an example, the items included in a disclose document for an off-the-plan sale of units or townhouses will include (see example):

First Statement

Details the standard terms of the sale

Draft Survey Plan
Diagram that shows the proposed survey boundaries.

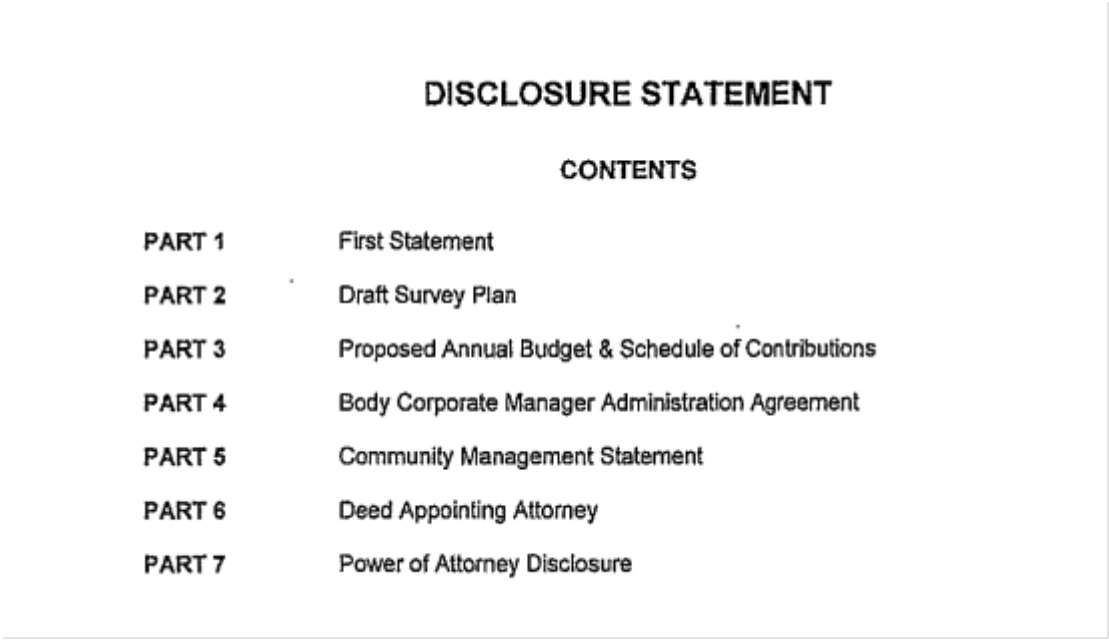
Proposed Annual Budget & Schedule of Contributions
Body corporate document that details the proposed annual budget and owner's contributions.

Body Corporate Manager Administration Agreement
Document that outlines the conditions and fees of the body corporate manager.

Community Management Statement
Document that outlines the management conditions and by-laws for the body corporate scheme.

Power of Attorney Documents
Documents prepared by the solicitor.

Schedule of Finishes
Details the fittings and finishes of the end product being sold e.g. unit, house, or land.



DISCLOSURE STATEMENT

CONTENTS

PART 1	First Statement
PART 2	Draft Survey Plan
PART 3	Proposed Annual Budget & Schedule of Contributions
PART 4	Body Corporate Manager Administration Agreement
PART 5	Community Management Statement
PART 6	Deed Appointing Attorney
PART 7	Power of Attorney Disclosure



PLATINUM
ACCELERATOR

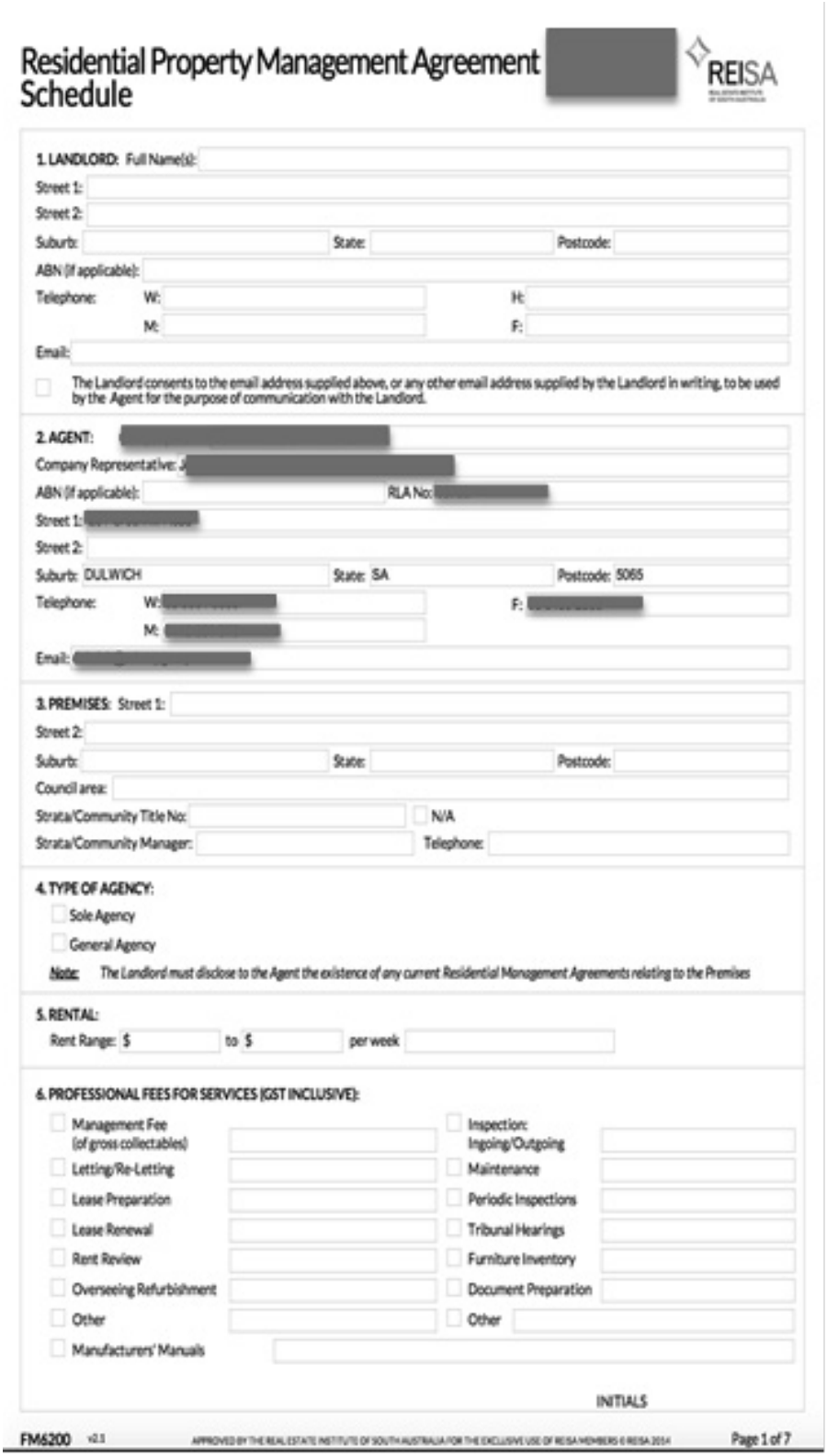
Property Management Contract

A property management contract is a document that you will complete when you are tenanting a property and engaging a property manager to handle the process for you.

These are generally a standard document used in your State (see example). They are fairly straightforward and self-explanatory and so we will not go into it heading by heading. What is to be highlighted though are a couple of the less obvious aspects.

The first is the duration of the contract. Typically you will be entering into a continuing appointment, which means it continues indefinitely. ***The notice period given to terminate the agreement is particularly significant***.

Typically this will state 60 days, however, I suggest amending this to more like 30 days, because let's face it, if you have an issue with a property manager, you want to get out sooner rather than later, and while 60 days is in their interest, it is not in yours.



Residential Property Management Agreement Schedule

[redacted] REISA

1. LANDLORD: Full Name(s):

Street 1:

Street 2:

Suburb: State: Postcode:

ABN (if applicable):

Telephone: W: H:

M: F:

Email:

☐ The Landlord consents to the email address supplied above, or any other email address supplied by the Landlord in writing, to be used by the Agent for the purpose of communication with the Landlord.

2. AGENT: [redacted]

Company Representative: [redacted]

ABN (if applicable): RLA No: [redacted]

Street 1: [redacted]

Street 2:

Suburb: DULWICH State: SA Postcode: 5065

Telephone: W: [redacted] F: [redacted]

M: [redacted]

Email: [redacted]

3. PREMISES: Street 1:

Street 2:

Suburb: State: Postcode:

Council area:

Strata/Community Title No: ☐ N/A

Strata/Community Manager: Telephone:

4. TYPE OF AGENCY:

☐ Sole Agency

☐ General Agency

Note: *The Landlord must disclose to the Agent the existence of any current Residential Management Agreements relating to the Premises*

5. RENTAL:

Rent Range: $ to $ per week

6. PROFESSIONAL FEES FOR SERVICES (GST INCLUSIVE):

☐ Management Fee (of gross collectables)		☐ Inspection: Ingoing/Outgoing	
☐ Letting/Re-Letting		☐ Maintenance	
☐ Lease Preparation		☐ Periodic Inspections	
☐ Lease Renewal		☐ Tribunal Hearings	
☐ Rent Review		☐ Furniture Inventory	
☐ Overseeing Refurbishment		☐ Document Preparation	
☐ Other		☐ Other	
☐ Manufacturers' Manuals			

INITIALS

FM6200 v2.1 APPROVED BY THE REAL ESTATE INSTITUTE OF SOUTH AUSTRALIA FOR THE EXCLUSIVE USE OF REISA MEMBERS © REISA 2014 Page 1 of 7

The other aspect is the ***assignment clause***, which allows the agent to assign the management contract to another agent for whatever reason they choose. The obvious reason is if they sell their rent role to another agent. Typically this section is pre-filled out to say that you agree with the assignment clause. In contrast, it is preferable to tick that you disagree with this clause, because you want to have the final say as to who is the manager of your properties. You want to maintain the control and have the choice to change managers if you so choose.

Also remember that this contract is open to negotiation, including;

- the management fee,
- the lease negotiation renewal fee,
- the maintenance repair fee,
- the periodic inspection fee,
- the administrative expenses.

Remember though that you do not want to negotiate too hard with the agent or they may become less interested in your property. You do not want them to give you the less desirable tenants or recommend another property above yours, because they will get a higher management fee from it. Remember the bigger picture and that you want the best relationship possible with your property manager to ensure you get the best service from them.

Finally, if you are planning on inserting any special conditions into the management agreement, it is best that you have them correctly drafted, preferably by a Solicitor. This is because if the condition you add contravenes the standard clauses in the contract, this can result in your condition being null and void, which obviously is not the intention. Also in some States, even the property manager is not legally authorised to enter special conditions to the agreement, so again clarify this for your State.

PLATINUM
ACCELERATOR

Build Contract

When undertaking either a major renovation or new construction project, and you are using a builder, it is essential that you have a build contract in place prior to works commencing. There is a difference between residential and commercial build contracts, and typically the latter is much less prescriptive and is more open to the specifics of the project, the builder and the client.

A residential build contract, in contrast tends to be much more prescriptive and the one we will cover in a bit more detail as it's the one you are likely to be using for renovation and house construction projects. In fact, depending on your builder, you may stick with a residential build contract even up to say a two or three unit size project, just depending on the project cost and the financier. Certainly the larger the contract and the greater your construction finance, the greater input the financier will have on the nature of the build contract used and the conditions included.

Build contracts are generally a standard document where you fill in the blanks. There are a number of different types of contracts, depending on the organisation that has prepared the standard document, and also your State. Some contract examples include the Master Builder's Association, Building and Construction Commission in your State, and Housing Industry Association to name a few (see examples below).

Each contract will be written slightly differently and is likely to have a slight bias either more towards the builder or towards the client, depending on the organisation that compiled the document. For example, the building contracts produced by the building associations are typically written to an extent in the builder's favour. For you, the client,

this is not a reason to avoid using them, it's just something to be mindful of when you are reviewing the document and the conditions.



You also need to consider the contract conditions from the worst-case scenario and confirm that you are happy with what is being proposed. For example, what if the builder runs over time, or if the builder cannot access certain trades or materials to complete the work, or if there are wet weather delays, or variations that result from you changing your mind or not clearly documenting your selections and preferences from the outset? The list goes on. Do not assume that everything will be clear sailing, and then when it is because of your diligence and preparedness, you will be pleasantly surprised.

Certainly, preparation is the key with build contracts, you definitely cannot put in too much detail regarding your selections, fittings, fixtures, materials, colours, and even the position of those colours. Builders are not mind readers and also they are on a tight timeframe, and so if you have not specified something, or its location is questionable, you run the risk of the builder making a decision on the fly, and if you do not agree with it, it may cost you money to have it rectified. So please spend the time upfront to document everything, whether that's on the plan or in the specifications document, just make sure it's in writing and that everyone agrees with it. Even if this process slightly delays the start of the build, that's OK, because it's much cheaper to change things on paper rather than once it has already been built! As with the previous contracts we spoke about, you need to understand the meaning behind the double check every detail entered into a build contract because it's surprising how even the property address, lot and plan number can be entered incorrectly.

Another aspect to be very diligent about, is understanding the ***insurance cover*** that will cover the build process. This will differ in each State. For example, in Queensland it's the QBCC Home Owners Warranty Insurance and in NSW it's the Home Building Compensation Fund through Fair Trading NSW. What you need to understand is if the insurance covers you if the builder is at fault, or goes bankrupt, or just cannot complete the build for any reason. Also, does it cover the homeowner for the 6-7 year warranty that the builder must provide for structural issues post completion?

Where the guidelines can change though regarding insurance is if you intend to be doing several build contracts with the same builder over the same time period, or if you are doing multi units. In this situation you need to double check that the insurance covers you adequately, because in some States, as soon as you have multiple builds with the same builder, you may not be covered during the build process, and you may need to take out separate insurance for this purpose, including contract works and public liability insurance. A good insurance broker that deals with construction will assist you greatly with this also.

Let's run through some of the main components that make up a standard build contract.

Builder's Details

Ensure that the builder's licence is valid and will remain valid for the period of your build contract. Do a search on the State regulatory body that manages builder's licences in your State to ensure that they are still registered, that they have no infringements, or decisions against them and no outstanding claims or a history of non-compliance or disputes. For example, in Queensland, all builders have to be licensed with the Queensland Building and Construction Commission, and in Victoria it's the Victorian Building Authority. On their websites, you will be able to search by builder's name or licence number, which will reveal their full licence history. Clearly if this search reveals anything unexpected, then more questions need to be asked – both of the builder and even the commission, to understand if the disputes are still active and to understand the information better.

You also should do an ASIC company search on the building company and the directors to ensure that there are no issues. What you don't want to see is recent or regular changes in directorship, and clearly no infringement issues. Some information will be free, but for a small cost you can access the company's full history, which I definitely recommend, recognising the amount of money you will be investing with them as your builder.

Finance and Lender

If you need to finance the construction project, you need to reflect this on the contract. If you do not know who the lender is at the stage of doing the build contract you can specify 'To Be Advised', but definitely do not leave it blank, otherwise it generally defaults to not being subject to finance.

The Works

In this section you describe the works that the contract covers. For example, you may describe the works as a new residential house 4bedroom, 2bathrom, double lock up garage – turnkey construction as per approved plans dated xyz. Or it may say new residential turnkey construction of 3 x 3 bedroom townhouses, high-set, light weight construction as per approved plans and specifications dated xyz. The more descriptive you can be the better.

Matters Affecting Site

This section is where you need to list any easements, building covenants or planning regulations that may affect the site. It is very important to disclose this, so as to ensure it has been brought to the builder's attention, and therefore if there is an issue, they cannot come back to you and say they were unaware of it.

Build Period, Practical Completion, Inclement Weather Days, Anticipated Start Date and Late Completion Damages

These are very important sections to complete and to understand the implications of. Firstly the build period is the number of days the builder has allowed to complete the job. You need to understand if this timeframe includes or excludes wet /inclement weather days as this can make a big difference. Obviously you want the build period to be as short as possible, but it also needs to be balanced against the late completion damages amount. The amount is the penalty fee the builder incurs if they exceed the contracted build period. If this amount is too low though, like the standard $50/day that is often quoted, then clearly there is no incentive for the builder to actually complete it in the timeframe specified. You want to ensure that the late completion damages amount is actually an amount that will give incentive to the builder to complete on time, like $100/day!!!

With the inclement weather days, this is the specified number of days allowed for in the contract for wet weather. More wet weather than this, though, and the builder can claim an extension on the completion date. What is important is to understand what defines wet weather, or inclement weather. How much rain needs to occur? For example, does 1 hour of rain register as wet weather, or does it need to be more substantial? Different

contracts will potentially have a different definition and you need to understand it, because it can make the difference of your project blowing out or staying on budget.

Other Contract Documents

In this section you need to include all of the documents associated with the build contract. This includes the specifications documents, the full plan set including engineering design, hydraulics plan, working drawings, any approvals, including building and development approvals, and operational works approval. It is a good idea to include the full name of the document, the number of pages and the date it was finalised. This is because there are numerous versions of documents, and you want to ensure the builder is basing the construction on the most recent final version.

Progress Payment Schedule

For residential contracts there is a standard payment schedule based on percentage amounts at each of the major construction milestones, being deposit, base, frame, enclosed, fixing, and practical completion stage (see example below). It is advisable to stick with the standard payment schedule, and certainly this is what the banks are more likely to want to see too.

Schedule 2. Progress payments

Part A - Prescribed progress payment schedule

This part applies unless Part B is completed.

Section 66 of the Domestic Building Contracts Act prescribes the following payment schedule:

Stage	Percent	Amount
Deposit	5.00%	$34,635.65
Base	10.00%	$69,271.30
Frame	15.00%	$103,906.95
Enclosed	35.00%	$242,449.55
Fxing	20.00%	$138,542.60
Practical Completion	15.00%	$103,906.95
Total	100.00%	$692,713.00

Prime Cost & Provisional Sum Items

Prime cost items are specified fittings and fixtures in the build price where a fixed dollar amount has been allowed for e.g. $40m2 for porcelain tiles. Classic examples include tiles, carpet, appliances, bathroom fittings, light fittings, where you may not yet have selected the actual item, and so the builder has specified you a budget to work with. If your final

section is higher or lower than the prime cost specified in this section, then this will be a variation to the contract, either a variation increase or variation decrease. Prime cost items should not be in a contract, as all your selections should have been made before getting to this contract stage, so as to ensure there are minimal variations in the contract, as these can cost you dearly.

Certainly you should be aiming to have zero variations during the build, and a way of achieving this is to have no prime cost items in your contract. Provisional sum items are similar to prime cost, however, they usually include a level of labour involved, but again, they are an allowance amount being included by the builder in the build contract to cover those items, e.g. excavation, rock removal, concrete footings etc. As above, including these items just leaves an opportunity for variations during the build, so try to keep these at an absolute minimum.

Excluded Items

Excluded items are those that are definitely excluded from the build contract, for example landscaping, if you intend to do the landscaping yourself. Also if you intend to supply certain materials yourself, that should be noted here. Be mindful though that anything you do or that you supply will not be covered by the builder's warranty, and while this may sound all right on the surface, it could have significant consequences down the track. For example, if you do the landscaping and mulch the gardens against the exterior wall of the building, this may promote termites and the extra moisture from watering the plants may cause uneven wetting and drying of the soil which can put different pressure on the footings that could potentially have an impact later on. Maybe the landscaping ground levels will not be perfect and run-off water may fall towards the building, and again this could be detrimental. So you can see that even the simple act of doing the landscaping on a new build could have potential consequences if not done absolutely correctly.

Special Conditions

This section is where any special conditions to the contract are entered. Again try to keep these to a minimum to reduce the potential for issues. If space does not permit in the Other Documents section of the contract discussed earlier, include the full list of plans and specifications here.

Signature Page

Clearly this is where all parties sign the contract, ensure that you are signing on behalf of the entity that owns the land and that is commissioning the builder. So if this is a company trust structure, then confirm with your Solicitor how this needs to be written on the contract and how it is signed for.

PLATINUM
ACCELERATOR

Option Contract

An option contract is a legal instrument used to secure a property and have control of the property without actually purchasing the property.

An option comes in three forms:

- Call Option
- Put Option
- Put and Call Option.

A 'Call Option' is the Buyer's option – it gives the buyer the right to purchase, but not the obligation to have to purchase a property.

A 'Put Option' is the Sellers option - it gives the seller the right to sell the property to the buyer, but not the obligation to have to sell it. This is sometimes used in off the plan purchases.

A 'Put and Call Option' – is basically an unconditional agreement where the buyer must buy and the seller must sell at the agreed time, at the agreed price.

Option contracts are a great tool and something you should ensure you understand and look to utilise whenever possible. They are particularly great for deals where having time on your side is beneficial, and where the outcome of your research is still somewhat

uncertain. A classic example is with development sites where council approvals are required, because these take time, and also the outcome can be somewhat uncertain, particularly if you are pushing the council requirements. So depending on the application, you may choose to not proceed with the deal when the council decision is unfavourable.

Because you have not had to actually settle on the property, your outlay will be much less during the option period, which is another benefit of an option agreement. The other significant benefit is that you can pass on the deal during the option period and therefore make a potential profit from the deal without even actually ever owning it. This will be explained in a bit more detail below as the main components of an option contract are outlined. This is definitely not going to be an exhaustive explanation of options, but will give you enough information to be informed when you speak with your solicitor about it in more detail.

It is essential that any option contract is purpose written by a solicitor. It is definitely not a standard agreement that you can buy off the internet, or use a template from someone else's deal. There is significant money at stake and you need to ensure that your own requirements and that of the seller are adequately covered.

The last point to make before getting into the detail is that the dates in an option contract are critical. **They must be adhered to, to the letter**. If for example it says a document must be received by 5pm on a given date then it's not good enough that it is in the postal system at that time, or that it is faxed or emailed though 1 hour later, because that in itself can result in non-compliance with the contract and the contract may be able to be terminated on you. There was one student that caught a plane from Brisbane to Canberra to hand deliver a document because that was the only way it was going to be received in the necessary timeframe. So please do not be complacent with dates and timeframes in contracts (in fact in any contract), as they are legal documents and with property, there is significant money at stake.

General Terms of the Option Contract

An option contract is actually made up of two documents. The first is the option contract that details the general terms of the option and includes the standard forms that will be outlined in more detail below. The second part is a standard contract of sale document that is relevant in your State, for any standard sale of a property, and again, this will be touched on below.

Regarding the general terms of the option contract though, this will cover off on the property details, the seller's details, the buyer's details (otherwise termed 'the grantee'), the option timeframe and the agreed price.

The **option timeframe** is particularly important, because often with student's option deals, they just haven't given themselves enough time. It is beneficial if the option timeframe is as long as possible, because you can always exercise the option sooner, but you can't just easily extend the period. An extension request requires you to renegotiate with the seller and they have no obligation to grant it, so it can leave you somewhat vulnerable and may in fact cost you in cold hard cash if the seller negotiates it that way. Also, the longer the agreement is, the more time it gives you to get council approvals, and to on-sell the option, which is essentially the property, if you so choose. A great target timeframe is 18 months to two years, although it does come down to what the seller will agree to and therefore, your skill as a negotiator. Certainly a one or two month option contract is considered very short, although it must be acknowledged that it really does come down to your strategy and your intention with the property.

Exercise of Option

A unique part of an option contract is that you actually have to exercise the option and formally notify the seller that you are going to proceed with the option. Remember, this is because with a call option you have the right to proceed but not the obligation, so you actually have to formally notify the seller that you want to proceed. To facilitate this, there will be a form at the back of the option contract that is the Exercise of Option form and that needs to be completed and submitted to the seller, or their solicitor, within the required timeframe. The process for exercising the option will be detailed in the General Conditions of the option contract and you need to follow these exactly. By agreeing to exercise the option, you are essentially entering into an unconditional purchase contract on the property and that is where the sale contract document comes into play, which is outlined in more detail below.

Nominee Clause

Another important and unique part of an option contract is the 'nominee clause'. This clause allows you to pass on the option contract to another party and in effect, passing on the purchase of the property to them. An example of this might be where you put the property under option and during the option period you do something to improve its value, like getting council approval to develop the site. If you then want to on-sell the now development approved site to someone else, you have the right to do so in the option contract by using the nominee clause and nominating the new buyer as the option holder. You would have a separate agreement with the new buyer at your agreed price, which is where you make your profit, and the new buyer would then have the right

to exercise the option agreement and settle on the purchase at the nominated price in the option contract.

There is a 'nomination notice' included in the option contract, and this needs to be submitted in the manner and timeframe detailed in the nominee clause of the option contract, and again, following this word for word is essential.

Purchase Price, Premium, and Deposit

The purchase price of the property is self-explanatory, and is the total amount you have agreed to pay to purchase the property, as detailed in the general terms of the option contract. Because the seller is granting you control of the property but with the option still to not have to proceed with the purchase (and sometimes this is for an extended period of time), you are likely to have to pay what's called a premium, or an option fee. This is typically an amount of money that is non-refundable and is paid to the seller on counter signing of the option agreement. The money is released to them to do whatever they choose with it.

From your perspective as the buyer, you want this amount to be as low as possible, because it has to come out of your cash reserves. If you can negotiate it at say $1,000, you are doing well, even though people will say you should only pay $1. In reality, the seller's solicitor is likely to recommend to them that $1 is not enough, so again it comes down to your negotiating skill that will determine what this amount is. It must be commercially viable for the seller to give you time to settle on the property and complete any applications you need to on the property.

The deposit amount is the amount agreed on and documented in the sale contract part of the agreement. This is the standard deposit that you would include in a normal sale contract. In this instance though, it is not uncommon to have this amount released to the seller immediately as a non-refundable deposit. This means that if you, as a buyer, do not proceed with the contract they are compensated by keeping the deposit.

Basically how much is negotiated as an option fee and a deposit in advance and how much is released to the sell immediately is totally a factor of what the market will bear and whether the purchase price is at market or above market value. If the purchase price is above market value then usually the option fee and deposit in advance is lower. If the purchase price at market then the deposit and option fee is usually higher.

Contract of Sale

As described above, the second part of an option agreement is a contract of sale document. This will be the standard contract used in your State for selling a property, but

in this instance it will be pre-filled out with the buyer's and seller's details, the property details, the purchase price, deposit amount, and settlement timeframe etc. The reason it is pre-filled out is because the terms of the sale have already been agreed to in negotiation of the option contract, and the sale contract is included to acknowledge that it is the instrument that will be used to actually settle on the property.

Now an important feature to be aware of is that the sale contract will have no finance clauses, no inspection clauses, and no special conditions. It will be a clean unconditional contract. The order of events is that you sign the option agreement, and then when you exercise the option agreement, the sale contract document takes effect. All parties sign the sale contract, and then settlement occurs according to the settlement date specified e.g. 60 days. The sale contract is unconditional because you have already had the period of the option agreement to do your due diligence, finance etc.

Caveat and Insurance

The last two items to be covered on option contracts is insurance and caveat. It is important to consider who is going to insure the property during the option contract because it can be for an extended period of time, particularly if you have negotiated a two year option agreement. Preferably, make a condition of the option that the current owner must maintain insurance on the property and provide evidence to you that this has been done. This will save you money, and the owner should already have insurance in place and so it should not be a major issue for them to keep it going.

A caveat is a legal instrument that can be lodged on the title of a property, to reflect the interest of another party in that property. It means that the property cannot be sold (or refinanced in most cases) without the interested party being notified, which in this instance is you, as the option and caveat holder. This is because it is written on the property title that a caveat is in place, and it cannot be sold without the caveat being removed (see example below). When you are negotiating an option agreement, negotiate to have a caveat put on the property to reflect and protect your legal interest in the property.

The owner will need to consent to this and will need to agree to a consenting caveat (or mutual caveat) being lodged by the solicitor. If you think about the instance where the seller unexpectedly passes away with no caveat existing on the title, and let's say the seller never provided his solicitor with a copy of the signed option agreement, the property could be sold as part of the estate and no recognition given that in fact you have an option on the property. This is an extreme example, but certainly could be the case if you have a long option contract, have not corresponded with the buyer for an extended period of time and perhaps you don't live in the local area to be able to go past

the property regularly. Yes, this is an extreme example, but you get my point that having a caveat in place at the outset would have avoided this situation.
Below is an example of how a caveat is shown on the title of a property when a title search is conducted.



LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: [redacted]

SEARCH DATE	TIME	EDITION NO	DATE
7/5/2004	8:36 AM	1	24/3/1999

LAND

LOT [redacted] IN DEPOSITED PLAN [redacted]
AT QUEEN'S SQUARE
LOCAL GOVERNMENT AREA: SYDNEY
PARISH OF ST JAMES COUNTY OF CUMBERLAND
TITLE DIAGRAM: DP1[redacted]

FIRST SCHEDULE

THE STATE OF NEW SOUTH WALES

SECOND SCHEDULE (2 NOTIFICATIONS)

1. DP[redacted]1 THIS IS THE FIRST TITLE ISSUED IN THE INTEGRATED TITLING SYSTEM AND REPRESENTS THE LAND UPON WHICH THE LAND TITLES OFFICE IN SYDNEY N.S.W. AUSTRALIA IS ERECTED
* 2. [redacted] CAVEAT BY ALLAN MU[redacted]

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

SAMPLE

PLATINUM
ACCELERATOR

Joint Venture Agreement

Joint venture deals are a great strategy to leverage your time, your skills and experience, and your money, depending on your situation. If you have the time, but not the money, then joining forces with another person with the money can be beneficial, and vice versa, if you have the money, but not the time, then a joint venture (JV) may allow you to get into a deal that you otherwise couldn't. Or you may both contribute on a servicing and equity basis to a deal. The critical component when doing a JV is to ensure that you have a JV agreement or contract is in place from the very beginning.

A JV agreement needs to cover not only what happens when everything goes smoothly and you make a profit and need to split it at the end, but it also needs to cover all of the other 'what if' situations, like what if there isn't a profit but rather, a loss? What if one of the parties dies or gets divorced? What if you don't agree on certain decisions – how will this situation be dealt with? These are all the difficult questions, but ones that must be covered in your agreement. You also need to think about the general day to day processes of doing the deal, like who pays the bills, from what bank account, who decides if you need to register for GST and who completes and lodges the BAS. How will you choose the paint colours, the selling agent etc.?

There is no right or wrong answer to any of these questions. The important thing is that you have thought about them, have agreed on a process, and have documented it formally, upfront in a JV agreement. Please do not take the view that because your JV partner is your best friend, or family member that everything will be fine. Yes everything starts out great because everyone is excited and keen to make heaps of money, but this

can turn quite quickly if you hit road bumps. If you don't have an agreement in place to guide you through the process, you definitely do not want any one deal to ruin your relationship.

A joint venture agreement is again a legal contract that needs to be drafted by a solicitor. To guide you in this process and the various questions and situations that need to be considered, discussed with your JV partner and covered in the agreement. The JV Agreement Checklist from Pacific Law has been included in the Module 8 Appendix. Module 8 covers joint ventures in greater detail.





PLATINUM
ACCELERATOR

Due Diligence

Now that we have been through some of the major contracts that you are likely to come across during your property journey, we need to discuss the many and varied due diligence items that you need to be aware of. Certainly, no one deal will have all of these issues, but it is not uncommon for half a dozen or more to impact on any one deal. This is particularly so when you are doing a development and having to comply with Council requirements. This definitely opens up a whole raft of additional factors that you need to be aware of.

Due diligence is doing your research to understand the impact that an item may have on your project. The item or situation may in fact be beneficial, but in most cases they are not, and hence why you need to first identify them, secondly understand their impact on your particular project, and thirdly, what you can do to mitigate the impact. The aim here is to at least bring you an awareness of the main considerations, and while the broad spectrum has been covered, there will certainly be items that you come across that you should add to your own due diligence list, to ensure you look out for in future deals. Remember that this whole property game is an ever evolving process, and the more projects you do, and the more diverse locations in which you do them, the more learning you will have along the way.

You are encouraged to not just read through this list below, but make your own list and keep adding to it with every new learning that you have. For example, maybe you are doing a deal right on the beachfront and sea level rise could be an issue, and something that you need to research. This then should be added to your due diligence checklist.

Finally, it needs to be stressed that your due diligence research should be done as early in the process as possible, certainly before you go unconditional with the purchase. The reason for this is that if your research does unearth a potential issue, you want time to investigate it, and still have the option to negotiate on it if necessary, or get out of the contract if you just can't find a solution to the situation. It is advisable not to proceed with a deal that has issues that you have unearthed in your due diligence and much better than getting stuck with a dud. Clearly if you are already unconditional, or you own the property, you now have to be in solution mode, because you don't have the option to pull out. Being caught with a problem property can not only cause you time delays, and the potential loss of money and opportunity, but it can also be very stressful, and so avoiding these wherever possible is just plain good business.

Working through the due diligence topics below, the specific property items will be looked at firstly, then the topics that could impact if you are considering developing a site. Then the more general locational items and finally, the more administrative ones, will be dealt with. It is hard to prioritise them, because each individual item could be a potential showstopper, so please take heed of them all.

Illegal Building Works

Illegal building works is anything at the property that is either not council approved, has not been built to comply with the Building Code of Australia, or has not been done by an appropriately licensed or qualified person. These are all situations that you want to pick up in the due diligence phase of purchasing a property, before you go unconditional. This is because once you have bought the property, you now inherit and take on these problems, irrespective of the fact that you did not create them. The fact that you are now the owner means they are now your problem – so buyer-beware! Let's deal with each of these in sequence.

Illegal building works that are not council approved may include such things as existing decks, pergolas, sheds, garages, extensions, complete buildings like granny flats, plus attic conversions or garage conversions to habitable spaces like a bedroom, study or rumpus room. Let's deal with these last ones first. The issue with these conversions is that they often do not comply with legal ceiling height. For example, a Class 1 habitable area must be 2.4m in ceiling height for two thirds of the room, and no lower than 2.1m in height, whereas most garages are built at 2.1m ceiling height, and therefore a conversion of this space into a bedroom or living area would not be legally compliant, could not get council approval, and therefore it should not be used for this purpose, and definitely should not be rented out to someone.

The issue with unapproved decks is that they may not have been constructed to engineering specifications, and could be a hazard waiting to happen. There have been several examples in the media where once a deck was loaded up with friends and family at a BBQ, it failed and caused significant injury and even death. Even an unapproved pergola or shed that may have been built too close to the boundary, could cause devastating effects if it facilitated a fire spreading to and damaging the neighbour's property.

With granny flats, apart from the fact that the building may not be council approved, the usage may not be either. For example, if you are looking to purchase a property with a granny flat and it is rented to a third party, you need to confirm that the council regulations in that area actually allow a non-related person to reside there. This is because there are many councils that still restrict a granny flat to being occupied by granny, or at least a person immediately related to the occupant of the main house. Amazingly, there are councils that require the granny flat building to be physically removed, if a related person is no longer living there.

Another situation that should ring alarm bells to you, is a property that is being advertised as multiple occupancy and has say three or more income streams from rent, but is actually a residential house and located in a built up residential street. Unless the seller can provide you with the appropriate approval or compliance certificates, you would have to assume that these rentals are non-compliant, and again something you need to be very wary of.

It does not matter if these built structures have existed for the last 30, 40 or 50 years, or have been used for this purpose for all that time in the past, the fact that they are not council approved means that they are illegal and the current property owner takes on the full liability.

There are a number of ways to identify these noncompliance situations. Firstly, you should **brief your building and pest inspector** at your pre-purchase inspection to identify any structures that are not council approved, and structures and works that are not compliant with the current Building Code of Australia. You should also require that they **highlight any renovation works** completed on the property that should have had compliance certificates issued e.g. plumbing, electrical, gas, and glazing works to name a few. If the owner is not able to furnish you with these certificates, this should raise alarm bells with you immediately.

You can also request and purchase from council a copy of the approvals they hold on record for the property. While the more recent records won't be a problem, don't be

surprised if some councils do not hold older records for properties. This is because quite often, a fire or flood destroyed their records sometime in the past. Many councils also offer a paid service where they will inspect a property for you to confirm if the structures that exist are council approved. Again this will come at a cost and may take a bit of time, but it is well worth the process if you suspect illegal building works on site.

The next level of noncompliance is if works have been completed more recently, but are not compliant with the current Building Code of Australia, or that have not been certified and completed by a licensed contractor, such as renovation works that are noncompliant. For example, electrical wiring, plumbing, gas, and drainage works, that do not look like they have been done to standard, or where a compliance certificate cannot be provided. It might be a bathroom renovation where evidence of approved waterproofing cannot be provided and a compliance certificate not issued. This alone can cause major problems with a building because over time moisture damage can result, dry rot can occur, and even termite activity prompted. Even unapproved glass shower screens and noncompliant fittings and fixtures that are not to Australian Standards can be of major concern.

Again, these are all things that you can request the building inspector to highlight to you and they are also things that you can request as evidence from the seller. For example, if you are buying a newly built or newly renovated property, request from the seller copies of all approvals and certificates relating to the works. Please note though that many building inspectors are not qualified to report on electrical wiring, plumbing, gas fittings, fireplaces and chimneys, and so if you are concerned with any aspects of the property in this regard you need to engage specialist inspectors.

If you have identified illegal building works, works not up to code, or unapproved usage, you are obviously in a strong position to be able to negotiate with the seller, assuming that you have done your due diligence during the conditional period of your purchase. You may be able to negotiate the purchase price down on the basis that you will have to rectify the works to ensure it is code compliant and council approved. Make sure though that you have had these works quoted and that you have added a margin for potential overrun, and for your time and effort to coordinate – remember you make your money when you buy, so ensure that you buy well!

It is also highly recommended that you liaise with council during this conditional phase to draw to their attention that you are looking to purchase the property, and you are aware of illegal building works, and that you want to work with them to rectify. In this instance you want council to be supportive of you and your plan, instead of taking a combative stance. Regardless of what council says though, you want it to be in writing, to

ensure that the council attitude does not change from positive to negative part way through the process and then you are left with a problem property on your hands. With regards to any unapproved structures on the property, these could also cause you issues when you want to get council approval to do additional approved works on the property. For example, if you intend to do an extension, but already have an illegal granny flat on site, this could cause you issues, and you are likely to have to deal with the unapproved structure before you can get approval for the new structure.

Even if you intend to demolish the building, you need to know in advance if you are taking on the liability of unapproved buildings on site.

Now if you are the one doing **DIY works without the necessary licence**, this is a very dangerous position to be in, even if you have on-sold the property and thought you got away with it. The reason this is still a major issue is because despite the fact that you are no longer the owner, the fact that you did the work like gas, plumbing, electrical or glazing, and someone else was injured, then you can still be held personally liable.

Insurance will not cover you, and now all your assets are at risk and in fact, you could be jailed if significant personally injury resulted. 100% compliance is therefore the only way to go, including compliance with council, the Building Code of Australia, and the licences required to undertake works. Please do not risk everything just because you are trying to save some money or time – it is definitely not worth it!

Note that councils also have compliance officers that use aerial photographs to identify works being carried out that may not be council approved. They also drive around the streets and even the presence of a skip bin out the front can be enough to alert them to potential works going on. In this situation a council 'show cause' notice may be issued, and then you will be required to defend your actions and works. Clearly this compromises your position and is something that you want to avoid.

This has been touched on above, but you need to be particularly aware that the insurances that you have on a property are likely to be completely null and void if the property consists of any illegal building works. That is, if there is anything at the property that is either not council approved, is not approved for the use it is being used for, has not been built to comply with the Building Code of Australia, or has not been done by an appropriately licensed or qualified person. It does not matter if you have been paying your insurance for the last 20 years, if the property is noncompliant in any way then your insurance is likely to be compromised and this is very dangerous territory to be in.

Property Condition - Termite Damage, Dry Rot, Concrete Cancer, Rising Damp, Asbestos, Cracking Walls & Foundations

There are a whole raft of factors associated with the physical condition of a property that need to be factored into your due diligence. If you intend to keep the property, things that could be very impactful and expensive to rectify include termite damage, asbestos, dry rot, concrete cancer, rising damp, cracking walls and foundations, poorly maintained or old plumbing and electrical, and stumps and roofing in poor condition to list a few.

Even if you do not intend to keep the property, but rather demolish it, things like asbestos can still impact significantly on the cost, and therefore they need to be identified and factored into the costs upfront. Most of these items should be able to be identified in a building and pest inspection report, however, it will come down to the diligence of the inspector. Where the property is furnished, the inspector may not be able to view the whole property, and this can be an issue. Signs of recent repairs may also suggest a potential cover-up and may be the owner's attempt to disguise the underlying issue. In this case, you need to be vigilant in looking out for anything that doesn't seem quite right.

As with many of the other potential hazards that have been discussed, there are also opportunities associated with these hazards, if you have educated yourself and are confident about providing a cost effective solution. For example, asbestos and termite damage can turn many people off buying a property. However, if you have done your research and have experience in the management of these, you may know that in fact the cost to rectify may not be that prohibitive, and it is just other people's naivety that has scared them off the property. Do not get cocky or complacent in these areas though as you don't want to get caught out yourself.

Asbestos and termite damage were discussed in the renovation section of Module 5, but will be covered in a bit more detail again below from a due diligence perspective.

Asbestos

The due diligence around asbestos is to educate yourself on what it looks like, where it is often found in a property, if it needs to be repaired or removed, how it can be repaired or removed, who should do the works, and the likely costs. Material containing asbestos is widespread in older dwellings because it was used so prevalently in the construction industry and in fact it was only fully banned for use in building materials in 2003! It can be found in the wall and ceiling sheeting, bathroom flooring, exterior cladding, sheeting and soffit, roof sheeting (see opposite), tiles, vinyl, glues, pipes, cement and even in fence material.



Asbestos needs to be managed professionally, because of its adverse health impacts. Understanding the regulations for handling and working around this material is imperative and you need to educate yourself before you start working around it. If left in place and undisturbed it can be inert and non-friable, meaning the asbestos fibres remain encapsulated in the matrix they are bound with, and hence not harmful. However, as soon as the asbestos containing material is damaged, drilled into, broken, or even cleaned with a high-pressure hose, this can cause asbestos particles to dislodge, become friable, airborne and hazardous to those working near and around it.

For this reason, all work with asbestos should be undertaken by a licensed asbestos removal company. These same companies can inspect a property to identify the asbestos materials that it may contain. They can also take samples to have tested for asbestos to confirm its presence or not in any of the less obvious materials.

Termite Damage

Termite damage can be your friend or your foe. Where the damage is fairly minor, limited in extent and superficial, this can be fairly easily fixed. Where the damage is much more extensive and affects the structural integrity of the building, then clearly this can have a significant impact on your project if you intend to keep the building. Understanding the extent of the damage up front is critical, because if found too late it could become a significant issue, in terms of cost, time delay and stress. A building and pest report should pick on any potential issues, as long at the inspector could get full access to the property.

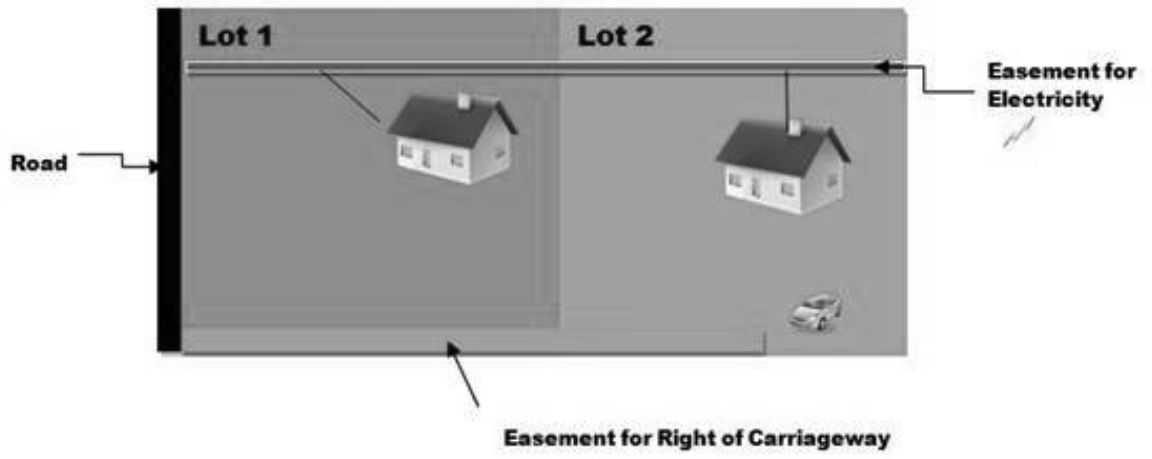
Building Compliance

Doing your research to ensure that the property you are considering is building compliant is very important. For example, smoke alarms, safety switches, and pool safety are now covered off on most purchase contracts. Things that are left to you to confirm though are things like whether the stairs are compliant, the hand railings, the use of thickened safety glass etc. A building inspection report is beneficial to unearth these potential noncompliance issues, but do not just file it away without taking action, particularly if you intend to tenant the property.

Another aspect when you are looking at a high-set dwelling is whether the downstairs is actually legal height. If not, your plans to turn it into a habitable living space may be dashed, and if you choose to proceed without approval, you could find your insurance to be null and void.

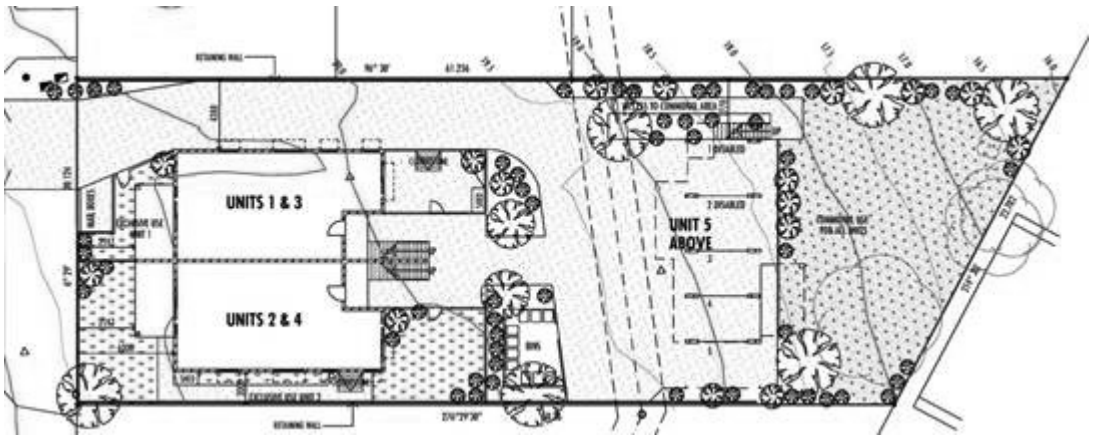
Easements

Easements were touched on earlier in this module. An easement is the term used for an area of land on a property that gives someone or some entity the right to use that land for a specific purpose, even though they are not the landowner. A registered easement is actually noted on the title of the property for example a major power line easement, or a shared driveway access easement (see example below). Other easements that are not registered and shown on the title, but are still as relevant, are called 'statutory easements' like power lines, telephone lines, drainage and sewer easements. To build over statutory easements you will need consent from the local council. For other easements you will need consent from whomever the easement is vested in.



Do not assume though that you will be given consent to build over an easement. In fact there are many councils that will not allow you to build over a sewer main easement for example. Instead they may require you to leave a 1.5m wide clearance either side of the main, which equates to a 3m wide buffer over which you cannot build a structure, not even a carport (see example below).

Clearly, if this cuts through the middle of your development site, it can have a major implication on the development potential of the site, the development layout, and the ultimate cost of the project.



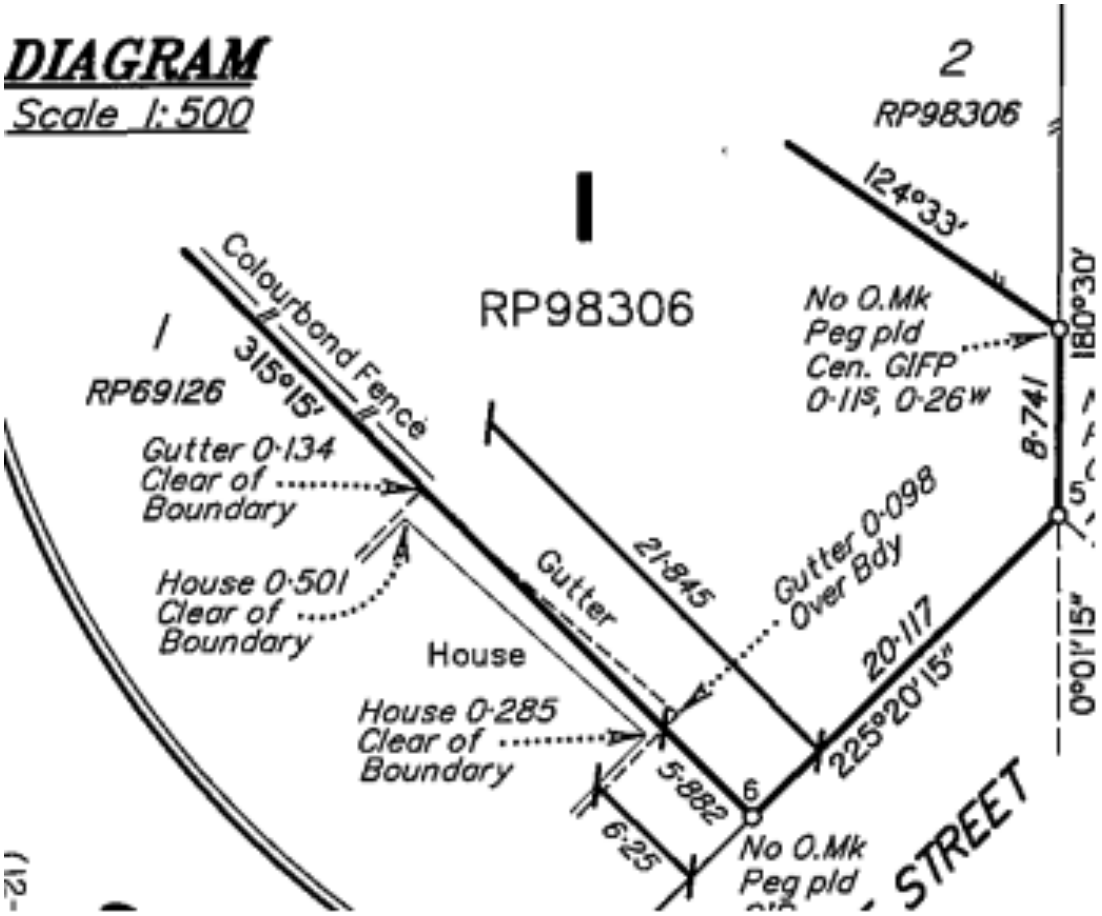
In order to identify the presence of easements on a parcel of land, you will need to do a title search to identify the registered easements.

You will also need to identify where services are located on the property and research if there are easement setbacks involved. Council and the utility providers will be able to identify these for you.

Encroachments

An encroachment is where part of a neighbour's property has extended beyond their boundary into your boundary, or of course the opposite, where a part of your property has extended into their property.

Classic examples are fences, sheds and in more extreme cases actual parts of the building. There was a recent example of where the neighbour's house gutter, plus fence, actually projected onto the neighbouring house lot (see plan on opposite).



Of course an encroachment is especially a problem if you are looking to develop the property in the future. This is because with any development, whether it's a subdivision, multi unit, or even a granny flat or dual occupancy dwelling, you will need to comply with council regulations and in most cases land size, block frontage, and setback to your neighbour are part of the regulations. So losing even half a meter along a 40m long boundary can make the difference between getting an extra unit, or block of land on the site or not, because it effects the overall land size, the frontage width and the set-back to the neighbour. It can even be critical if you are doing a straight single house build and you are needing to build close to the boundaries, so ensuring there are no encroachments on the site is essential.

Encroachments can be first picked up visually by looking along the boundary lines or fence lines, if they exist, but recognising that the fences can in fact be in the wrong position, the only real way to confirm an encroachment is to have a registered surveyor undertake a survey of the site. This might initially be a contour survey, which you will need in any case, for a council development application or building approval. If this survey raises any concerns regarding encroachments, incorrect boundary lines, or indeed different total land size or boundary lengths than you expected, then you may need to

have a full identification survey completed, which does come at a higher price. This is because with an identification survey the exact boundaries are located and pegged. It will definitely be essential to have this survey completed if you are to prove to the neighbours that there is in fact an encroachment issue.

It is highly recommended that you have at least the contour survey complete while you are in the conditional phase of the purchase contract, because if an issue is identified, you have time to negotiate on it and if necessary, pull out of the contract. Whereas, if you wait until the contract is unconditional, it may be more difficult for you to get out of the deal if you need to. For example, if the deal stacks up as a three unit site, and then you find out that because of an encroachment you can only develop two units, then clearly if the deal no longer looks profitable, then you do not want to proceed with the purchase. You do not want to get stuck with it and then have to try to resell it now as a two unit site, or spend the next six months negotiating with the neighbour to have the issue resolved, all the while unable to proceed with your development plans.

Covenants

Covenants have been discussed earlier on in this module, but they definitely need to be a part of your due diligence. This is because a covenant in an area can significantly impact on what can be built there, the size, the materials, even the colours used. It can also restrict the height of buildings where views are being preserved. The relocation of buildings into the area may also be prohibited, as a covenant aims to uphold a certain level of finish in an estate. Even prefabricated buildings may fall into this category, even though they are brand new, and so you need to do your research. The property title should list if any covenants are noted.

There is some debate about the longevity and legality around covenants imposed by the original developer of an estate. Particularly the older estates, and once the developer no longer owns land in the estate, there may be an opportunity to challenge these developer imposed covenants. A solicitor is certainly the one to seek advice from in this regard.

Caveat

Caveats were looked at in the option contract section above. From a due diligence perspective, you need to check the title to ensure a caveat has not been lodged on the title. If it has, it could delay you in purchasing the property or delay you in selling it. This is because a caveat registers the interest of another party on the property, and prevents the property from being sold without all interested parties being advised. If there is a mortgage against the property the bank is likely to have their interest in the property noted, so that you can't sell the property without repaying the bank. If a non-consenting

caveat or a hostile caveat has been registered on the title, this is a sign of conflict with the property, because this caveat can be lodged without the consent of the landowner. A classic example is if a builder has not been paid for work on the property and the builder lodges a non-consenting caveat on the property title to protect the builder, and prevent the owner from selling the property without the builder knowing. This type of caveat needs to be removed before settlement can take place, and clearly this could result in further dispute and negotiations between the parties, and cost you in lost time and money.

The alternative situation is a consenting caveat or a mutual caveat that is one that has been lodged on the title with all parties' consent, including the landowner. A couple of classic examples of this is where there is an option contract on the property, or where someone has privately loaned money and taken this property as security. Again this caveat needs to be removed prior to selling, or buying a property. Your solicitor will be able to advise on this matter.

Notations on Registered Survey Plans

Every parcel of land is reflected on a registered survey plan. On older survey plans handwritten or typed notations were sometimes made on the plan that affect what can be done with the land. Making sure you have diligently read every notation on the plan as important, especially if you intend to develop it or amend the title in any way. For example, there was a recent situation where two land lots were on the one title; the one at the front had road frontage, but the one at the rear was land locked and had no legal access path.

The strategy was to provide legal access to the rear site via a shared driveway on the front block, that way allowing separate title to be created for each block. What was interesting though was that during the process, it was discovered that on the original survey plan there was a very faint handwritten note to say that the rear block could never be put onto its own separate title. Luckily this was never picked up by council or the Titles Office and the retitling went through without question. There were definitely a few sleepless nights waiting for the result and if it had been picked up by the officials, it could have significantly delayed the project and added to the costs.

Neighbour Disputes and Council Show Cause Notice

When purchasing a property you need to identify if there are any disputes with the neighbours. This may be a dispute over a tree, over a fence or retaining wall to name a few. The sale contract may show if there is a legal dispute over a tree. Talking with the neighbours will highlight if there are any other issues going on. Contacting council will also reveal if any show cause notices have been issued, or are in the process of being

issued. This might be because an owner has excavated too close to a property boundary and it has the potential to undermine the neighbour's land or worse still, affect buildings on their land.

Other reasons to show cause may be if an owner is purposefully discharging runoff water onto another property, or even maybe noxious weeds are not being controlled, or the length of the grass is too long and is causing a hazard for harbouring snakes and vermin. There was a situation where the neighbour's dogs were being kept in substandard conditions, being fed raw meat and their waste not being cleaned up regularly enough, resulting in unfavourable odour and noise coming from over the fence, enough to turn off potential tenants and purchasers. You need to understand this history, because if you buy the property, you take on these issues.

Impact of Council Overlays

Council overlays were looked at in Module 5, but they will be covered in more detail here, because they are definitely something that you need to include in your due diligence on a property if you require council approval to complete your strategy. The type of overlays to be dealt with individually below include native vegetation protection areas, water courses, flooding, overland flow, bushfire, slope, slip prone areas, acid sulphate soil and cultural heritage.

Native Vegetation Protection Zone

Most councils will have mapped the native vegetation in their local area, identified areas to be protected, and reflected this on native vegetation protection zone maps. The areas may want to be protected for their ecological, flora and fauna values, their habitat for protected species like koala, as wildlife corridors, or buffer zones to name a few. In these zones the clearing of vegetation may be restricted and even if it is allowed, it may come with very stringent conditions on how it is done. For example, a fauna specialist may need to be hired to inspect every tree for significant native fauna and relocate anything found, before the tree can be felled. Obviously this could be a costly and time-consuming process, depending on the number of trees to be felled.

If your site is located in a vegetation protection zone, and vegetation clearing is required for you to undertake your project, clearly this could have an impact, and recognising it sooner rather than later is critical. On the flipside to this though, you may be in a vegetation protection zone, but in fact have a property that is completely devoid of native vegetation. In this case you will need to provide evidence of this to council, and have them approve this as an exemption, if you are to avoid the impact of this overlay on your development. You would want to flag this with Council early on in the process to ensure they will consider it as an exemption.

Watercourse

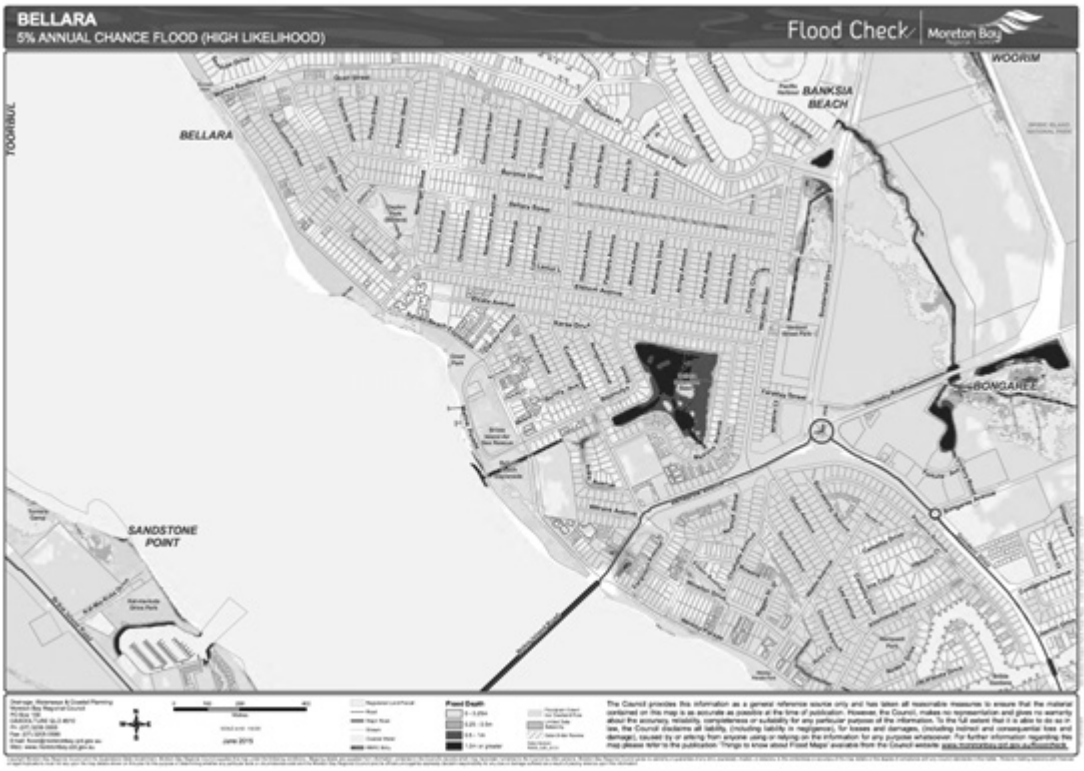
A watercourse can be anything from a minor drainage line, through to a seasonal stream, a permanent creek, all the way up to a major river, and most councils will have mapped these different levels of water courses over their council area. Aesthetically and environmentally, having a water course like a creek on your property may be lovely, however, if your strategy is development, where council approval is involved, then a water course can be a big negative. The reason for this is that council is likely to specify a buffer distance from the top bank of the watercourse, that any building works must be setback from.

The larger the water body and the more permanent it is, the greater the buffer distance will be, so depending on the size of your block of land you could end up with it all being consumed by buffer, and in fact none is able to be developed. The watercourse does not even have to be on your property to impact your site. For example, there may be a river a street or two away, and the buffer zone still may impact your property. Most councils will have this mapping online, but if not you will need to enquire with council, or with a consultant town planner to source this information and to clarify the potential impact on your property.

There are some situations where a watercourse may exist, but may not be shown on the council mapping. In this instance it is likely that council will pick up on it from the contour survey of the site, or from the site inspection council may do, or even from the aerial photographs. So do not ignore it and stick your head in the sand and hope it doesn't get picked up, because if it does it could have an even bigger impact. Instead, you should consult an engineer to assess it and from there decide if further investigations are required, like completing a flood report on the watercourse to demonstrate its likely impact.

Flooding

Similar to watercourses, your council may have a flood overlay map that shows the extent of flooding in the area (see example below). All developments will need to comply with this overlay and in fact even a residential house build will be impacted, and a minimum floor height is likely to be specified if the site is flood affected. Be mindful of the situation though where your site is shown to be in a flood affected area, or right on the margin of a flood affected area, but in fact due to the specific characteristics of your site, it does not actually flood, or only experiences minor flooding. Again, engaging an engineer to quantify the effect and represent it to council may provide you greater scope to then develop the site.



There are also situations where localised flooding may occur and impact your site, but this is not shown on an official flood map. Clearly this flooding occurrence can impact on what you plan to do to the property because you don't want to build, even a garage, in an area that may experience water ingress. Again, quantifying this early on is highly recommended.

A great way to do this is to chat to some of the elderly folk in the street, because I guarantee that they will be able to tell you everything that has gone on in the area since they have been there. It is as simple as knocking on their door, or chatting to them in the front garden. Mention to them that you are considering buying the property down the road, or doing research on the property down the road, and ask if they know if it has experienced any localised flooding since they have lived there. Keep in mind that councils and Main Roads Department are always doing works to try an alleviate flooding, and so an area that did flood in the past may not do so now, if works have been done to mitigate it.

The other important consideration with flooding is that even though you may have developed the site according to council's requirements, if you intend to sell the end product, there still may be challenges. What I mean by this is if for example, you have developed units on the site or subdivided off blocks of land, the buyer's solicitor is likely to do their own flood search and your property will still show up as being in a flood

affected area. You need to be prepared to tackle this head on, and be able to clearly demonstrate to the buyer and their solicitor how you have mitigated these effects and how any potential flooding will or will not affect the site. If you just ignore it, you run the risk of the buyer's solicitor recommending that their client not proceed with the purchase because it is too big a risk to take.

Insurance is the other major consideration with properties in areas designated as flood affected. With the recent flooding events in Queensland and NSW, many of the insurance companies have tightened their regulations and will either not insure properties in flood effected areas, or will have significantly increased their premiums. Getting quotes from numerous insurance companies is definitely recommended in this situation. Getting these quotes early on in the process is also highly advised, because the insurance premiums alone could turn a positive cash flow property into a negative, if they are too high, and you want to know this before you proceed with the deal. If you are developing on the site and planning to sell, these high premiums will potentially affect the new owners too, so you need to be prepared to address this in advance.

Overland Flow

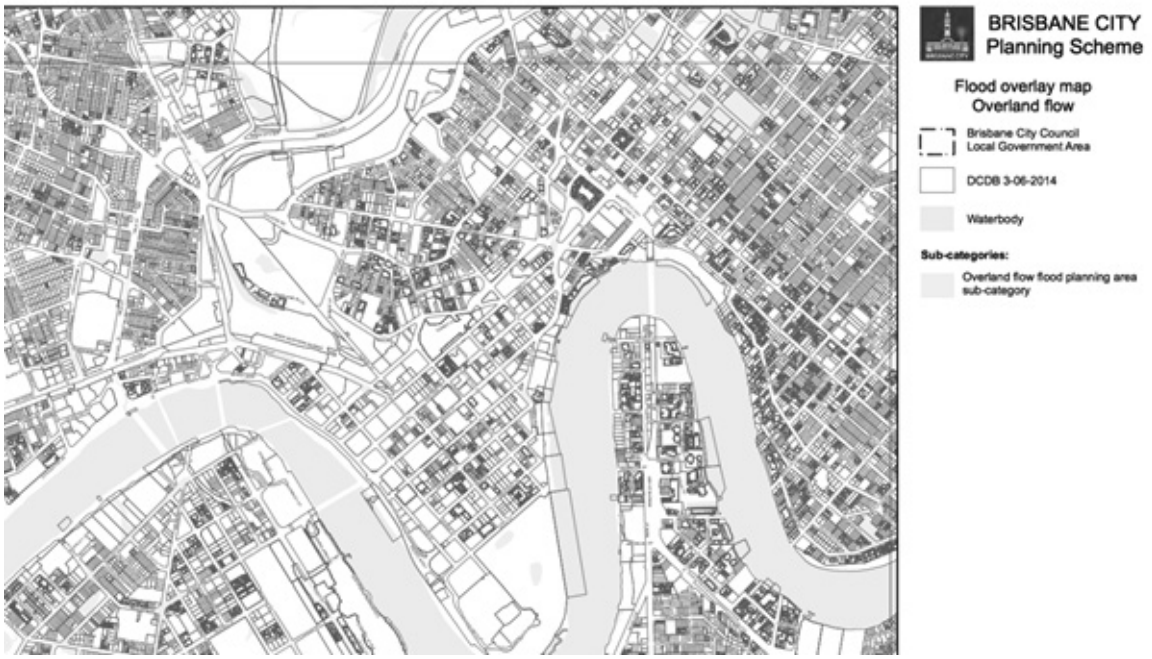
Overland flow is where runoff water following a rain event flows over the ground surface of a property. Think of it differently from flooding because it is not associated with rising water from a watercourse, instead it is sheet flow of runoff water before it reaches the watercourse. This water may accumulate from properties a distance away from you, and flow through adjoining properties including yours. The problem is where overland flow water concentrates in low lying and gully areas where it can have the same effect as flooding.

Most councils will not allow you to obstruct, impede or redirect overland flow in a manner that it could affect other properties. For example, you cannot build up your land to construct a building or a retaining wall, or a fence in the path of the water, because in doing so you could cause the water to back up, and be redirected onto someone else's property, thereby adversely affecting them, because of what you did on your property. Instead, you need to manage the overland flow water on your site with storm water infiltration and detention pits, and potentially other engineering measures, all of which is at a cost to your project.

Depending on the extent of the flow, you may not be able to fully manage it. Also keep in mind that your insurance may be affected by this type of runoff water. Some policies will not cover water that has flowed through your property but has not come from the rising of a watercourse. In this instance, traditional flooding from a rising watercourse may be

covered, but overland flow is not. This highlights that it is essential, therefore, to read your insurance policy carefully and understand the terminology.
Some of the more resourced councils have mapped the overland flow paths in their shire and produced overland flow overlay maps that can be accessed from the council website (see example below). Similar to flood affected sites, it is critical to identify overland flow affected areas and do your due diligence in advance to understand its potential impacts on your strategy. And yes, there are also situations where your property may not be formally mapped as an overland flow path, but given the lay of the land, runoff from excessive rainfall can adversely impact, for example where the block slopes away from the road or where your neighbour's block slopes towards yours, and water runoff impacts your site.

Do not think that the slope needs to be very sleep either, as water will start to flow at even a small angle if enough falls in a short period of time. Looking at the contours of your property and identifying low lying and gully type areas is a good first step, as well as zooming out to look at the contours of the wider catchment that may drain onto your property. Also look for storm water pipes in and around your property, as there will be a tell-tale sign that water accumulates in the area. Talking with neighbours is again a great way to quantify this potential effect. Ultimately a civil engineer or hydraulics engineer will need to be consulted and, potentially a hydraulics report may need to be prepared.



Bushfire

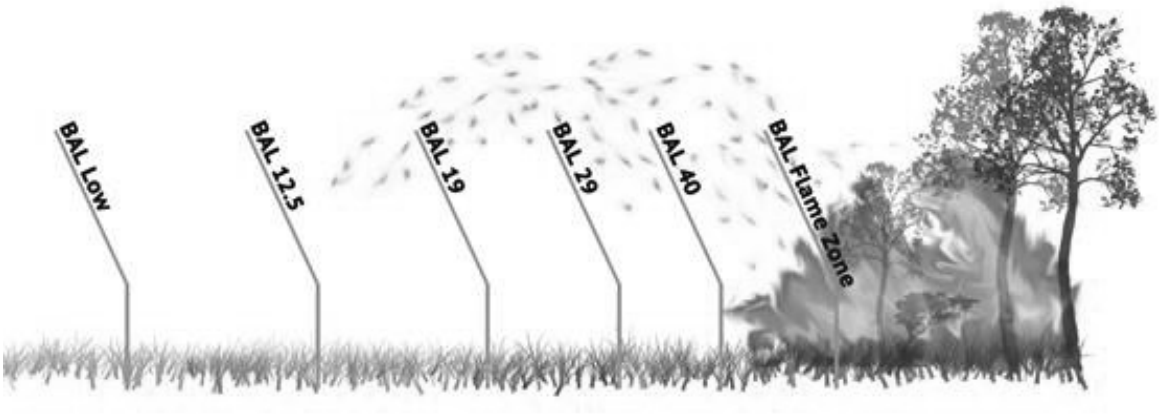
Bushfire has the potential to have a devastating effect on property and human life, and therefore legislation exists to ensure that people's lives are not put at risk from further

development and construction in bushfire prone areas. Councils will have mapped areas based on their exposure to the threat of bushfire and this will impact on the site's capacity to be further developed (see example below). It will also impact on the construction requirements for any build as the building code has set requirements when building in bushfire prone areas.

These construction regulations are very strict and require increasingly higher specification construction methods and materials, the higher the bushfire attack level (BAL) rating for the site.

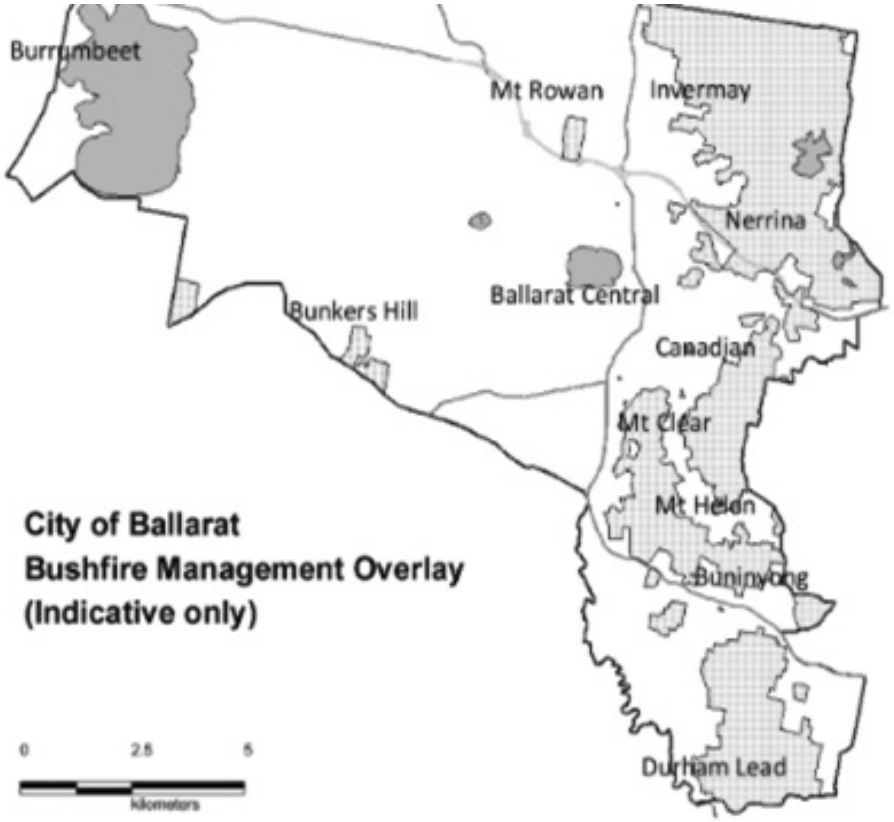
For example, on windows alone, instead of the standard fiberglass mesh fly screens, you will be required to install stainless steel mesh fly screens, or even fire shutters on the windows, if the BAL rating is high for where you propose to build.

There are six categories of rating from BAL-low, BAL-12.5, BAL-19, BAL-29, BAL-40, to Flame Zone, and a suitably qualified bush fire consultant will be required to rate the site and produce a BAL Assessment Certificate or Bush Fire Assessment Report depending on your project.



Because a bushfire prone area can significantly impact on the capacity to develop a site, the on-site position of a build, and the construction method, the cost to do a project could quite easily become nonviable.

For this reason, bushfire risk is something that you want to quantify as soon as possible in your due diligence process.



Slope

The slope of the site has a diversity of impacts, which individually can have a significant impact on your project, but in combination, they could be a showstopper. Therefore, identifying them and researching them upfront is important. Let me outline some of the potential impacts here.

Firstly, most councils reduce the development intensity of a site, the steeper it is. For example, a medium density site with a slope <5% might be able to be developed into 4 units, whereas the exact same site but with a >20% slope may only be able to have 2 units developed. Clearly this can significantly affect the development potential of the site and you need to understand council's policies upfront by consulting with a town planner, or researching it from the council website.

As outlined earlier, slope affects the runoff of water, so a site that slopes away from the road can be problematic for managing storm water runoff. This is particularly relevant if you plan to develop the site, because in most councils you will not be allowed to discharge runoff water onto a neighbouring property, and instead you need to manage the runoff on your own site. This may involve installing storm water pits to capture the runoff water and discharge it to the street, or alternatively, installing soaker pits to dissipate the water underground, but again not all councils are accepting of this approach.

The steeper the site, the more expensive building typically becomes, not only because of the need for scaffolding at height, but also the cost to cut and fill the site, to install retaining walls if required and even the cost to construct the driveway. The steeper the site, the more difficult vehicle access can become and the steeper the driveway. Remember too that not all drivers are comfortable with steep driveways, so if you are relying on selling the end product, a steep driveway may be a turnoff for some buyers.

Finally, remember that sewage (poo) does not run uphill, so if you have a sloping site, the location of the sewer main is critical. If the sewer main is not lower than the dwelling, so the sewer can naturally run downhill, you will need to consult with an engineer in terms of the options. While there are mechanical sewer pump systems available, not all councils will accept their use, because of the potential issues if the pump fails!

The slope of a site can be determined roughly by looking at the lay of the land. Looking at other sites of known slope will help you get a feel for what a 5% slope looks like against a 20% plus slope. Some councils will also have contour maps of areas in the shire that will give you a guide. To be accurate, however, you will need to have a contour survey completed for the site. From the contour lines you will be able to determine the slope of the land. An experienced person with a laser level, like a builder, will also be able to shoot the levels of the ground to give an indication of the slope. If you are building a single house the builder's levels may be sufficient, but if you are doing a development then a contour survey will be required.

Slip Prone Areas

Another aspect of steep sites can be the slip prone nature of the substrate. Not all steep sites are slip prone though, as it relates to the underlying geology. Slip, otherwise known as landslip, is the rapid downward movement of rock and soil, and obviously building on these areas can be problematic. Developing on these sites can equally be constrained by council, so knowing if your site is subject to slip is critical. Again, this is not something you want to find out once it is too late to do something about it. A geotechnical engineer is the consultant that can quantify the status of the site and a structural engineer will then use this information to determine what needs to be done during construction to comply with the required regulations.

Using consultants that are local to your area is advisable as they understand the soil and geology of the region, and the ways to accommodate this in the local building environment, otherwise there is the potential with non-local consultants that they may overstate the issue. Either way, constructing on a property in a slip prone area, even if it's just a garage, can add significantly to the cost, so you need to be aware of this.

It is not just if you are developing or constructing on a site though that this has relevance. Even if you are completing a renovation with the intention to sell at the end, buyers may be put-off by the fact that the site is in a slip prone area. They may not want the anguish every time it rains, of worrying if the building is going to move or not. Hence the marketability of your product can be affected.

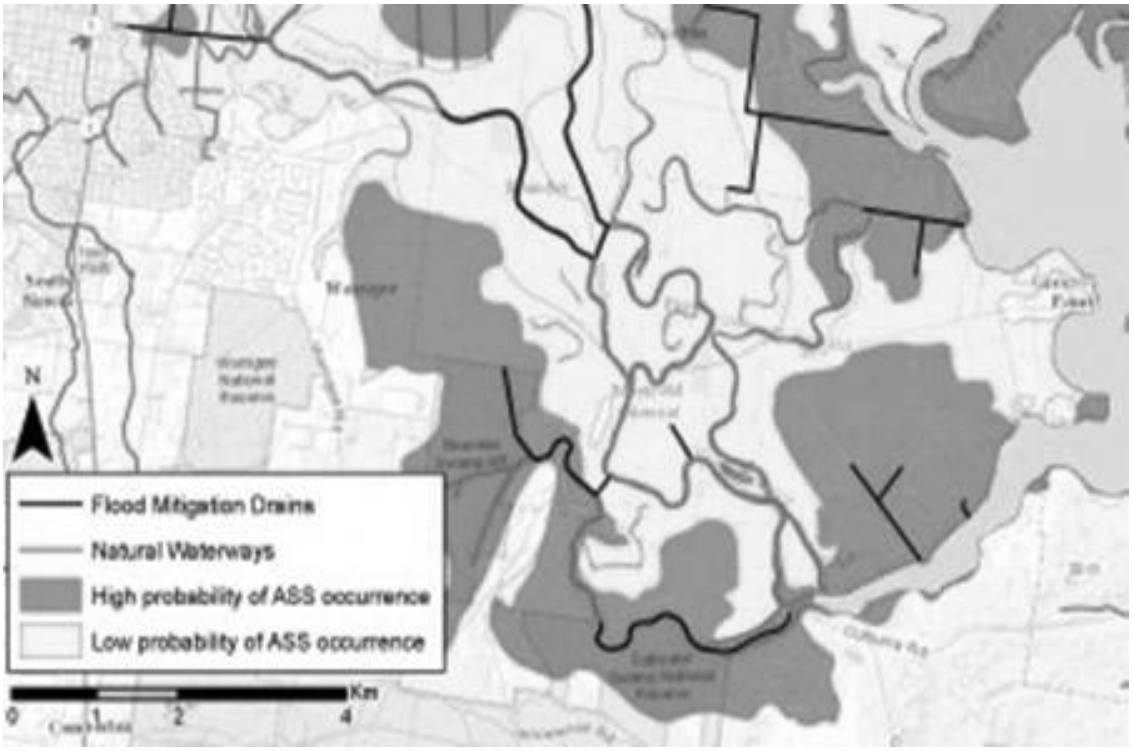
Soil Type - Swelling & Cracking Clays, Acid Sulphate Soil

While we are talking about all things underground, another aspect to consider is the soil type. If you are planning to construct on a site, having the soil type characterised by a soil test is essential. This is because different soil properties will impact on the design of the building foundations, including the depth and nature of the footings. A reactive soil type like a crackly clay that swells when wet and shrinks when dry can be problematic for footings and foundations and their cost can increase considerably.

Also, underground piping can be affected by this movement and additional measures may need to be taken during construction to protect them. Clearly all this comes at a cost, and if you have not factored this in, it could turn a profitable deal into a less profitable one. For this reason, it's common for purchase contracts to be subject to a soil test to accommodate this uncertainty.

Acid sulphate soil is naturally occurring and is formed by bacterial activity in water-logged conditions. This is common in coastal areas where the soil was once covered by water. In their undisturbed state, acid sulphate soils pose little or no risk. Once they are disturbed and exposed to oxygen, however, they oxidise and produce sulphuric acid. This has the potential to impact on environmental values, but it also has the potential to cause metal to corrode and concrete, bricks and mortar to break down or crack more quickly. Metal pipes, fittings and joins that are buried underground may also corrode at an accelerated rate.

As a result, structures and materials may require increased maintenance and may need to be replaced earlier than they otherwise would. This is not something that you need to be alarmed about as it is quite common, particularly in coastal areas, but it is something that you need to be aware of, as it may impact on the extent of excavation that is able to be done on site, and it may impact on aspects of the construction on these soils. Coastal councils may even have acid sulphate soil overlay maps for their shire, which will give you a heads up on their location (see following example).



Rock

Rock is clearly the other underground factor that needs to be considered if you plan to construct on a site, or even if you are doing a subdivision, because services may still need to be installed underground. Rock is one of those factors that can definitely turn a profitable deal into a less profitable one if significant excavation or rock breaking is required.

Unfortunately, there is no council overlay for this and a soil test of the site needs to be undertaken to identify if rock exists. It is critical, however, that the soil test is done within the footprint of the build area and not in areas that will not be built on or dug for services installation. The larger the project, the more soil bore holes that you should have profiled. This is because it is cheaper to pay for more bore holes and accurately quantify any existing rock and the nature of the rock, rather than to find this out at the beginning of construction and have your budget blown out significantly due to variations and time delay. You are much better to understand the site conditions upfront and include this in the project feasibility, or still have the option to pull out of the deal if the likely cost will move the project into negative territory.

Contaminated Sites

A contaminated site is one where the soil, water, or air has been affected by one or more substances that are actually or potentially hazardous to health or the environment. Soil contamination is the one most likely to impact with regards to property, because it can

restrict what you can do on a site. There is a contaminated land register that your solicitor will be able to search to ensure the property is not listed, but then there are more localised potential contamination issues, for example a history of industry on site, or illegal dumping or burying of asbestos on a site.

Another more specific example is where the soil beneath a timber garage had potential oil contamination and oil drums and petrol drums buried under ground. These are unregistered incidents, but things that you still need to look out for and manage appropriately. Potentially, the petrol and oil drums may need to be filled with a concrete slurry, and the soil may need to be completely excavated and replaced, or aerated to release the chemical contaminants, depending on the issues. Obviously a qualified specialist like an engineer, or soil contamination expert needs to be consulted in these situations.

Underground water contamination is another aspect to be aware of. For example, there are parts of eastern Sydney where the ground water has become contaminated by industry in the past. This still impacts the properties in the area though, and for example, you cannot access bore water on these sites.

These are the potentially negative impacts from contamination, but there are also potential opportunities for those that are highly skilled in this area. People that have specialist experience in the identification and management of these types of sites may actually target these problem sites, because they have the unique capacity to solve the problem. Clearly this is not for the majority of people, but it is something to be noted, because maybe there are specific skills that you have that could turn someone else's problem into a potential opportunity for you.

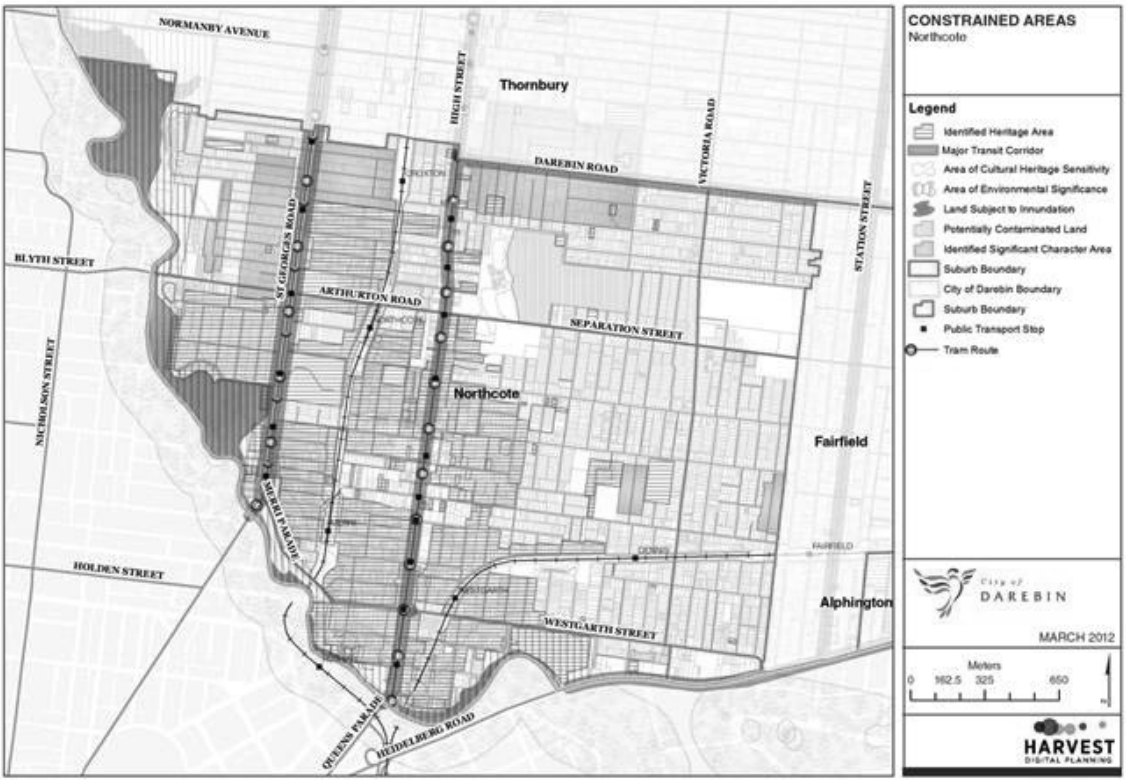
Cultural Heritage

Many councils have identified areas within their shire that they want to preserve the look and feel of. These may be called cultural heritage areas or streetscape preservation areas, or demolition control areas to name a few. They may be individual streets right up to complete suburbs and are likely to be reflected on a map overlay. Each council may differ in regard to what they will allow to occur in these designated areas. The restrictions may range from requiring you to apply to council to even paint the front of the dwelling, through to preventing you from moving the dwelling even on the same block of land, or prevent you from moving the dwelling off the site and moving it to another site, or preventing you from demolishing all or part of the dwelling.

If you intend to develop or construct in these areas, council may impose requirements that the new build needs to be of a particular style and even colour palette to ensure it

complements the existing streetscape. Clearly, understanding if your property is impacted by any of these restrictions and understanding these restrictions up front is critical. For example, if your strategy required you to demolish or relocate the existing dwelling, but in fact council will not approve it in that area, this could turn it from a potentially profitable deal into a dud!! Again, you don't want to find this out too late in the process.





Another very important aspect of cultural heritage is areas identified as significant from an Aboriginal and indigenous culture perspective. Certainly if you are looking to develop a site, council will include this as part of the approval process. Again, this may impact what you can do on the site and how you go about doing the site works. For example, you may be required to hire an archaeologist and / or local aboriginal elders to inspect the site during excavation to ensure any unearthed artefacts of significance are handled and managed with cultural sensitivity.

Heritage Listed Buildings

Individual buildings of heritage significance have also been identified at a council, State and national level. At a council level, they may be reflected on mapping overlays, and you or your town planner will need to research this. At a national level, there is a heritage register that lists protected properties and your solicitor will be able to undertake a search of this. Again, there will be very strict regulations dictating what works can be done on these buildings and sites, so thorough research is required. Opportunities also exist though, to apply for funding grants to assist with the maintenance and renovation of these structures, so again, research into this is recommended.

Above Ground Infrastructure at the Front of the Property

While we are focusing on property specific due diligence, another aspect to be aware of is the presence of above ground infrastructure out the front of your property e.g. power poles, road signs and other signage, bus stops, traffic lights, roundabouts, fire hydrants, public mail boxes, car parks and parking meters to name a few. The reason they are significant is because they may not be able to be easily moved, or they may cost a significant amount of money to move them, or take a significant amount of time to get approval to have them moved. Depending on their position, they may hinder you developing the property further, especially if it requires you to widen the driveway or relocate the driveway, and this conflicts with one of these pieces of infrastructure.

There may also be buffer zones around this infrastructure, like power poles, and hence there is a minimum distance away from them that any access driveway must be positioned. Even if the infrastructure is not directly out the front of the neighbouring property, you may still be impacted by the buffer zone, so noting the infrastructure around your property and doing the necessary due diligence upfront is critical. Council or the Main Roads Department might simply not approve a development in this location, or the cost to get approval and to move the infrastructure may be so prohibitive that the deal is not worth pursuing.

For example, getting approval and relocating a power pole housing major transformer infrastructure, could take months – up to a year – and cost tens of thousands of dollars, if

not over a hundred thousand dollars depending on the size, so they are not something to be complacent about.



The flip side to the situations above is where you know that currently restrictive structures may in fact be flagged for removal and that this could actually improve the development potential or the value of the site. Maybe you have some inside knowledge that something is planned for removal and this could benefit the site. An example of this is a site where there was some significant power infrastructure across the road from a property, which adversely affected its ocean views. It was not common knowledge. However, through extensive research, it was discovered that in fact the piece of infrastructure was flagged for decommissioning in the future and hence its removal would significantly improve the ocean view of the property, and therefore its market value.

Underground Infrastructure

Examples of underground infrastructure are those items that may be out the front of your property or actually on your site, including manholes, disused septic tanks, buried water tanks and Telstra pits for example. These generally will not prevent you from developing the site, but their cost to relocate or remove needs to be factored in, as too does the timeframe to have this approved. For example, even a disused septic tank needs to be officially decommissioned. It may have been made out of asbestos containing material, and so needs to be removed appropriately. Finally, the hole that it leaves needs to be correctly refilled and compacted if you intend to build over the area, even if it is a driveway. This is because subsidence can result if it's not sufficiently compacted and the driveway could be rendered unusable. If a council or an engineering inspection is part of

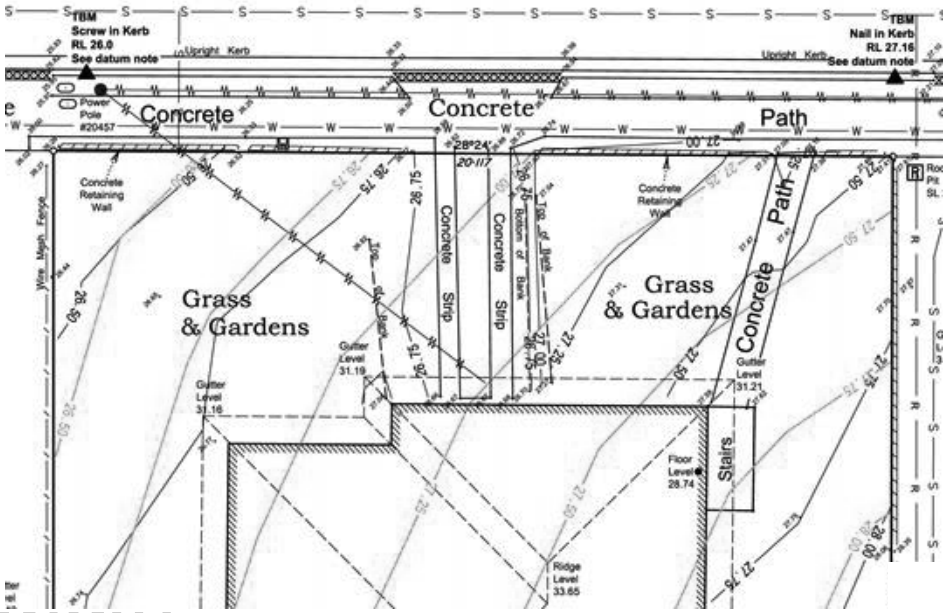
the process (which is likely if it is a development project), then you run the risk of them not approving the works, costing you both time and money. So even something as simple as filling a hole has implications that need to be considered.

Similarly, if you intend to fill in a swimming pool, do your research on this upfront so that you understand what's involved and factor it into the project. One final point on man holes (or person holes), is that there is generally a buffer zone around them in which you cannot build. Obviously this can affect your proposed site layout and so understanding this early in the process is imperative.

Services Location

These services include the water main, sewer main, storm water, power, phone and gas. They will not be covered in any great detail here because they were covered in depth in Module 5 and touched on above in this module. If you intend to develop the site to any extent, the important thing is to know where these services are located relative to your site. For example, if the water main is across the road, you may have to do an under road bore to connect into it and obviously this comes at a cost. If the services dissect your property, for example a sewer main, you need to understand what the implications are. Can you build over it or not? If yes, then what can be built e.g. a driveway is usually okay, but what about a carport or an actual habitable building, or pergola? If you can build over it, what are the design requirements to protect the sewer and what will be the impact on cost?

For example, is bridging the sewer an option, or can it be encased to preserve its integrity in case it needs to be accessed in the future? If the answer is no and you can't build over the sewer, then what buffer distance do you need to be away from it and can you design around this? A civil engineer will be able to advise on these questions.



Take an existing power pole as another example. The electrical companies will not allow the power line feeding one property to cross over the land of an adjoining property. This can become a problem when you subdivide a block, because you may find that the position of the existing power pole may contravene this rule, and the overhead line may cross a portion of the new block. In this case, a new property power pole will need to be installed to service the new block. It is not a huge cost, but it is a cost, and it can delay the project if you are not pro-active. An electrician will be able to advise you on this one.

Capacity of Services

Another important consideration if you are developing a site and increasing the intensity of dwellings, is the actual capacity of the existing services, particularly power and water. For example, just because you have power to the current site, you cannot just assume that there will be sufficient power lines available to service your development. This is particularly the case if you are adding more than four dwellings, because this seems to push it into the commercial zone.

This can be common in less built up areas or newly emerging areas where the infrastructure may be limited. It does happen though in built up areas too. Several students have been advised by the power supply companies that a larger transformer will need to be installed to service their units and that this will take 12 months and at a cost to them of over $30,000 each. This did not come to light until nearing the end of the construction process, so starting your due diligence on this as soon as possible in the development approval process is recommended so that you can either tick this off as being done, or immediately start the negotiations to have it rectified. There are electrical engineer consultants that should be able to assist in this due diligence, as well as liaising with the power supplier in your area that owns the infrastructure e.g. Ergon and Energex in Queensland.

Water pressure is another factor, and something that you need to ensure will be adequate, particularly if your project is large. This may not mean just increasing the size of the main water meter to your project, but possibly the actual water main may need to be upgraded in size. Obviously this is a costly and time-consuming process. A consultant hydraulics engineer should be able to investigate this for you.

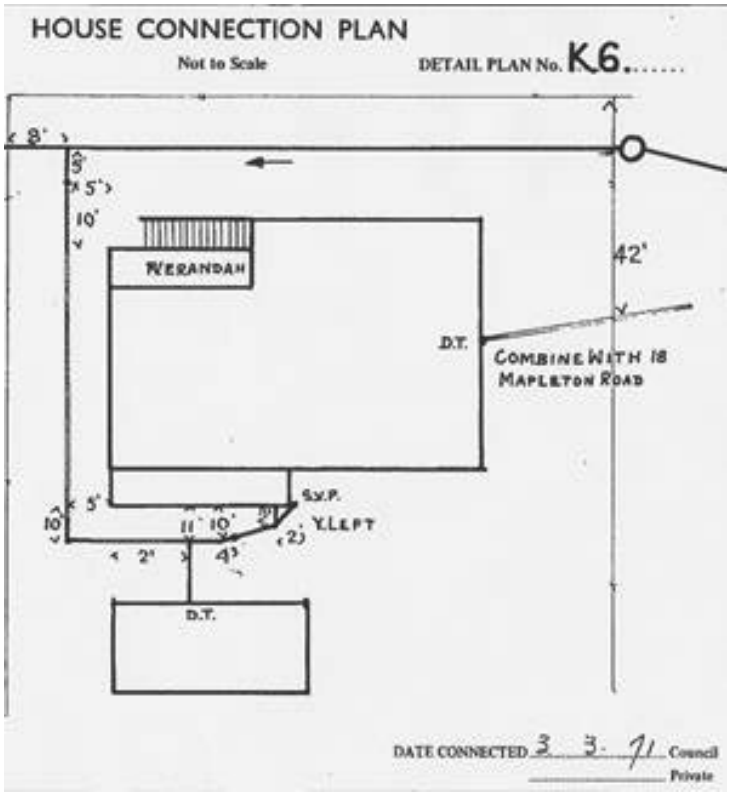
Shared Services Between Properties

Who would have thought there was so much due diligence associated with services! What is being referred to here is the situation where services are shared between adjoining properties, so when you come to do work on your property, it in fact affects the neighbour. The most common example of this is when the sewer drain is shared between adjoining properties (called a combined sewer drain). Rather than each property having

their own sewer drain that connects directly into the sewer main, instead you have the pipework from multiple properties converging and connecting into just one sewer drain in one of the properties. Therefore, there is just one sewer connection into the sewer main, instead of there being an individual connection into the sewer main for each separate property. This was commonly done years ago as a way to save costs, when council were originally installing the services. Therefore, it is something that you find particularly in the older, well-established suburbs. It is certainly not something that is done in modern estates.

The problem with this arrangement is that if you plan to do any development of your site, council can require you to rectify the situation. This is because if your property is the one with the combined drain located on it and the neighbours are all feeding into it, then as soon as you go to do any work on your sewer line, it will impact on all the adjoining properties. Conversely, if you are one of the adjoining properties and you want to develop your site, then in effect, you do not actually have a direct connection to the sewer main, because it is in the property with the combined sewer drain.

So you can see that in both instances, this needs to be rectified for you to develop the site. Obtaining a copy of the house drain plan from council should reflect the nature of your sewer connection, as will the sewer main infrastructure plan. If you do not see your property on these plans as having a direct branch into the sewer main (see example below), then this needs to raise some questions.



Adjoining Properties & Structures Next to the Boundary

While we are talking about neighbouring properties, there are some other aspects that need to be considered in your due diligence, both from a negative and a positive perspective. In all examples, you need to be aware of the other properties around you and in the street.

If you are planning to do any construction on your site, you need to be aware of and sympathetic to the privacy of the adjoining properties. If you are developing the site, it will get picked up in the development approval (DA) process, and if you are constructing on site without a DA, it will get picked up in the building approval process. The types of things referred to here are the positions of the windows and doors of the neighbouring property along the side boundaries, as this will affect the location of your windows and the requirement for screening to those windows. Even the position of their balconies, verandahs, and private open space along the side boundary can impact you.

The existence of a zero lot alignment of any part of the neighbour's property can also impact you. What I mean by zero lot alignment is where they have been allowed to build right up to their property boundary, without the usual boundary setback of 0.5m to 2m (see example below). For example if the neighbour's lock-up garage has been approved and built with a zero setback, and so it is built right up to the boundary line, then it is unlikely that you will get approval to do the same on your property along the same boundary. Instead, if you want to build your garage up to the boundary line, you will have to have your garage on the opposite boundary and apply to council for the setback relaxation. Unless of course your other neighbour has already built on that boundary, in which case you may not be able to do either option.



Another consideration in some councils and in some zones is the development of duplexes. Some regulations state that you cannot develop a duplex if there is already another duplex built within a certain distance of your site. In fact, the other duplex doesn't even have to be built yet, it may just need to have been council approved. Clearly, if you were unaware of this council regulation, or did not research the other approvals around you, or even applications lodged with council but not yet approved, this could significantly impact on what you could do on your site.

From a positive perspective though, there are also situations where having a development next door to you could actually work in your favour, particularly if you plan to develop your site. This situation would occur when maybe your site is only approved as a maximum of two storeys, but because there are older units next to you built to 3 or 4 storeys, then maybe there is justification for you to apply to council for a height relaxation for your project, particularly on that side of the site. This alone could increase the density of units you are able to develop, or the size of the units, or even the views achieved from those units.

This situation can also be beneficial from a residential perspective. For example, if most of the street has older houses built closer to the front boundary, then maybe you could get a relaxation from council to do the same, or maybe if there are a couple of older houses in your street build to three storeys, then you could use these as a precedent to request that you too could build to three storeys when normally two storeys would be the maximum.

Trees

The presence of trees on the site, at the front of the site, and neighbouring the site, may have numerous potential impacts. Firstly, trees obviously have roots and the larger the tree or the more vigorous its growth habit, potentially the more invasive the root system, and this does not have to be a tree in your property. It may be a tree some distance away in the neighbour's property. Species like bamboo and the figs can have very vigorous root systems. The problem with this is that the roots can cause damage to not only underground pipework like water and sewer pipes, but they can also damage footings, crack and lift driveways, buckle fences and the like. Clearly, greater maintenance can be associated with having trees in and around a property.

Trees also drop sap, foliage, fronds and limbs and this can cause property damage and also be a hazard to people. If there are going to be tenants in the property you need to be mindful of this potential hazard, as you may be held accountable if an injury occurs and you did not manage the tree appropriately. The falling debris can also build up in the roof gutters, causing them to block, resulting in water damage inside the property.

If you intend to develop the property, the presence of trees can have a significant impact. Depending on the maturity of the tree, some councils will not allow you to cut down well established trees and so obviously, this can affect your capacity to develop the site, particularly if the tree is right in the middle. If you can remove the tree the cost can be considerable, particularly if it is large. The roots may need to be grubbed out and this can leave a void underground that may have an impact if you plan to build over the top. Even retaining trees on your site, or having significant trees on a neighbour's property can impact on the wetting and drying profile of the soil, and this has to be accommodated in the engineer's design of the footings and slab. Both may need to be thickened to accommodate this effect and this will again come at a cost.

Trees at the front of your property and on the council frontage, can also impact on the location of the access driveway, again impacting on your potential to develop the site. As trees grow, they can also affect a view and you need to be very mindful of this, particularly if you are paying a premium for the view. If the trees are beyond your boundary and they grow up to block your view in the future, you may have no capacity to do anything about it.

Body Corporate Review

When you are considering a property that is strata titled and part of a body corporate, it is imperative that you review the body corporate documents. This includes the body corporate by-laws, the meeting minutes, annual statements, accounts, and budgets. This research is important because you become a part of the body corporate as soon as you buy a property in the complex. The by-laws will control what can and can't be done as a tenant or a resident. The accounts will reflect the amount of funds in the administration account, the regular costs that are being incurred, and the amount of money in the sinking fund and set aside for future maintenance.

Clearly not enough money in the sinking fund is an issue if maintenance is required in the near future. This is because the owners can be requested to pay a special contribution to attend to these works and depending on the issues, this could be a significant amount of money. The minutes will detail the history of the building, maintenance, and structural issues, disputes between owners, and general unease amongst the community. Clearly you want to know this information before you potentially buy into such an establishment.

Height Restrictions

All councils will have height restrictions that dictate the maximum height or number of storeys that a single dwelling and that new developments can attain (see example opposite). Understanding this is important if you intend to do building works, or

development on site. It is also worth noting though that relaxations may be considered, if there is already a precedent in your street for taller buildings. This is not a given, however, and you need to discuss this with council early on to gauge their willingness, before making decisions on this basis.



If the zoning allows for more than two storeys and you are considering building higher, it is essential that you do your research on construction costs, because they increase significantly above two storeys. You also need to check the building regulations in your State, because in some locations like Queensland, a different class building licence is required depending on the height of the building. For example, a low rise builder's licence can only build to a maximum of two storeys, a medium rise licence up to a maximum of three storeys, and an open builder's licence above three storeys. The total floor area and class of building being constructed can also affect the required licence class of the builder.

Your target market also needs to be considered. For example, if you are developing townhouses, does the target market want the extra flight of stairs that come with a 3 storey townhouse, or is the cost of a lift justified? Just because you can go higher, doesn't necessarily mean you should.

Cyclone Rating Requirements

Cyclone's affect Northern Territory, Queensland, and Western Australia. The construction of buildings in cyclone affected areas is at a higher specification than in non-cyclone areas, due to the destructive forces (wind and pressure) of a cyclone and the significant potential damage to property and human life. Knowing that you are in a cyclone rated

area and factoring this into your build cost is essential, because it does have a significant impact, with the property having to be built to a much higher wind load rating. If you are considering doing a structural renovation, an extension, or even relocating or moving a dwelling in these areas, this additional compliance requirement needs to be factored in, to ensure your costs do not blow out.

Main Roads

The class of road that a property borders can have a major effect from a number of perspectives and so researching this up front is very important. Below are some of the potential impacts. Firstly, you need to understand the class of the road or street, as this will affect who controls it.

For example, small feeder streets may be managed by the local council, whereas main roads may be managed by the Main Roads Department in your State, while the highways are typically managed federally. Don't be surprised though if even the same street differs along its length, in the class and management authority. This is important because it will affect where and what you research, and who may impose regulations, and who may be a referral agency that could have input into a development approval for the site e.g. State and federal agencies. The more resourced councils may have online mapping that shows the hierarchy of roads in the shire (see example below).



The current status and nature of a road or street is important, because it can significantly affect what you can do within its vicinity. This might be as simple as whether you can put

a skip bin out the front while doing a renovation. Definitely, if you plan to develop the site in any way, and increase the intensity of people accessing the property from the road, then the current and future characteristics of the road are critical.

The visibility up and down the street from your property will have an important effect. For example, if you are on a corner, or approaching the crest of a hill, or if there is infrastructure near by and the road visibility from your site is restricted, this can affect your ability to develop the site. The volume of traffic and the capacity to turn in to your property can also have an impact and may prevent for example a right turn entry or exit, or may require you to install a lay-by lane, or traffic lights etc., which all come at a cost. Your capacity to park roadside out the front of your property is also a consideration, as it can affect the number of visitor parks that need to be provided for on site. Your proximity to major infrastructure or an event centre can also impact, because of the overflow of vehicle parking that may result e.g. near schools, hospitals, entertainment and sports grounds and stadiums, and even local markets.

Even the capacity to leave rubbish bins on the road verge for collection is impacted by the size of the road and the existence of a parking lane. Let's take an example of where you are on a main road and there is no on-street parking allowed, but you intend to develop the site and increase the number of dwellings and hence, number of rubbish bins that need to be emptied. This situation could mean that there is no capacity for a rubbish truck to pull over to empty the bins without backing up the traffic. In this instance, therefore, you may be required to design your development to take on-site rubbish collection and hence, a rubbish truck accessing and turning on-site. This alone takes up a huge amount of room and could significantly affect the layout and your capacity to develop the site.

Understanding the current status of your street is critical, but so too is researching any future plans. For example, is there a resumption order in place because the road will be widened in the future? This may come up in a Main Roads Department search by your solicitor on purchase, but not necessarily, which is why you also have to do your own research. For example, the council may have a planning rule, only known by council and consultant town planners familiar with the local area, that for particularly narrow streets, council may impose a condition of development, that you cannot build any permanent structures within a certain distance of your boundary, because council intend to widen the street at some point in the future.

This will therefore affect things like the positioning of the main water meter, drainage pits, retaining walls, manholes, in addition to the actual building to name a few. Maybe your individual property may have been specifically named in historic council reports as

an option or alternative site for more significant resumption, but it has not been finalised. This could make a chunk of your land unable to be developed and hence, alter significantly what you could do with it in the future. Searching council records and meeting minutes, and doing general internet searches on your road is highly recommended.

Besides actual resumption plans, just changes in the intention for your street and surrounding streets can have a significant effect on the intensity of traffic passing your property and the general flow of traffic. For example, what if your currently quiet street was proposed to become a higher order street or even a main road? Or what if your no-through-road became a through road? What about if changes to the road network a distance away turned your street now into a preferred route for cars and therefore turned it into a major thoroughfare? Or what if a new development was approved for your street, for example, a pre-school, and therefore, the traffic usage could increase significantly? Maybe a local market is planned to start up nearby and parking in your street is likely to become a major issue during market hours. Maybe the bus routes are altered and your street is now frequented by buses, or maybe a bus stop is added.

These may be viewed as negative consequences, but obviously the alternative is also possible and your currently busy street or road may be downgraded and become less frequented, or maybe the local market moves, or the pre-school closes. Maybe road-calming devices like speed bumps or a round-a-bouts are planned to be installed, and they will reduce the speed and flow of the traffic. All these have an impact because they affect the volume and flow of traffic, the ease with which you can access your property, the traffic noise, the parking, and even your proximity to public transport and these all affect the potential value and the saleability and rentability of your property.

Noise Pollution

Noise can be a major environmental pollution, whether it comes from a road, railway, airport, flight path, industrial noise, or even the less obvious like the sound of a helicopter landing on a heli-pad on top of a hospital building, or a colony of resident bats, or parrots that only squawk at night. Because it may not be constant, but rather infrequent and irregular, you need to research what is around you that may result in noise pollution.

Speaking with the neighbours is again highly recommended, as they will generally tell you what goes on in the area. Also being aware of future changes that may increase or decrease the noise pollution of your site is important. For example, you may be on a main road or back onto a railway line, and an acoustic fence is planned to be installed in the near future by the authorities. Clearly, this could significantly reduce both the noise and visual pollution experienced on your site, hence possibly increasing its value and appeal.

Alternatively, if you intend to develop a site that is affected by noise, you are likely to have to engage a specialist consultant to quantify the effect and give the site a noise rating, or maybe several noise ratings if the exposure changes over the site. An acoustic engineer could do this, or possibly a traffic engineer, or as part of the approval process a referral agency like Main Roads Department may be required to access the site. The intensity of the development may be reduced, or conditions may be imposed in the development approval.

For example, you may be required to erect at your own expense an acoustic fence on the boundary, or to design and construct any habitable buildings according to the noise rating. There are numerous acoustically rated materials that can be used to insulate against noise, including different exterior cladding, internal linings, insulation materials, and window and door glazing. They all, however, come at a cost and can substantially affect the cost of developing that particular site.

Air Pollution

While we are talking pollution, air pollution is another aspect that needs to be part of your due diligence, including chemical, particle and odour. What I'm talking about here is things like pollution plumes from industry, maybe from a smelter, or a commercial incinerator, or even congested main roads. There is also the unfavourable odour from activities like a brewery, sugar mill, abattoir, or even a colony of bats. Particle or dust pollution is also a factor, for example from a mining activity, quarry, or haulage on unsealed roads. In all of these cases, the prevailing wind direction, relative to your site is very relevant, and will affect the extent of the pollution your site is exposed to.

Do not think that you need to be close to the pollution source either, because wind blows and pollution can travel long distances, so you may not even be aware that there is industry in the area that may cause pollution that affects your property. Let's call on the neighbours once again and even the local Information Centre and Property Managers in the area can be useful for gathering this type of information. The Bureau of Meteorology will have information on prevailing winds for your area, to inform your research.

Underground Mining & Earthworks (subsidence)

Having touched on mining in the section above from a pollution perspective, there is also another potentially significant impact from this activity, and in fact from any activity that involves underground excavation, like digging a tunnel under the centre of a city. Ground subsidence is where the ground surface drops and can result in anything from a depression in the ground surface through to a major sinkhole. Clearly being aware of any current and historic activities like this, in the vicinity of your site is essential.

A solicitor search will identify registered subsidence sites. However, you should also do your own local research and internet search to pick up potential sources. For example, a mine proposed for your area, or a proposed road tunnel, or even the noise and vibration from these works can potentially have an impact. Any movement in the earth's surface can adversely affect property, hence existing structures need to be appropriately assessed and proposed structures need to be appropriately designed and built. Having followed the required regulations during construction, however, people's perceptions may be adversely affected by the potential for subsidence in an area. Despite the fact that compensation may be available, this could negatively affect the value, saleability and rentability of the property, and is therefore something you need to aware of.

Earthquake, Tsunami, Sea Level Rise

In Australia, earthquakes and tsunamis are not commonplace, but for completeness, I just wanted to remind you that they are potential factors to include in your due diligence, particularly if you are considering property overseas. Sea level rise, however, is something that could impact low-lying areas of Australia in the near future. Being aware of it, researching it and factoring it into your decision making is therefore recommended the closer to the coast you are considering.

Crime Rate

The crime rate of an area can have a huge effect on people's desire to live there, and therefore needs to be part of your due diligence. Keep in mind though that the crime may not be across a whole suburb. It may be limited to a street level, or even an individual property level, and if you happen to buy the property next door, this can have a significant impact on the success of your project. Talking to multiple people in the street, the local shop owners, even the local police, are worthwhile actions to ensure you have done your due diligence in this regard.

Insurance

Insurance is an essential component in property and something that needs to be part of your due diligence. The property and the people you work with need to be properly insured. For example, vacant land should have public indemnity insurance cover, to protect any injury caused to a third party accessing the site. For example, the postman out the front, or a contractor like a soil tester, or surveyor traversing the land. If there is anything built on the site, it should be insured from a building perspective, and also from a public liability perspective, and contents should be insured. If you have tenants, landlord insurance is also advisable to cover potential property damage, or loss of rent. If you are doing work to the property, you need to ensure that the tradespeople, builder, consultants, and professionals working on it have the correct insurances in place e.g. professional and public indemnity insurance and WorkCover.

Also, the work itself needs to be covered by contract works insurance. Any specialist works like house relocation may also require specialist insurance, as might the presence of tenants if they reside on the property while works are underway. You should request a copy of these insurances from the relevant parties like your engineer, builder, tradies etc. Double check that the insurance will remain valid for the duration of your project and keep a copy for your record.

Licences & Compliance

Another aspect of your due diligence when undertaking works on a property is that everyone is appropriately licensed for the work they are undertaking, that they have the necessary qualifications and trade tickets, and that current workplace health and safety measures are in place and being adhered to. You should also request a copy of these licences, qualifications, certificates, and again ensure that they are current and will remain valid for the duration of your project.

You also need to ensure that you are qualified to do the works that you intend to undertake. For example, if you are doing a renovation on your own property and you are unqualified, then clearly you cannot do plumbing, electrical, or building work that is required to be undertaken by a qualified tradesperson or builder. Even works that affect the fire protection aspects of a property like the fire separation walls, or fire collars in a unit, apartment or townhouse, need to be undertaken by a qualified person. Large scale demolition works and asbestos removal also need to be done by qualified people.

The situation also changes once you are undertaking renovation works for someone else, or on someone else's property. This is because the regulations change and therefore you need to understand the licensing restrictions on this in your particular State. For example in Queensland, undertaking a major kitchen, bathroom, or laundry renovation for someone else requires you to have a licence class known as a Builder Restricted to Kitchen Bathroom and Laundry.

If you intend to be an owner builder, you also need to understand the restrictions and regulations in your State, because they differ between States. For example, in most States, there is a restriction on the number of properties you can construct as an owner builder, over a given period of time. In Victoria you can only build one house every three years, and you must intend to live in it on completion. Also, if you go to sell it within six and a half years of construction completion, there are requirements that you must first fulfil. There are also restrictions on what renovation work you can do and what you can build. For example, in Queensland you can only build a single dwelling and therefore no duplexes, multi-units, commercial, or industrial construction projects.

PLATINUM
ACCELERATOR

MODULE
8

FINANCE & JOINT VENTURES

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

PLATINUM
ACCELERATOR

Introduction

Finance is a huge component of active property investing and is influenced by many factors. In this module we work through the various components of financing, from the types of financing, terms used, calculations involved, right through to how you fund various active strategies. This includes financing manufactured growth strategies like renovation, subdivision and multi-unit projects, through to income strategies like cash cows in mining/resource towns, rent by room accommodation, and commercial income properties.

Another method of funding projects is for multiple parties to come together to strengthen each other's situation financially. Individually, two people may not be in a situation to be able to borrow funds, but by coming together, they complement each other's limitations and become eligible to obtain finance. This coming together of parties for a common goal is called a 'joint venture' (JV), and this is only one example. We will cover JV's in detail as well, as they can be a valuable tool in your investment toolbox.

PLATINUM
ACCELERATOR

Finance

Background

Types of Loans

There are a number of different types of loans and below is not an exhaustive list, but it will give you a basic working definition for the major loan types that you are likely to encounter.

Residential Loan

This is a loan primarily for personal, family or household use that is secured by a mortgage, deed of trust, or equivalent, to purchase a residential property. The loan is for a set term, e.g. 30 years, over which period the principal of the loan is repaid, along with the interest charged. A residential loan applies for both a principal place of residence property and investment property. Typically one to three dwellings on the one title are able to be financed with a residential loan. Certain lenders' policies will allow up to four dwellings, but this is the exception, not the rule.

Commercial Property Loan

This is a mortgage secured by a commercial property, including properties with four or more dwellings on the one title. This is because lenders regard this sized project as more of a commercial venture than a residential one. Typically the loan term is shorter, e.g. 15 years, and the interest rate is higher than for a residential loan.

Commercial Development Loan

This is finance provided for the development of a commercial property including larger land subdivisions and multi-unit developments comprising four or more dwellings.

Business Loan

This is a loan advanced to a business instead of to a consumer. They may be secured or unsecured, and are typically shorter term e.g. 30 days to 5 years. They are often advanced for financing equipment, machinery, or inventory. Lenders typically require commercial borrowers to submit annual financial statements as part of the loan approval.

Construction Loan

This is a loan where the proceeds are used to undertake construction of some kind. They are typically a short-term loan of up to 3 years and are secured against real estate. Typically, only interest is paid during the construction period. Once the construction is complete, the loan is rolled over into a normal term loan, e.g. a residential loan for residential property, or a commercial loan for commercial property.

Full Doc Loan

This is the standard type of loan used by banks and has been around since banking began. When applying for this type of loan the applicants will need to supply all relevant financial details on themselves, their financial status, income, assets and liabilities, complete property details including rental income and outgoings on the property. Self-employed people are generally required to provide 2 years of business and personal tax returns, or pay slips and group certificates for PAYG applicants.

Low Doc Loan

These loans were very popular up until the GFC (Global Financial Crisis), especially for self-employed people, but also PAYG wage earners. The applicant signed an Income Declaration Form that stated an earned income amount and generally no other evidence of income, e.g. no tax return or pay slips were required. Due to the toughening of lending procedure post-GFC, this style of loan is now much more restricted, and much less widely used than previously.

Lease Doc Loan

These loans are for commercial property where the existing lease on the property is used for serviceability of the loan. The lease typically needs to have at least 12 months

validity to be considered as income. These are generally 5 to 25 year loan terms and may require annual reviews of the borrower's financials and a valuation of the property on a semi regular basis, e.g. three yearly intervals.

Limited Recourse Loan

These are loans where the creditor has limited claims on the loan in the event of default. This is the loan vehicle used to lend in SMSF, and if the SMSF defaults on the loan, the lender's rights are limited to just the asset held, not the other assets held in the SMSF.

Types of Lenders

There is a diversity of different lenders involved in funding property. These include the major banks, second tier lenders, building societies, mezzanine financers, private lenders (including SMSF), international moneylenders, and specialist lenders that target particular industries like the medical industry. In this module, the terms 'lender' and 'bank' are interchangeable and refer to all lenders detailed in the list above.

Types of Accounts Associated with Loans

There are a number of different account types associated with loans and it's important to understand them so that you understand what should be used when.

1. Line-of-Credit (LOC)

This is a flexible loan arrangement with a specified ceiling to be used at the borrower's discretion. You would have a credit limit on which your loan can extend, and if you owe less than this amount, then you are able to redraw or access the funds up to that limit. These are typically operated on an interest only basis on the amount owing calculated daily. The interest rate is typically a little higher than a standard loan.

For example, a $400,000 house with an existing mortgage of $100,000 on it, based on a 80% LVR = $400 x 0.8 = $320,000, minus the existing loan of $100,000 means there is an additional $220,000 available, which would be put into a line-of-credit facility – this is like a $220,000 credit card in that you can spend it at will. Some people prefer a LOC while others would prefer to use a redraw facility or an offset account in this instance.

With a line-of-credit, the interest payments come out of the LOC – so assuming you have capacity, your interest payment is just added to your debit balance and your line-of-credit balance is going up and up until the limit is reached. With a redraw facility, you still need to make set payments but they can be redrawn. LOC's are interest only loans, typically at an interest rate slightly higher than standard variable rate loans. They are never a fixed rate facility.

2. Redraw Facility

This is a loan facility where you can make additional repayments on your loan and then access these extra funds when necessary. All redraw facilities are based on a variable rate loan.

3. Offset Account

This is a transactional account that sits alongside a loan account. Whatever funds are sitting in that offset account at that point of time will be 100% offsetting the interest being charged on the loan. The funds are available to redraw at your will. You would use an offset account as opposed to a line-of-credit or redraw facility if you were ever going to be thinking of paying down your home loan debt, or if the future use of funds is going to be for personal use. However, if your future use of the money is for investments purposes, a redraw or line-of-credit is better.

Borrowing Capacity

Financial institutions looking to lend money to you will take into account three main requirements – known as the 3 C's – which are capacity, collateral and character.

Capacity

This takes into account your capacity to service the loan from your current cash flow. This is also referred to as your serviceability. It is not only a reflection of your income, but also your expenses. For example, a large income alone is not sufficient because large expenses can result in low excess cash flow, and hence, limited capacity to pay for an additional loan. An allowance for living expenses is made and then adjustments are made for any existing loans or credit cards. Clearly the more children you have, the more loans you have, and the more credit cards you have, the more your expenses will be, and the larger your income will need to be to counter these expenses and still give you capacity to borrow.

Collateral

This takes into account how much cash/equity you have available to contribute to the deposit and other costs associated with buying a property, including legal fees, Stamp Duty and working capital, etc. Available or usable equity is the relevant figure, because there will always be a percentage of equity quarantined in a property. Whether it's 10% or 20% quarantined, depends on whether the lender will provide a 90% or 80% loan against the security property. The property type is also influential. For example, financiers will generally not lend as much on a rural or rural residential property as they will on a

residential property. For commercial property, the usable equity is generally only 70% versus 80% commonly available on residential property.

Character

This is the lender's view of your lending history. For example, does your Credit Report and Liability Statement show good repayment conduct? This may include repayment conduct on other loans, right through to defaults on your utilities accounts, e.g. Telstra, through to judgements that may be lodged against you. The number of loans that you have applied for in recent times also falls under this category. If you have applied for numerous loans, you may be asked to explain why, and why you didn't proceed with them. Similarly, recent credit card applications, store card applications and finance company loans for furniture and cars, etc. can work against you. Your age is a further consideration. This is because the older you are, the less time you have in your active income earning phase to be able to pay out a loan. Hence, this will affect your ability to obtain finance.

Important Terms

Before we get too much further into financing, it is important to define a number of common terms used in the industry:

Equity is the amount of an asset that you actually own, e.g. the difference between the market value of the property and your bank loan balance is your equity amount.

Available Equity is funds held in either cash or a line-of-credit, offset account or redraw facility. This is money that you can access immediately and use in a property deal.

Loan to Value Ratio (LVR) is the ratio of the amount loaned to the valuation of the security held by the lender, e.g. 80% LVR. A property worth $400,000 and an 80% LVR equates to $400 x 80% = $320,000 loan.

Interest Rate is the amount charged by a lender to a borrower for the use of the loaned funds (principal), expressed as a percentage of the principal. The rate is generally expressed on an annual basis, e.g. 5%pa.

Loan Term is the period over which a loan agreement is in force. Either before or at the end of the loan term the loan principal should be repaid or the loan renegotiated. It is typically expressed in numbers of years, e.g. 30 year loan term. There is a second meaning for loan term which is the specifics of the loan agreement, e.g. the loan period, interest rate, security held etc.

Principal & Interest is a loan in which both the principal (capital sum borrowed) and the interest are paid during the term of the loan.

Interest Only is a loan where you are only paying the interest on the loan and the principal only begins to be paid back at the end of the interest only period. They usually

only have a finite life, e.g. 5, 10 or 15 years – after which you will have to start repaying the principal.

Fixed Rate Loan is where a guaranteed interest rate is charged for a specified period of time. Usually fixed rates are for 1, 3, 5, up to 10 or 15 years. With fixed rate loans, financiers typically only allow you to repay the minimum repayment during this period of time. A trap with these loans is that if you sell the property or refinance it during the fixed term period, either with the same bank or another bank, there will be break fees charged – also known as discharge penalty fees, and these can be quiet substantial, especially if the interest rates have dropped since fixing the loan. You are able to fix either principal and interest loans or interest only loans.

Variable Rate Loan is a standard loan where the interest rate charged can fluctuate at any time. They can be taken out as either principal and interest loans, or interest only loans.

Security is an asset that guarantees the lender their borrowings until the loan is repaid in full. It is important to note that the bank's view different types of security differently. For example, an uninhabitable residence being used as security may only be funded at 70% LVR. Another example is in a landslip area – if it's been highlighted by the bank's panel valuer, and if the valuer recommends a geotechnical report – then this will need to be provided prior to the property being accepted as security and the loan approved. Financiers may consider properties within flood prone areas as security so long as full flood insurance is in place and paid for by the borrower. Properties zoned flood affected may have restricted borrowing or may be declined by the banks. With properties impacted by mine subsidence, financiers may consider them as security, but may make them subject to the provision of a satisfactory certification from the appropriate Mine Subsidence Board. Even with serviced apartments, typically financiers will only lend on a 70% LVR, and the maximum bank exposure on any one complex is 20% - 30%.

Cross-securitisation (or cross-collateralisation) - This is when the bank secures a mortgage over multiple properties, essentially wrapping two mortgages together and taking the two properties as security. Look on your mortgage documents and note what property addresses are listed as security. If there is more than one property listed, then the loan is cross-securitised. This means that you cannot alter the loan on one property (e.g. access equity), without the bank requiring a revaluation on both properties. If you sell one property, the bank may require you to use some of the sales proceeds to pay-down some of the loan that remains – hence you do not have the autonomy to do what you like with the sales proceeds.

Refinance is to replace or extend an existing loan with funds from the same or another lending institution.

Unencumbered Property is a property free of liabilities or restrictions or mortgages.

Lender's Mortgage Insurance (LMI) is paid by the person taking out the loan (the borrower). The insurance cover, however, is for the bank/financier in case at some stage

they have to foreclose on your mortgage and there is a shortfall. At this point, the insurance company pays the financier the shortfall and pursues the borrower for the monies. Mortgage insurance is generally required when you borrow more than 80% of the value of the security (in residential 1st class security), so to borrow up to 80% in most cases, mortgage insurance will not be required. If you borrow more than 80% though, you will pay the insurance on the whole borrowed amount, not just what is in excess of the 80%. The insurance premium can vary from 1% up to as high as 1.8% on a maximum lend. The premium is a once off payment upon settlement of the loan. Many banks will allow you to add the cost of the LMI to the loan, hence capitalising the cost. LMI is also refundable. For example, if you pay for LMI with one bank and then after a year you refinance with another back, you can claim back that LMI fee from the first bank. In Australia there are currently only two mortgage insurers and so they basically control the market, because they dictate what serviceability requirements they are prepared to accept, as well as the areas (postcodes) in which they will lend. So, if you are looking to invest in more regional or in resource driven towns, it's advisable to first confirm that the mortgage insurers will insure in those areas if you intend to borrow above 80%. This is because it's the mortgage insurers that dictate to the bank if they are comfortable with the deal.

GST and the Margin Scheme

GST has a bearing on the profitability of a project and on the tax implications. Whilst this is technically not financing, it is something that you need to understand, because it needs to be factored into your calculations. You also need to understand what the bank will fund and not fund, especially when it comes to development finance and commercial property financing, and the sale of property. The Appendix at the back of this module is information produced by the Australian Taxation Office on GST and property and the margin scheme.

Price Point Calculation

An integral part of financing a property deal is knowing the property price point that is within your budget. These calculations start with identifying your available working equity position. Detailed below are the steps involved in this calculation. We will also work through an example situation to make the calculations meaningful.

1) Determine your available equity position. Now remember that there is a difference between equity and available equity and what we need to know for this step is your available equity position. This is either cash in the bank, or funds in a line-of-credit, or in an offset account or redraw facility. Hence, these are funds that are available to you to draw out at any point in time. Let's assume for this example that you have $165,000 available equity.

2) Determine the amount of funds that you want to set aside as a personal safety buffer. This is a personal decision, but should take into account your current commitments, your cash flow and your risk profile. Remember that this is a personal buffer, and is different from the project buffer or contingency that you should be including in the costings and feasibility of your project. In this example, let's assume a $15,000 personal safety buffer.
3) Subtract the personal buffer figure from the available equity figure to give you the available working equity (AWE) figure, e.g. $165,000 -$15,000 = $150,000. This AWE amount now needs to cover the three major components of a project that are funded by you. These include:
    - Deposit – your contribution to the purchase price, e.g. the balance of funds not covered by the lender's finance on purchase.
    - Purchase costs – the costs associated with purchasing the property that you have to pay for out of your own funds, e.g. Stamp Duty, solicitor, insurance, building and pest inspection report etc.
    - Strategy costs – the costs to undertake the strategy that the lender won't fund. This also needs to include the hold costs while undertaking the strategy.
4) Decide on your strategy and the amount of funds you will need to contribute to that strategy. We appreciate that this is a chicken and egg scenario, because you can't know your strategy costs until you know the property and ultimately the strategy you will do. And while this is correct, we need to make some assumptions to allow us to do these calculations in order to see what the end result is. Certainly if it means that you don't have enough funds to actually purchase a property, then that's when you need to revisit these strategy costs and potentially test a less expensive strategy. For example, it might come down to the decision between having sufficient funds to do a frontage lot subdivision, but not the potentially more expensive battle-axe block type subdivision; or it might be the difference between being able to do a cosmetic renovation, rather than a structural renovation; or it may be the difference between doing construction of a single dwelling rather than multiple dwellings. For this reason it's a good idea to redo these calculations using a few different strategy cost figures, so that you understand the impact it has on the end property purchase price figure. For this example let's assume that the chosen strategy is a one lot into two subdivision, and a battle-axe subdivision at that, hence, a strategy cost of $60,000.

    Listed below are some guidelines for estimating the costs for conducting a range of strategies. These figures are provided in order to assist you in doing these calculations yourself. However, they are a general guide, and you MUST still do your own due diligence, because these costs vary from council to council, from

location to location, and from strategy to strategy depending on the actual works involved.

Renovation - Cosmetic = $5k-$35k up to 9% - 10% of purchase price.

Renovation - Structural = $70k upwards.

Strata - Purely the paper shuffle/approval aspect (no physical site works) = $30k.

Subdivision - Battle-axe 1 lot into 2 = $60k

Subdivision - Frontage lot, 1 lot into 2 = $40k

2 Lots on the 1 Title - Title lift and retitle individual lots = $20k.

House Relocation and full renovation Single shift = $30k - $50k

Double shift = $50k - $120k.

House Construction - Assuming cost of $200k, financed at 80%LVR = $40k.

Development Approval – e.g. multi-unit DA = $20k planning and engineering approval (no physical site works), plus development contribution/council headworks cost = $20k - $28k per extra dwelling or lot (QLD, NSW, WA), versus $0-$11k in VIC.

5) Subtract the strategy cost from the AWE figure to give the Net Available Working Equity (NAWE) e.g. $150k - $60k = $90k NAWE.
6) Based on your serviceability and the property type and location, the bank will typically lend 80% of the purchase price, and the balance 20% must be contributed by you – which we call the deposit. You will also need to cover all purchase costs, which as a general rule is up to 6% of the purchase price (especially in NSW where Stamp Duty is higher). So in total you will need to contribute 20% + 6% = 26% which as a decimal figure is 0.26.

   Divide the NAWE figure by 0.26 to give the Property Purchase Price

   e.g. $90k/0.26 = $346,154.

   Hence, you can afford to purchase a property for around $346k with the bank contributing 80% and you paying from your own funds the 20% deposit, the 6% purchase costs, and the $60k subdivision and hold costs. In reality this is the upper end of your range and you would probably be looking at property from around $300 - $340k.

If in contrast the bank would lend you 90% of the purchase cost, you only have to contribute 10% deposit, plus the 6% purchase costs. This would total 16%, which as a decimal figure is 0.16. Therefore, $90k / 0.16 = $562,500 property purchase price. So you can see that the difference between an 80% versus a 90% LVR is the difference between

having the funds to purchase a $346,000 versus a $562,000 property, which is a huge $216,000 difference.

General Financing Considerations:

There are a number of components to financing and a number of considerations that you need to have an understanding of as detailed below.

- What's the end goal?
    1. Before proceeding too far into the financing of any deal, you need to ask yourself some questions about your intentions for the end product. The answer to these questions will greatly affect the financing you will need.
    2. Is my intention to –
        - buy and hold the property?
        - buy the property and sell off the vacant blocks or strata units, or newly developed units?
        - buy the property and sell off the plan before title registration? e.g. vacant land, strata units etc.
        - buy the property and sell some, keep some?
- Feasibility analysis

  Financing or refinancing a property MUST be based on a feasibility analysis of the property. This should be an analytical decision not a gut feel or emotional decision, as that often can be a dangerous decision making methodology, especially given that we are generally referring to hundreds of thousands of dollars. This is why diligent feasibility analysis is required to drive an informed decision. Module 6 of this program teaches you the method of doing feasibilities from scratch, so that you can take control of your decision-making and have confidence in it.

- Cross-securitisation

  Cross securitisation is when the bank takes two properties as security, i.e. the one being purchased and an existing owned property. Two properties are listed as security on the mortgage document. The disadvantage of this situation is that the bank now has control over two of your properties, so if you want to access equity from one, you have to revalue both properties. Also, if you choose to sell one, the bank may require an amount of the sale proceeds to go to them to pay down the debt on the remaining property to the bank's comfort level, hence you do not

have full control over the sale proceeds. Also, if your situation changes, the bank can force you to sell both properties, so as you can see, cross-securitisation gives all the power to the bank, and can put you in a less favourable position. When financing properties, we try very hard to keep each property as a stand-alone property, so that the loan is secured only by the primary property, hence, there should only be one property address as the security on your mortgage document.

Taking this a step further, we would also like the loans to be spread across a range of financiers. This is because by having several loans with the same bank, they again have the upper hand, as they are holding your security for a number of loans. They are able to access your history and financial position and relate that information to your loan application. In an ideal situation you would have your loans spread between a diversity of financiers, and would have your daily savings / transaction account/s with a separate bank that you had no loans with. This is because with your transaction accounts, the bank can see what regular credits you have, e.g. your wages going in, and your regular debts going out, e.g. your living expenses. Hence, the bank could potentially see if you lost your job and your regular credits stopped, or if your expenses substantially elevated. Keeping this information away from the financier that you want a mortgage with, is just good business practice, so that we retain more of the power rather than the banks.

In saying all of that, there are situations where your only option is to cross-securitise to be able to do the next deal. For example, you may have good equity in your home (principal place of residence – PPR), but your serviceability doesn't allow you to create a line-of-credit or a redraw facility against the property. The only way then to access that equity for your next deal is to provide the PPR as additional security for the next deal. Hence, the bank has the new property and your PPR secured against the deal. Obviously for this to happen, the same lender must hold the mortgages to both properties. You cannot have the mortgage on the PPR with Bank A, and then use it to secure the new property deal with Bank B. They must be with the same bank as that bank wants first security over the two properties. This is an example of cross-securitising the properties, but it is a means to an end and is only done as a last resort, and if it's the difference between being able to do a deal or not, then sometimes you just have to do what you have to do and understand the implications of your decision. Certainly if this was the reality for you, you would look to complete the deal as soon as possible and to release the security of the PPR as soon as possible, so that this cross-securitisation doesn't end up as a long term situation.

For example, the deal may be to subdivide the newly acquired property. Once the subdivision is complete, the equity created from this manufactured growth

strategy, may be sufficient to allow the property to now stand-alone and solely secure the loan. In that case, the PPR can be removed as security on the loan. The property is then no longer cross-securitised and both the PPR and the new deal stand-alone and secure only their own debts.

- Mortgage document review

  Reading your mortgage documents prior to signing is essential and you need to take responsibility for this. While in a perfect world there would be no mistakes - this is not a perfect world, so do not rely on the bank getting every detail correct. Also, do not rely on your mortgage broker to check the documents. Ultimately it is your responsibility to check – so ensure you do it. You need to check for the correct borrower's name/s and details, the correct property address, lot and plan details, correct security address (avoid cross-securitisation), correct interest rate, loan terms, P&I or IO, fixed or variable, fees schedule etc. If you haven't double-checked these details, you shouldn't sign the documents!!! Independent legal advice may also be required prior to signing the documents, so understand if this is the case and be prepared.

Valuation Process

A significant aspect of financing property is determining the value of the asset. Because of the significance of this process, we will break it down into some detail and cover the practical aspects of valuation.

Valuing a property is determining a real value of a property at a given moment in time having regard to the nature of the property and the purpose of the valuation. The valuation report details the professional opinion of the property valuer. The lender relies on this professional opinion to inform his/her decision as to what value to assign the property, and whether the asset is worthy of the risk of financing. The opinion of the valuer is paramount for all parties, and for this reason you will often hear valuers referred to as "God", because their opinion can make or break the financing of a deal. While the "God" reference may be said tongue-in-cheek, it is in fact deadly accurate, because it is hard to convince the lender to go against the recommendations of the valuer. Even getting the bank to review a valuation that you disagree with is a big deal and definitely not guaranteed. It is for this reason that understanding the valuation process, the strategies to maximise a valuation, and the tricks of the trade, is important to cover before we delve into the financing of different strategies.

The purpose of the valuation takes into account who is asking for the valuation and why they want it. Below are two examples:

- If a financier is requesting a valuation for the purpose of securing a mortgage on a property, they will request a fire-sale valuation. This is a value at which the property could reasonably be sold quickly in case of repossession by the bank. Experience shows that a fire-sale valuation for a bank is typically 80% of the current market value.
- If a financier is requesting a valuation for the purpose of determining the current market value in a controlled sales situation, they will request a market valuation. The market value can be defined as the price at which a property should exchange on the date of valuation between a willing buyer and the willing seller in an arm's length transaction, after proper marketing, wherein the parties had each acted knowingly, prudently and not out of compulsion.

When applying for a loan for the purpose of purchasing or refinancing a property, financiers will in most instances require a market valuation to be done by a registered valuer on the financier's panel. Lenders have a list of panel valuers that are accredited and approved to value certain types of properties in certain areas. Therefore different lenders may use different valuers in different locations and for the valuation of different property types, e.g. residential versus commercial.

Because the valuation method differs between the different property types and the different purposes of the valuation, we will cover residential valuations here and cover the more specific valuation of development projects and commercial properties later in this module under the respective project types.

Residential Valuation

The most common and widely used valuation method in the residential property market is the 'direct comparison method'. This is where the subject property is compared against others in the area, hence, it's also called the 'comparable sales method'. The valuer must make a value judgement on whether a recently sold property is comparable to the subject property, and adjust up or down accordingly.

Factors Considered in the Comparison Sales Method of Valuation

- Land use and zoning, e.g. low density residential or neighbourhood residential versus medium or high density residential that allows for a higher density of residential development.
- Location – greater reliance is usually placed on sales close in locality to the property being valued. If there are no recent comparative sales within close proximity of the property being valued, recent sales in comparable locations may be used.
- Date of comparative sales – sales immediately prior to the time of valuation provide the most acceptable evidence of value. In periods of rapid change, both for an increasing or decreasing market, a lapse of a few months may result in substantially different values.
- Physical Characteristics - The valuer is looking at the physical features of the property including physical size of the home, number of bedrooms, bathrooms, car parking, standard and quality of the finishes, e.g. laminate versus stone bench top, plus the general presentation of the property. They are also looking at the site including the land size, slope, proximity to services, e.g. café's, main road noise etc. They will make a note of any site constraints that they are aware of, e.g. in a flood affected zone, or heritage protected area etc. Comments will also be made on the state of the property market in that area and the likely risks associated with this property and location.
- Title and tenure – the type of property being used as a comparison should be of similar ilk. For example, the sale of a leasehold property should have little relevance on the valuation of a freehold property, regardless of whether the properties were in close proximity with similar physical characteristics.
- Tenancy composition – some tenants are considered more secure and desirable than others. Long leases are considered more desirable than shorter ones, e.g. 12 months versus 3 months. Evidence of regular rental increases will also reflect favourably.

There are a couple of different methods for doing the comparable sales method valuation for residential properties including full valuation, desk-top and drive-by as detailed below.

Full Valuation

This is the standard valuation that is undertaken. It requires the valuer to access the property to fully inspect and evaluate it.

After inspecting the property, the valuer will also do a search with the Valuer General's Department for similar properties that have sold in that area. Often RP Data is used for this research. The valuer will also contact some of the local real estate agents in the area to enquire about most recent sales in the area, because some of the electronic search information can be 3 - 6 months out of date. Certainly when the market is rising rapidly, the most up to date current information can make a significant difference in the valuation. Residential valuation is definitely not an exact science, instead it is more like an art and comes down to the personal opinion of the valuer. Many decisions are judgmental and hence, three valuers could have a varied opinion ranging in tens of thousands of dollars for the same property. For this reason, it's beneficial for the broker to order the valuation, so that if you don't like the first valuation, another can be ordered and the best one submitted to the bank – assuming you have the flexibility to do this with the financier. Some financiers will control the valuation process from their end and in that instance you often only get one chance at it.

Desk Top and Drive-By Valuation

Some of the major banks with loans less than 80% of the purchase price will not require a full on site valuation, but instead will do it in-house and accept the purchase price as the true value of the property. Alternatively they may do a desktop valuation using comparable sales data sources like RP Data, or they may engage a valuer to do a drive-by valuation where they drive past the property to confirm that it does exist and that it is in reasonable condition.

Suggestions for Maximising a Valuation:

- You need to realise that valuers are very busy and may be completing five or more valuations that day in addition to yours – so be respectful of their time and only tell them the essentials.
- Presentation does matter when it comes to a valuation and can have a big effect on the end result. Do not assume that a valuer can see past the half unpainted walls, or the poorly maintained garden. They can only value on what they see – so ensure you have completed the renovation, tidied up the garden, and decluttered as much as possible, as this will always make your property look bigger. Also, ensure that you have given it a good clean. It's amazing just what clean windows can do to the look of a property.
- First impressions count too, so look at your property from across the road. Assess its street appeal and how you can improve this with some simple landscaping. Mulch is an amazing thing and for a small cost and effort it can really improve the look of your property. Maybe a pot plant or two at the front door – it's all about making the property feel welcoming. In fact, what we are aiming to do is eliminate any issues a valuer could have with our property, any reason that they could reduce the value.

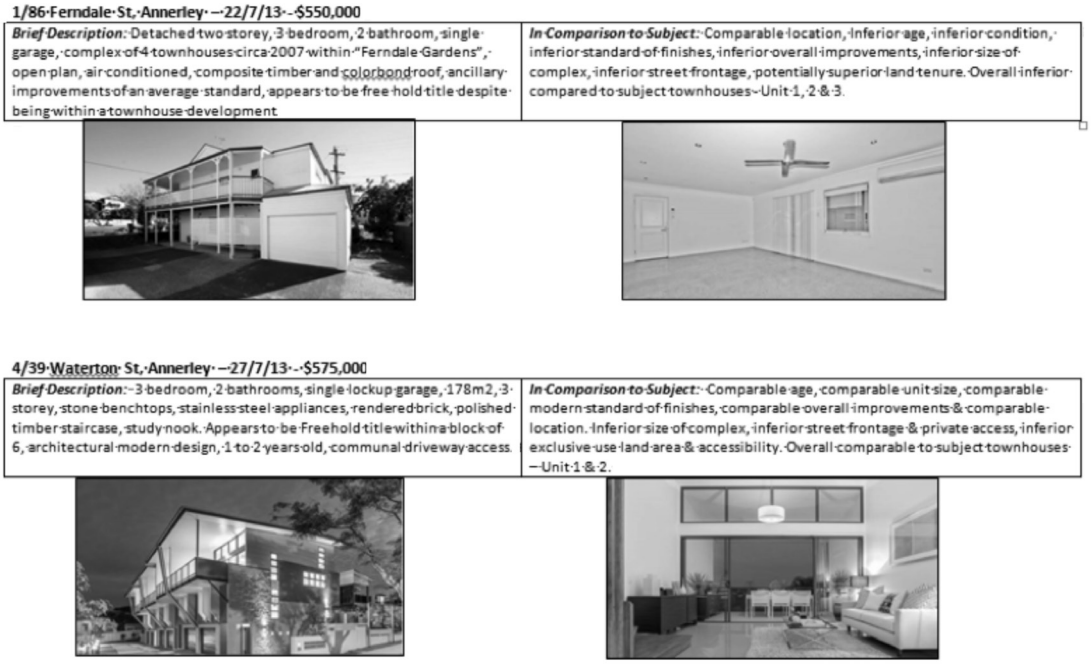
Remember that they are working for the bank – not for you – so, if they can find a reason to lower the price, they will. Another important consideration is that they are comparing your property with other properties that have just sold. So, if those sold properties have been styled and decluttered and presented to their maximum for sale – then you don't want yours to look drab in comparison, and yes, it is only for the day of the valuation, but it is definitely worth putting in the effort, because it can make tens of thousands of dollars difference to the end value.

- Typically a valuer will call to arrange the inspection within a day or so of it being ordered. If this has caught you off guard and you haven't yet finished the final renovation touches, or haven't done the declutter and clean, or if you are away and can't be present, ensure that you advise the valuer that the suggested time will not work for you and that you will need to reschedule it for another time. This will buy you time to complete the things you need to get done. Don't feel pressured to let them value it if you are not 100% ready.
- Provide your own comparable sales and a list of the renovation works you've completed. This is covered in more detail below, as this is worthy of a section on its own.
- Provide them with a floor plan and site plan if you have them, as this will save the valuer significant time having to hand draw on site, which many of them do.
- If your property is in a flood affected area, or a slip prone area, or a mine subsidence area, but you have specific evidence that in fact your property is not adversely affected by these factors, then provide this evidence to the valuer, e.g. a flood report, or mine subsidence clearance certificate. Also, if you know that your property has been incorrectly referred to as 3 bedroom instead of 4 bedroom, or that the RP Data listing for your property is incorrect in this regard – again speak up and bring this to the valuer's attention.
- If you are not happy with the valuation and you have evidence to justify this, e.g. they have noted it as 3 bedroom not 4, or flood affected when it's not, then talk to your broker and have them justify to the bank why you request an amendment to the valuation, or a new valuation be completed. This may or may not work, but either way it's definitely worth asking.

Comparable Sales Summary:

Doing the valuer's work for them and summarising sales that are comparable to your property, is a very successful technique for a number of reasons. Firstly, it shows the valuer that you have done your homework, you are educated in the market, and that you cannot have the wool pulled over your eyes. Secondly, it does potentially cut down the valuer's work, because you have already listed the most recent sales in the area that the valuer may not yet even be aware of. Below is a list of suggestions for compiling and presenting this comparable sales data:

- Create a document that summarises the comparable sales, with your property at the top along with its features, and then with the sold listings below (see sample below). For each comparable sale, include a photo of the property, the address, date sold, sale price, land size, features of the property, and then comments regarding its comparison to your property. Use terminology consistent with what valuers use, e.g. superior, inferior and comparable. For example, superior location, inferior land size, and comparable quality and size of dwelling.
- Do not be too obviously biased, e.g. don't say that your property is superior when clearly it is not. That is just a quick way to get the valuer offside and for them to disregard your information because it is biased.
- List the properties in order of lowest to highest price.
- Remember that you want to make your property look as good as possible, so pick and choose the best comparable sales that serve your purpose.
- Eliminate properties sold under a forced sale situation, e.g. a property sold due to liquidation or mortgagee in possession or forced sale conditions of any kind.
- Only include the most recent property sales because valuers typically avoid using sales over 6 months old. If only older sales are available as valid comparison, the valuer must flag to the financier that they are 6 months or older.
- You can include properties that are unconditionally under contract (assuming they are in your favour), however, properties currently listed for sale are of no relevance. This is because valuers can only consider the prices of properties that have actually sold and settled.



1/86 Ferndale St, Annerley – 22/7/13 - $550,000

Brief Description: Detached two storey, 3 bedroom, 2 bathroom, single garage, complex of 4 townhouses circa 2007 within "Ferndale Gardens", open plan, air conditioned, composite timber and colorbond roof, ancillary improvements of an average standard, appears to be free hold title despite being within a townhouse development	***In Comparison to Subject:*** Comparable location, inferior age, inferior condition, inferior standard of finishes, inferior overall improvements, inferior size of complex, inferior street frontage, potentially superior land tenure. Overall inferior compared to subject townhouses ~ Unit 1, 2 & 3.

Some Other Valuation Tricks and Techniques:

- When the bank orders the valuation, despite the fact that you may have paid for it, often they will not release a copy to you. Certainly you can ask the question though, and sometimes the broker is able to obtain a copy, or the bank is prepared to release it after the settlement of the loan.
- Remember that you can also order a valuation and request that it is completed for mortgage purposes and to the standard of a particular bank. That way, because you have ordered it and paid for it independent of the bank, then you are the client and the valuer's report will come to you. At least that way you know what the value is likely to come in at, and you can choose whether to give a copy of it to the bank valuer. In that instance, you may just casually mention to the bank's valuer that you recently had a registered valuation done for your own purpose, and so they may as well have a copy. What you are really doing here is highlighting to the bank's valuer that you are informed, and can't have the wool pulled over your eyes. Also, it is hard for a valuer to go against another current registered valuation completed for bank purposes. There is no guarantee with this approach, but it certainly sways in your favour. Be careful not to be too arrogant or pushy with this though – valuers hate pushy homeowners.
- If you have bought a property under-market and your contract price is $300,000, but the property is really worth $350,000, it's most likely that the valuer will value the property at contract price. This is because by definition, market price is what the seller and buyer agree on, and that's reflected in the contract price. On rare occasions the valuer may value the property higher, however, banks typically work on valuation or contract price, whichever is the lesser. There are exceptions to the rule though, and on occasions banks vary from policy and loan on valuation if it is higher than contract price. Celebrate and treat this as a windfall! Remember that even if the bank takes the lesser value of the contract price, you can always go back and request an increase in the loan based on the valuation.
- Understand that a valuation only remains valid for 3 months from the inspection date. Outside of this period you may need to have a new valuation completed.
- Most lenders use the valuation ordering system Valex. It is an independent system that manages the valuation ordering process. This system allows the bank or mortgage broker to log a valuation request. The job is then automatically sent to a panel valuer to complete the job. In the good old days, prior to the GFC, borrowers and brokers had much greater control over which valuer completed the job. This meant that you could target specific valuers that were not too conservative in their approach, or valuers that had successfully valued for you in the past. This is less of the case nowadays and the best you can hope for is for the broker to be able to order a valuation prior to the loan being lodged with a lender. That way we know we have a favourable valuation in hand before liaising with the lender.

The Decision to Hold, Refinance, or Sell:

When you have existing property in your portfolio, or when you are in the process of doing a project, the question has to be asked whether you keep the property or sell it? Depending on the equity in the property, the question is also whether you refinance it to access the extra equity.

The decision to keep, refinance, or sell comes down to a number of factors. Some factors are personal, others are financial, but all need to be considered to ensure that the final decision is made based on sound analysis.

From a personal perspective the factors include:

- Ease of management – if a property is a headache from a management perspective this needs to be considered. For example, it may be a long distance from you and even possibly in another country. If this results in the management being a major issue for you, then this needs to be considered. Alternatively, it may be very difficult to get tradespeople to do on going maintenance, or there may only be one property manager in the region, and they are not performing to standard. If you have exhausted all avenues to improve the management process, and still find this is causing you issues, it needs to be taken into account.
- Upkeep – if the property requires considerable upkeep and on going maintenance and repairs and this is a major issue for you from a management or cost perspective, it needs to be considered. Similarly, if the property has the potential to be adversely impacted by events such as flooding, bush fire, cyclones, even vandalism, and this causes you undue stress, again this needs to be taken into account.
- Future potential – the property's potential use in the future also needs to be looked at. For example, if the zoning and land size has current or future development potential, you need to understand this now to be able to factor this into your decision. In other situations you may aspire to making this property your principal place of residence - your future home, and clearly this needs to be considered.

Once you have assessed the personal factors, it's necessary to assess the financial factors regarding the property. There are three components to this:

1) Opportunity cost of keeping the property

2) Overall equity position

3) Overall serviceability position.

The opportunity cost of keeping the property and not using the maximum funds to go onto other opportunities, is assessed by conducting an 'opportunity cost analysis' on the property. This takes into account the:

- Property's cash flow - either positive or negative.
- Potential capital growth in the property value based on its location.
- Equity tied up in the property,
- Funds released if the property was sold.

On the Ultimate program member's website there is a webinar plus a spreadsheet to assist you to conduct this analysis. On the website, go to >Support, > FAQ 17 for the webinar link, and go to >Support, >Downloads, >Opportunity Cost Worksheets for the spreadsheet.

The final considerations are the impact of holding the property on your overall equity and serviceability position. It is essential to keep in mind that each deal needs to put you into a better position for the next deal, so you need to ensure that each deal strengthens your weakness, not further weakens it. If you are weak in serviceability, you do not want to hold a negatively geared property, otherwise it will further draw down your serviceability. Similarly, if you are limited in equity, you do not want the current deal to drain your equity position - otherwise you will have even less with which to go into the next deal. This ever dwindling pot of equity (and potentially serviceability), will mean you will end up in a position where you don't have enough equity and/or serviceability to do another deal, and this will stop you in your tracks. Obviously, this is not in your best interest.

From a serviceability perspective, you really only want to hold property that is close to neutral or positive cash flow, because it doesn't take too many negative cash flow properties to limit your serviceability to the point where the bank won't lend you any more money. Even if you have successfully created a big chunk of equity from doing the deal, if it is negative cash flow and pushes your serviceability over the edge, you may not be able to refinance it to access the equity.

If equity is your limitation, you need to be careful not to hold property too early on in the process of developing your portfolio, especially if it results in you quarantining too much equity in the deal. What we mean here is that if you can't get all your original funds back out of the deal, then you actually now have less funds to go on with to the next deal. Let's look at an example to highlight this point.

Let's say you purchase a property for $300,000 and obtain an 80% lend, hence $300,000 x 80% = $240,000 loan, meaning that you have to contribute the balance $60,000 either as cash or from your line-of-credit, or offset account.

You then do a structural renovation for $50,000 and the property values at the end for $400,000. At this point you have contributed $60,000 for deposit and $50,000 for renovation, equalling $110,000. $110,000 of your available equity has been put into the deal, and this doesn't include the additional purchase costs and hold cost – so in reality it would be more.

Assuming the property is revalued at $400,000 and you refinance it at an 80% lend once again, the bank will loan you a total of $400,000 x 80% = $320,000. You have to subtract from this the current loan you already have of $240,000. The bank will give you an extra $80,000 ($320,000-$240,000). Given you had to put in $110,000 of your own funds into the deal, but you are only getting an extra $80,000 back on the refinance to replenish the funds you put into the deal, this means that you have actually quarantined in the deal $30,000 of your own funds. This is because you started with $110,000 but now only have $80,000 to go on to the next deal, so even though you made a profit from the deal, by holding it and refinancing you actually have less money to go on to the next.

Let's say the next deal was similar and was bought for $300,000 at 80% lend. Hence, you need $60,000 for the deposit. Given that you only have $80,000 in total, you now only have $20,000 left over to do a renovation. You can see that you can't keep doing this too many times and continuing to hold these properties, before you end up with insufficient available funds to do another deal – and then you are stuck.

The solution would be to sell the first deal and therefore release the maximum profit. Let's say you sell for $400,000 and after sales cost you end up with $375,000. Subtracting your current loan of $240,000, you end up with $135,000 in your hand to repay yourself the $110,000 you put into the deal. So $135,000 minus $110,000 equals $25,000, which means that after doing that deal and selling it, you now have all your money back plus an extra $25,000.

You can see that by selling it and releasing all funds, you ended up with more money to go on to the next deal. In contrast, if you had held and refinanced, you would have had less money for the next deal. Even if the property was slightly positive cash flow, what you are limited in is equity, and hence, holding for the positive cash flow at this point would be detrimental, because your equity position is what is weak and needs to be built up.

This is where the magic $200,000 equity figure that we refer to in Module 3, Appendix 2, comes into play. If you have less than $200,000 available equity (e.g. cash, line-of-credit, or in an offset account), then your next deal needs to be a manufactured growth/chunk deal to build up your equity position to at least $200,000. If you intend to hold the property after doing the strategy, you need to be able to get all your equity back (and preferably more) from revaluing - otherwise you should consider selling.

Remember that each deal needs to put you into a better position for the next deal. Once you have $200,000 or more equity, you can also focus on income strategies. You do need to be able to maintain your $200,000 equity position, however, and so these same refinancing versus selling calculations need to be done for every deal.

In the example above, rough figures were used and an explanation in words was given to provide you an understanding. In order to make a final decision, however, rough figures are not good enough, and you really need to calculate them accurately in order to understand the true impact of refinancing verse selling. Remember, the numbers never lie!! This is covered in the section below.

Refinancing Calculation Example

Taking the same renovation deal as detailed above, in this section we go through the calculations for refinancing versus selling, and what this would look like in a spreadsheet feasibility, plus the formulas and calculations. This is still not a detailed feasibility because it's not going to break down and itemise the individual purchase costs, hold costs, renovation costs, or selling costs – but you will get the idea.

The assumptions are:

- Purchase price of $300,000
- Bank finance on purchase at 80% LVR
- Purchase costs of 4.5% on a QLD deal (this would be 6% for VIC due to the higher Stamp Duty costs)
- Renovation costs $50,000
- Owner funds available $128,500
- End value $400,000 (revaluation figure and sale figure)
- Option 1 - Bank refinance at 80% LVR
- Option 2 – Bank refinance at 90% LVR
- Option 3 - Sell

Buy, Renovate, Refinance or Sell	Formula	Total Costs $		Loan Funds 80% LVR		Owner Funds $	
Purchase Price		300,000		240,000		60,000	
Purchase Costs (4.5%)		13,500				13,500	
Hold Costs		5,000				5,000	
Renovation		50,000				50,000	
Total Costs		$368,500	A	240,000	B	128,500	C
End Value		400,000	D				
Profit Potential	(D-A)	31,500	E				
OPTION 1 - Refinance @ 80% LVR							
New Loan on Refinance @ 80%	(Dx80%)	320,000	F				
Loan to be Paid out on Refinance	B	240,000					
Equity Released on Refinance	(F-B)	80,000	G				
Owner Funds To Repay	C	128,500					
Owner Funds Quarantined In Deal	(C-G)	48,500					
EXTRA Funds Released For Next Deal	(G-C)	-48,500					
Total Owner Funds Available for Next Deal	G	80,000					
OPTION 2 - Refinance @ 90% LVR							
New Loan on Refinance @ 90%	(Dx90%)	360,000	H				
Loan to be Paid out on Refinance	B	240,000					
Equity Released on Refinance	(H-B)	120,000	I				
Owner Funds To Repay	C	128,500					
Owner Funds Quarantined In Deal	(C-I)	8,500					
EXTRA Funds Released For Next Deal	(I-C)	-8,500					
Total Owner Funds Available For Next Deal	I	120,000		(LMI Not Accounted For)			
OPTION 3 - Sale							
Sell Costs (3%)	(Dx3%)	12,000	J				
Net Sale Income	(D-J)	388,000	K				
Loan to be Paid out on Sale	B	240,000					
Owner Funds To Repay	C	128,500					
EXTRA Funds Released For Next Deal	(K-B-C)	19,500					
Total Owner Funds Available For Next Deal	(K-B)	148,000					

From the above spreadsheet it is clear that there was $31,500 potential profit in the deal. On refinance at 80% (Option 1), the new loan would have increased to $320,000. This would have been structured into a $240,000 loan that pays out the original loan at purchase, and an $80,000 loan as a line-of-credit. The $80,000 line-of-credit would be used to repay yourself for the $128,500 you put into the deal from your own funds. So, once again it is clear that refinancing this deal doesn't release sufficient funds to repay you what you put into the deal. In fact, instead of getting your original $128,500 back, you are only getting $80,000 back to go onto the next deal, and this is because the other $48,500 is still quarantined in the deal – it is equity sitting in the deal. It's still your money, but it's no longer available to you to use. This highlights again the difference between equity and available equity that you can access and go and use.

Now for those that are familiar with these types of calculations, we hear you say, "What about a 90% LVR?" Yes you are absolutely correct, and that is Option 2 in the spreadsheet.

If in fact you could refinance at 90% LVR, hence $400,000 x 90% = $360,000 loan on refinancing, and after paying out the existing $240,000 loan, that's now a total of $120,000 that you have access to. This still doesn't fully cover the $128,500 you put into the deal, but it's certainly closer. We haven't considered the cost of Lenders Mortgage Insurance (LMI), however, which is likely to have been triggered as soon as the lend went above 80% LVR. So, with every deal, it's a question of what LVR you are able to lend at. Certainly the stronger your serviceability the more likely it is that you will be able to refinance at 90%. The location of the property will also impact on LMI and needs to be considered. It is also worth remembering, that with the equity that is released from this deal, it is the NEXT deal that has to pay for the interest charged on this money.

The final option is to sell the property on completion – Option 3. The end result of selling is that you get all your original money back, plus an additional $19,500. So, in total you have $148,000 to go and do the next deal, meaning that you have strengthened your equity position. Whether you choose Option 2 to refinance at 90%, or to sell, will come down to your serviceability and your capacity to get a 90% lend, and on the cash flow of the deal.

Strategy Financing

With any property deal there are three phases to financing; 1) the purchase of the property and hence, financing the acquisition stage; 2) financing the strategy, e.g. renovation, subdivision etc., and 3) refinancing during, or on completion of the project. Obviously, if you intend to sell on completion, then this last phase doesn't apply.

The following section reviews each of the major manufactured growth and income strategies, and details the financing characteristics of each across each of the stages above. Each strategy has its own unique opportunities and constraints with regards to financing, and so each are covered individually, including:

- Renovation
- Construction
- Subdivision
- Development, e.g. multi-units
- Strata titling
- Cash cows in regional/mining areas
- Short stay – executive leasing/holiday letting

- Rent by room/student accommodation
- Commercial property

1. Renovation Strategy

Financing a renovation differs depending on the extent of the renovation, whether it's a cosmetic renovation, a structural renovation, or an extension, as detailed below.

Purchase Finance

Purchasing a property for renovation is similar to purchasing any residential property, in that a residential loan would be used based on an 80-90% LVR, depending on your personal circumstances. In this instance you would not disclose to the bank your renovation intentions. Only if the property was uninhabitable (e.g. no working kitchen and bathroom) would the LVR drop to potentially 60-70%, and the bank would be expecting a renovation. Because the property is unable to be lived in, the bank regards it as higher risk and they want less exposure, so they will lend you less. It is in the valuation report that the bank will be alerted to the fact that it is uninhabitable.

When budgeting for the purchase of a renovation project, you will need to make sure you have enough funds available to pay for:

- Deposit (purchase price minus the bank finance)
- Stamp Duty
- Legal fees
- Inspection and due diligence reports, e.g. pest, building, survey etc.

Strategy Finance

When the strategy is a cosmetic renovation, the funds to complete the works will need to come out of the owners available funds. Hence, if it's a $30,000 cosmetic renovation proposed, those funds need to be contributed by you. An allowance also needs to be made and funds available for:

- Contingency – to cover overruns, e.g. 10% of renovation costs
- Hold costs – to cover interest payments, rates, insurance etc., for the duration of the project
- Sell costs – to cover staging, photography, advertising, marketing etc.

When the strategy is a structural renovation or extension, and more significant in value, there is the opportunity to have the bank finance the renovation works. This includes the uninhabitable property example, where the renovation is most likely to be structural at minimum. To have the works paid for by the lender, all works need to be included in a build contract, which the valuer would review, along with valuing the proposed end product after the renovation, based on comparable sales in the area. Lenders will generally lend 80% of the contract construction cost, however, they also need to be comfortable that the end value will stack up and that the renovation will not result in the property being overcapitalised.

If the bank does fund the construction, the funds will not be released directly to you, but rather will be released directly to the builder on their drawdown claim, as detailed in the construction finance section below. Plus, the lender will require you to put in your funds first, and will need to see evidence of this before they will commence funding. Even with bank finance for 80% of the renovation build contract, you will still need funds yourself to pay for the other associated costs detailed above, including contingency, hold costs, and selling costs.

If it is clear from the start that you intend to conduct the renovation very soon after purchase, it is possible to cover off in the one loan application the purchase and the renovating, and thus the lender's contribution to each. This would still require a build contract for the works, or at minimum a formal written builder's quote.

Refinancing to Access Equity

During the renovation phase the lender typically only lends based on a percentage of the renovation costs, and does not lend on the increased value that will potentially be created from the works. For this reason, it's common to revalue and then refinance a renovation project on completion, in order to access the equity created from your efforts. Because the property was valued at the time of purchase, it is recommended to leave it for 3 to 6 months before revaluing, despite the fact that you may have completed the renovation in the first 8 weeks, for example. This is the same if you had funded the complete renovation from your own funds.

It is also recommended that you detail the renovation works completed, and provide that information to the valuer on inspection, so that they are fully briefed on the end product. Highlight to them the quality of the fixtures and finishes, e.g. stone benchtop, fully replaced and upgraded all light fittings, European appliances etc. Even more important is to highlight to the valuer the items that are not easily visible. For example, if you did rewiring, or re-plumbing, added insulation, re-levelled the house, did internal structural

works etc. Do not assume that they will know or see the works you have done, so make it known to them. As detailed in the valuation section above, also provide the valuer a summary of comparable sales so that they know what your expectations are. If it is a rental property, also provide one or two current rental appraisal letters based on the renovated end product, because the renovation works should have also increased the rental value.

As with all term lending, it will come down to your own personal circumstances, however, an 80-90% lend on the renovated value is likely. Refer to the refinance section above, to remind yourself of the calculations on refinancing and accessing equity.

If you intend to hold the property long term and not refinance again in the short term, you may choose a fixed rate loan if the rates are competitive. Remember though that with a fixed loan, there may be penalties if you choose to break the loan mid-term, either because you have chosen to sell it or refinance it. It is also worth remembering that with any loan that you do through a mortgage broker, they will have been paid an upfront commission by the lender for bringing your business to that lender. They are also most likely to be paid a trailing commission over the duration of the loan.

If you then choose to sell the property or refinance it with a new lender, and the current loan is paid out early, there is a period of time in which the lender will claw-back the commission paid to the broker. For example, the claw-back period may be three years, and so if you pay out the loan during the first three years, the lender will require the broker to repay the commission paid to them. The likely flow on is that the broker will then request you to pay for the claw-back commission. In effect, you are now the one paying commission to the broker for arranging the original loan. This is only fair, as the broker has undertaken significant work to get you the initial loan, and because you have cut the loan short, the broker doesn't get to keep the commission that they earned. By the lender passing on the charge to you – you are in effect paying the mortgage broker's commission for the original loan instead of the lender. This is a cost of doing business and just needs to be factored into your feasibility.

2. Construction Strategy

Under the heading of construction, building an extension through to a single house, or building a granny flat through to a duplex is all covered. When it comes to larger construction projects like multi-unit developments, the construction component is part of the development funding, and so is covered in more detail under the multi-unit strategy further on in this module.

Purchase Finance

When it comes to construction, you are either starting out with a vacant block of land, or you are building on an existing property, for example, an existing house that is having a granny flat added.

If it is vacant land being purchased, lenders are likely to fund between a 60-80% LVR, depending on your personal circumstances. If it is an existing house being purchased, it's likely to be an 80-90% LVR.

Strategy Finance

Construction finance is typically based on 80% of the build contract. Because construction finance is based on the build contract, or at least on a formal written build quote, it is beneficial to include as much as possible in the build contract. Make it a full turnkey contract, because the lender won't finance anything that is not on the build contract, and you will have to pay for it out of your own funds. For example, if you are a plasterer and want to do the plastering on the job yourself, and so get the builder to exclude plastering from the build contract, this will mean that the lender will not lend funds for this, and you will have to pay for all the costs yourself.

Similarly, if you believe that you can do the landscaping cheaper than the builder and so have it excluded from the build contract, then now you will need to pay for it out of your own funds. Finally, if you think you can buy certain fixtures and fittings at a better price than the builder, for example, the kitchen or bathroom items, and you exclude this from the builder's quote, this will affect the lender's funding. The better idea is to retain these items in the build contract, but have a side agreement with the builder that you will do the works or supply items, and that way the bank will still finance a large chunk of the cost. The alternative to this is to obtain quotes from others and submit these along with your build quote, e.g. pool, landscaping, shed etc.

When applying for construction finance you will need to provide the bank with the approved building plans, plus the signed build contract/or formal quote, and specifications. The build contract also needs to specify the drawdown schedule for invoice payments to the builder, e.g. footings, slab, frame, lock-up, practical completion stage. The builder's license/insurance details also need to be provided as evidence that the builder is licensed in that State to construct the style of construction proposed. The valuer will assess the built contract and the plans, and will determine the end product value. The bank, however, will typically only finance based on 80% of the build contract price, even if you have equity in the property, because the bank wants to know that you have what they call 'skin in the game', i.e. you have money on the line too.

Once satisfied that all conditions have been met, the lender will then grant unconditional approval. Construction loans generally have a specified expiry date, e.g. 2 years and you will need to have commenced construction within that period. The bank will require you to contribute your cash reserves first, before they will finance the works. The bank will pay the builder's invoice direct to the builder, so the funds never actually go to you. The bank will, however, require you to authorise the payment of each drawdown invoice. They will require you to write this authority on the invoice and sign it prior to lodging with the bank for payment. You need to understand the bank's process for paying the builder's invoice, so that you can manage the process and avoid delays. This is because the last thing you want is for the builder to cease works because they have not been paid.

Before authorising payment of the builder's invoice, you should inspect the property to confirm that all claimed works have in fact been completed, e.g. slab stage, or frame stage, or lock-up stage, or fit-out stage. You should also request a copy of the building certifier's and engineer's inspection certificates for each relevant stage, e.g. footings inspection, slab inspection, frame inspection, plumbing department inspection and approval of works etc. Once again, do not authorise payment of the invoice before receiving these certificates and double checking them, because this is the only negotiating power you have to ensure works are done. Once the funds are released and the builder is paid for that stage, they may be less motivated to attend to your requests.

If you are not confident in what to look for at each inspection and drawdown claim, it is highly recommended that you employ an independent building inspector to review the builder's claim and the works completed on your behalf. Similarly, if you live away from where the build is occurring, and physical inspection is not possible, engage a building inspector to do it for you. This is a small price to pay to ensure that the build occurs as per the plans, specifications and build contract.

It is likely that the bank will order a valuation to be undertaken at the stage of their first drawdown of the loan and payment to the builder. This is to ensure once again that the builder's claim is legitimate and accurate relative to the works completed. The bank will also instruct the valuer to do a final valuation at the stage of the final builder's invoice claim, and hence, the final drawdown on the loan. This valuation will not assess the market value of the property, but rather reflect that the build works are in fact complete and that all approvals are in place, e.g. Building Certifier's Occupation Certificate. The valuer will also want to see evidence that you have building insurance in place. This is because once you sign the builder's practical completion authority, the builder's contract works insurance ceases and the site is no longer a construction site, so you need to have home building insurance in place to ensure the property is protected. It's advisable to also take out a minimum cover of contents insurance to cover those items not covered by

the home building insurance, e.g. blinds, floor coverings, external air-conditioning units, dishwasher, i.e. non-permanently fixed items.

The bank uses the valuer as their eyes and ears on the ground. If the builder invoices for variations to the contract, or lodges a wet weather claim and hence extension on the completion timeframe, it is the valuer that will assess the legitimacy of these claims and either approve or decline them. Keep in mind that any variation on the price of the build may need to be paid by yourself from your reserve funds, depending on whether you are already at the maximum LVR. Keeping a contingency buffer for construction projects is important in order to be able to cover off any variation or time delays. Certainly the first part of the project covers the highest risk for variations, depending on the ease of excavating footings, and getting the build out of the ground. The initial site preparation, including cut and fill of the site, excavation of the footing, and slab preparation can all be adversely affected by rock and wet weather, and so it's not until the build is out of the ground that the variables are reduced. That's not to say that issues cannot occur later though.

You also need to be very mindful and avoid changing your mind or varying the design, finishes, fixtures and fittings during the build, because it generally comes at a significantly elevated price, even much higher than if you had negotiated it during the quoting stage before you signed the contract.

It is highly recommended that you attend the valuer's final inspection to ensure everything goes smoothly. This is because a delay from the bank's end at this stage of the project, when your loan is almost fully drawn and costing you the most to hold – will have a big impact, and cause you stress. Be proactive and attend the inspection and ensure all documentation required by the bank is provided to the valuer, e.g. Builder's Practical Completion Certificate, Certificate of Classification, if it's a multi-unit project in QLD.

Interest is generally charged on the drawn down balance of the loan, hence, interest will only start accruing on the first drawdown of the loan, and continues to accrue throughout the build. It is for this reason that you want to avoid build delays at all cost, because you are paying interest on the loan balance each month, and there is no income yet coming in. Construction loans are generally charged at a higher interest rate than a standard term loan. The bank will charge a fee to process each drawdown claim and will charge you the valuer's fee along the way also. You may request to have the interest capitalised on the loan, which means that the interest is not paid by you along the way, but rather it is added to the loan. Under this method you will then be charged interest on

the interest added to the loan. Hence, it is a bit of a negative double-whammy. If the bank will consider this option, you will have to assess the cost too in order to decide if it is beneficial for you to do from a cash flow perspective. Interest payments are usually calculated on a variable, interest-only basis on the amount drawn down.

On construction completion and once the construction loan is fully drawn down, the bank will typically roll the loan over into a term loan. The term loan will be based on say a 25-30 year loan, at the going interest rate, on either interest only or principal and interest terms, and either fixed or variable interest rate. Remember that if you intend to revalue the property and access any of the equity, or refinance with another bank, you want to keep the loan at a variable rate. This is because a fixed rate loan can incur hefty break fees if you change it part way through the fixed period.

If you are an owner builder, or a licensed builder building your own home, the lenders will typically still only lend around 75% LVR. This is because lenders don't like to fund owner occupied projects because of the many risks associated, such as running over budget, overcapitalising, and incurring costly errors.

Refinance

On completion of construction is when the valuation will be based on true market value. If you have created equity from the construction, you may have the opportunity at this point to refinance and extract equity as you set-up the term loan. The principles discussed under refinancing a renovation project equally apply to refinancing a construction and so refer to the renovation refinance section above.

3. House Relocation

The strategy of house relocation is unique from a financing perspective and has its own specifics as detailed below.

Strategy Finance

The relocation of a house is classed as a high-risk endeavour by lenders, so it is very rare that they would fund this exercise. For this reason, the strategy of house relocation can be very cash intensive, because you need to use your cash/available equity reserves to fund the relocation, and typically also the renovation works to get the dwelling back up to a habitable standard. The prospect that the building could fall off the back of the truck is too high a risk for the bank. It is generally only once the building is on the site and permanently fixed, that it becomes an acceptable security that the bank is willing to lend against.

In some instances, house relocation companies may have financial backing and may be able to offer finance for the purchase and relocation of the dwelling, especially if it is done under an official housing industry contract or HIA contract– albeit at a higher interest rate. It is certainly worth asking the removalist if this is an option. Once the house is fixed on site, there may be an opportunity for the bank to finance the renovation works, but this is very much assessed on a case-by-case basis and there are no guarantees.

For this reason you really need to be prepared to self-fund the acquisition, relocation and renovation of a removal house.

4. Subdivision Strategy

For a subdivision project where you are splitting a block of land into smaller lots, the size of the project will dictate whether it involves residential or commercial finance. Where the result of the subdivision is three or less lots, this type of deal would typically be financed based on residential funding. There may be a couple of lenders that will do four lots as residential, but this is certainly the exception. This section will focus on residential financing. For larger projects of 4 or more lots, commercial financing is likely and this will be covered later in this module, because commercial financing for subdivision is similar to commercial financing for multi-unit projects.

Purchase Finance

When purchasing a property that you intend to subdivide, there is no need to highlight to the bank your intentions to subdivide. In fact, it is preferable not to mention this, and for the bank to simply see this as the purchase of a house or vacant land on a single lot. That way, it falls under residential financing. Certainly you have disclosed to your mortgage broker that your intention is to subdivide, because we need them to take that into account for future funding of the deal. Again, this is where working with a mortgage broker is beneficial over dealing directly with the bank, as the broker will know your full intentions with the property.

This same theory extends to not telling the valuer of your future intentions either. This is because if you happen to mention in passing to the valuer that you intend to subdivide the property, they may be inclined to disclose that to the bank and include it in their valuation report, and this may impact on the bank's perception of the property and how they choose to finance it. So again, we want to avoid this and not complicate the situation.

If it is a house that you are purchasing, the bank is likely to lend based on an 80% to 90% LVR on the initial purchase – depending on your strength as a borrower and the property location. If it is a vacant block of land being purchased, the bank is most likely going to lend based on a 60-80% LVR, simply because land is not income producing and so the bank wants to reduce their exposure by lending you less.

In the situation where you are purchasing a property with two lots on one title, again the same parameters as above apply. We do not want to advise the bank that we intend to lift the title and put the two lots onto individual titles.

Another opportunity may be where you are purchasing, for example, two lots side by side, each on separate title. Let's say your intention is to subdivide each, hence, yielding a total of four lots on four titles. In this scenario you should seek advice from your accountant and lawyer. This is because it may in fact be more advantageous to purchase each lot via a separate purchase contract, and potentially in a different ownership structure, e.g. each lot in a separate discretionary trust with corporate trustee. This is because it's likely to reduce your potential land tax liability, plus it keeps the loan amounts less, which can be easier to finance, and also gives you flexibility in the financing of the projects. For example, you may choose to use a different lender to finance each. You have this flexibility if the two lots are on separate purchase contracts, whereas you lose this flexibility if they are on the one contract in the one ownership entity name.

Strategy Finance

The strategy of subdivision and all of the costs associated with it will need to be paid out of your own cash reserves when the project is purchased with residential finance. This means you will need to cover the DA costs, the engineering site works and connection of services, driveway installation (if required), the titling costs, plus the council contribution/ headworks costs etc. The money to pay for these costs needs to come from your available equity reserves.

One of the unique features of the subdivision strategy is that it is one of the few strategies that can be staged. This is hugely beneficial if you have a smaller amount of available equity to do a deal. For example, if you don't have enough equity to purchase the property, do a renovation on the existing house, and subdivide the land, then you can stage the deal. This would involve doing the subdivision first, refinancing and extracting the equity from the newly subdivided land in order to fund the renovation. In effect you are recycling your equity to make it go further.

Let's explain this with an example and put some numbers around it to help you see the potential. Next are the assumptions and the spreadsheet outlining the overall deal and the numbers around the financing options.

Assumptions:

- Owner's available equity = $125,000
- Purchase price = $300,000
- Purchase costs (4.5%) = $ 13,500
- Renovation costs (10%) = $ 30,000
- Subdivision costs (e.g. frontage lot) = $ 40,000
- Subdivided unrenovated house value = $240,000
- Subdivided renovated house value = $290,000
- Subdivided block of land value = $200,000
- Lending based on 80% LVR for purchase and refinance house
- Lending based on 70% LVR for vacant land.

A) OVERALL DEAL

Buy, Renovate, Subdivide & Refinance	Formula	Total Costs $		Loan Funds 80%LVR		Owner Funds $
Purchase Price		300,000	A	240,000	B	60,000
Purchase Costs (4.5%)		13,500				13,500
Hold Costs		10,000				10,000
Renovation		30,000				30,000
Subdivision		40,000				40,000
Total		$393,500	C	240,000		153,500

	Value	
End Value - Renovated Subdivided House	290,000	
End Value - Subdivided New Block of Land	200,000	
Total End Value	490,000	D
Profit Potential	96,500	D-C

B) FINANCING STAGED DEAL

Stage 1 - Purchase Property	Loan Funds		Owner Funds	
Purchase Finance @ 80% LVR	240,000	E	60,000	
Plus Purchase Costs			13,500	
Total Owner Funds Required			73,500	F

Stage 2 - Subdivision	Owner Funds	
Subdivision & Titling Process	40,000	
Hold Costs - 6mths (Total Project)	10,000	
Total Owner Funds Required	50,000	G
Stage 1 & 2 Total Owner Funds Required	123,500	(F+G)

Stage 3 - Refinance Subdivided Block & Unrenovated House	Values		Loan Funds	
Value Subdivided Unrenovated House (80%LVR)	240,000	H	192,000	Hx 80%=J
Value Subdivided New Block of Land (70%LVR)	200,000	I	140,000	Ix 70%=K
Total Revalue	440,000	H+I	332,000	J+K=L
Minus Existing Bank Loan			-240,000	E
Available Funds on Refinance to Replenish Owner Funds			92,000	L-E=M

Stage 4 - Use Redrawn Equity to Do Renovation on House & Refinance	Values		Loan Funds	
Renovation	30,000	N		
Value of Renovate Subdivided House	290,000	O	232,000	Ox80%=P
Value of Subdivided New Block of Land	200,000		140,000	Ix70%=Q
Total Revalue	490,000		372,000	P+Q=R
Minus Existing Bank Loan			-332,000	L
Available Funds on Refinance to Replenish Owner Funds			40,000	R-L=S

Overall Total Available Funds For Next Stage or Next Deal	102,000	(M-N)+S

From the assumptions, you are starting with an available equity position of $125,000, i.e. $125,000 in cash, or in a line-of-credit, or an offset account. From the spreadsheet, it is clear that if you purchased the property and did the renovation and subdivision in one go, you would in fact need a total of $153,500 available equity.

This, however, is in excess of the funds you have available, so the option you have, and the unique opportunity with subdivision, is to stage the deal to make your $125,000 equity stretch as far as possible. In practice, and as detailed in the spreadsheet, the staging would look something like this:

- Stage 1- Purchase the property which would use $73,500 of your available equity and you would have a bank loan of $240,000 secured against the property purchased.
- Stage 2 – Carry out the subdivision, paying for all costs yourselves and hence, use a further $50,000 of your available equity. With stage 1 and 2 you have now used $123,500, which is almost all of your available funds, e.g. only $1,500 left.
- Stage 3 – Refinance the subdivided block, and the subdivided but still unrenovated house. These would value at $440,000 and the loan facility would increase to $332,000. After subtracting your current loan facility of $240,000, this would release back to you $92,000 to replenish some of the funds you put into the deal.
- Stage 4 – Use the funds released from Stage 3 to pay for the renovation costs on the house, e.g. $30,000 and then refinance the renovated house and subdivided block, now with a combined value of $490,000, giving a loan facility of $372,000. After subtracting the current loan of $332,000, this would release back to you a further $40,000. This $40,000 added to your $92,000 released in Stage 3, minus the $30,000 used in the renovation, leaves an overall total available funds amount of $102,000. You also have your $1,500 left after Stage 1, so in reality you have $103,500.

By staging the deal and refinancing in between the subdivision and renovation, you were able to complete this deal with your $125,000 of available equity. This demonstrates the benefit and power of staging the deal.

In reality, further decisions need to be made with this project, because at this stage of the deal, while you have manufactured growth and created equity, plus released what you could, you now actually have less available equity than you started with. You started with $125,000 and ended up with $105,500. Given that our rule of thumb is that each deal needs to put us into a better position for the next, this depleted equity position is not ideal, so the other potentials to work through include:

- Selling the renovated subdivided house, and/or
- Selling the subdivided vacant block, and/or
- Building on the vacant block, and refinancing, or
- Selling the newly built house.

As you can see, there are a number of exit strategies and options to consider and to conduct feasibilities on. This is exactly what you want, because the more exit strategies you have, the lower the risk of the deal. Also, it is only from doing a feasibility on each exit strategy, and considering the capacity to finance it, that you will be able to make a final decision on what to do next.

Refinance

The example above has included the refinance process. What is important to know is that on refinance, the bank typically only lends 60-70% LVR on vacant land. Where a house exists and you have subdivided it off, remember that the rent on the house will contribute to your serviceability on refinance. So, have a copy of an updated rental appraisal, or rental statement if it's already rented, in order to include in your refinance application.

Remember that once the titles are registered, you also have the flexibility to move one of the properties and associated loans to another lender. In fact, you could move both to two different new lenders, assuming there was an advantage to do so. For example, maybe another bank would be more competitive to get the construction loan to build on the vacant block.

Another opportunity when refinancing a subdivision deal is to have the bank release the security against one of the titles. For example, if there is sufficient equity in one of the lots - maybe the subdivided renovated house, then it may be possible to have all the lending secured against the house only, thereby releasing the vacant block of land. In effect, the vacant block would have no mortgage and would be 100% debt free. Freeing up this security will allow you to use it to secure other deals, or to secure finance to develop the land.

There is no specified target profit margin for undertaking a one lot into two subdivision, or even a one lot into three, and because they are residential financing, the bank will not be requiring a certain level of profitability. As a general rule however, 15% profit on cost is a good target and is realistic for this type of deal and the risks involved. In the spreadsheet example above, a 15% profit on cost would equate to $59,025 profit. The

calculation being - total project cost of $393,500 x 15% = $59,025. As per our spreadsheet, however, the potential profit was $96,500, hence the profit on cost would be ($96,500/$393,500) x 100% = 24.5%, so this was a good deal.

Certainly by retaining the existing house you are reducing the risk profile of the deal. That is not to say that demolishing the house isn't a consideration, it's just that it increases the risk profile. This is because vacant land isn't income producing, so you will have no income coming in on completion. Also there may be less people looking to purchase a vacant block than an existing house, and if you can't sell the vacant land, your only option is to build, and now you have two lots that you have to build on.

As with all strategies that involve residential financing, the profitability that you are prepared to accept on the deal is a personal decision, because the bank is not specifying an amount. Guidelines are great though, e.g. 15%. However, at the end of the day you need to determine what is worthwhile for you. There are a number of factors that you need to consider in making this decision, including:

- Personal funds required to undertake the deal – the more funds that you are required to put into the deal, and therefore the more funds you have at risk, and unable to be working for you elsewhere, the higher your profit margin expectation may be.
- Time in the deal and how long your funds are tied up – the longer the deal and the longer your funds are tied up, the higher your profit margin expectations may be.
- Skill required – the more skill required to do the deal, the higher you may require the profit margin to be.
- Your experience – the more experienced you are in doing active strategies the higher the profit margin you may demand. Alternatively, if this is your first or second deal, you may accept a lower profit margin in order to get the experience and have the learnings.
- Ease of funding – the easier a deal is to finance, possibly the lower your profit expectation.
- Risk of the deal – this considers a number of factors including the complexity of the deal, or considered another way, the ease with which the deal can be done, or the certainty in the deal, e.g. the ease and certainty of getting DA approval. Other factors include the size of the debt involved, the range and number of exit strategies available, and the ease of exiting the deal, the volatility of the market and potential for market value reductions, you're confidence in the numbers and the figures used in your feasibility. Obviously, the less confident you are in them

and therefore the higher the risk of cost overruns, the higher the risk in doing the deal.

Whether a person would be happy with a $50,000 profit from the example subdivision and renovation deal above, or whether the profit margin needs to be $59,000 or $100,000, will differ for each person, and you need to understand this for yourself and make an informed decision. It is certainly important to keep in mind though that the smaller your profit margin, and the tighter or thinner the deal, the less fat there is to absorb any potential cost blow-outs, or movements in the market against you.

5. Strata Titling Strategy - Existing Building

Strata titling an existing building such as a block of units on one lot and title, involves dividing it into individual units on separate lots. Below are the considerations for financing this type of deal from purchase through to doing the strategy, and refinancing on completion.

Purchase Finance

The financing requirements when purchasing a block of units for strata titling depends on the number of units that exist. For complexes of up to three units, residential finance should be achievable on purchase, hence an 80 – 90% LVR depending on your personal borrowing capacity and on the location of the property.

For four or more units, even though they are on the one title, commercial financing will most likely be triggered from the outset. This is because the lenders regard this as a higher risk property, because the number of purchasers in the market looking to purchase this type of product is less. If the lender had to have a fire sale and sell it off quickly, there would be less potential buyers, because the normal mum and dad purchaser does not buy blocks of four or more units. Hence, the market for resale is reduced. For this reason, with commercial lending, the LVR would be approximately 60% to 70%. The lender requires you to put more money in to purchase it, so you have more skin in the game, and in turn, the lender's exposure is reduced.

Even though your intention is to strata title the units, you would not disclose this to the lender on purchase, although you would highlight this to your mortgage broker, so that they can match you with the preferred lender, knowing your future intentions. This is because some lenders charge a high break fee if you pay the loan out early, and this will be the case if you are doing a quick strata titling and selling on completion, so your broker needs to know this to match the finance.

Strategy Finance

With both residential and commercial finance on purchase, it is typical that you will have to fund all strategy costs yourself from your available equity. This includes the costs to achieve building code approval, fire separation, separation of services if you choose to do so, provision of car parking if that's required, landscaping and fencing if that's part of your strategy etc. Also costs associated with the set-up of the body corporate and lodging the strata title with the Titles Department would need to be funded by you from your available equity. It would only be on a large complex that commercial funding may cover these strategy costs.

Refinance

Once the strata titling process is complete, you then have the opportunity to sell the units individually, or refinance them individually. Revaluing the units on the basis that they are now strata titled, is an important step because strata titling typically increases the market value of the individual units. It also means that the units will be able to be refinanced based on residential lending, so your LVR may improve and you may be able to access additional equity from the property. Whether you choose to refinance and keep all units with the same lender, or move them to different lenders will depend on the deal and the lender involved, and your exposure to that lender.

There is also the opportunity to refinance and potentially release the security in one or more units, as long as the LVR on the other units is within required levels. By releasing the security you are in effect ending up with a completely debt free unit with no mortgage. Obviously there is also the potential to sell some and keep some units – so lots of options.

One very important requirement when financing units is that the internal floor area is at least 50m2, excluding balconies, patios and carport etc. This size is considered to be the minimum size for lending at an 80-90% LVR. Units of smaller floor area are likely to be financed at a lower LVR of 60-70%, if in fact they can be financed at all. There are always exceptions to the rules, and lenders with differing policies, so again this is an important conversation to have with your mortgage broker at the beginning of the deal, so that the right lender can be selected.

In larger unit complexes, lenders will also have a maximum exposure that they will accept on any one development. This is often 20% – 30%, hence, you may need to refinance some units with other lenders to reduce the exposure to any one lender.

6. Multi-unit Development Strategy – Residential Financing

Anything that involves council development approval and then construction of units, townhouses, villa, apartments etc., comes under the heading of a multi-unit development project. Detailed below, are the financing requirements from the purchase phase through the strategy phase and to the refinance stage, assuming the end product is not being sold.

Purchase Finance

Typically the purchase of a site that suits multi-unit development will either be a block of land or an existing house, or may even be a site with a couple of existing units that you could add onto. Financing the purchase will therefore be based on the nature of the underlying property. For all examples above, however, residential finance would be likely and only the LVR would differ. For example, the existing house is likely to be an LVR of 80-90%, similarly the two units, whereas the vacant land is likely to be a 70% LVR.

When you purchase the property, you will treat it as a standard residential purchase. While your intention may be to develop it in the future, you do not generally want to float this with the lender at this early stage. You just want to get the purchase through as a straightforward deal, not complicate it with information that is irrelevant at this stage. Yes, it's very relevant to you, but it's not relevant to the bank – so keep it to yourself. This is because if the bank thinks you intend to develop it, then they may alter the terms that they are willing to finance it with from the outset.

Again, this is where the services of a finance broker come into the fore. With the finance broker you need to be able to explain your FULL intentions with the property, from its initial purchase, through to its development, and final sale or holding of the end product. It is important to be clear on your intentions at the outset and explain this to the broker, so that they can choose the most appropriate lender for the deal. That's not to say that you won't have to refinance with a new lender for the development phase, or for the final exit phase, but at least they will have the best chance to get the deal over the line for you.

In contrast you cannot be as open when dealing directly with the bank, because in the freeness of you explaining your intentions, this may significantly affect the bank's perception of the deal and hence, their ability to finance it for you. In other words, when dealing direct with the bank there is a much higher likelihood that you could put your foot in it and disclose too much!

Strategy Finance

The size of the development project and number of units being developed will dictate whether the development is financed using a residential loan or commercial loan. Residential financing is typical for projects up to 3 units, but for a couple of lenders 4 units can also be financed with a residential loan. Also the strength of you as an applicant will have a bearing, and the stronger you are the more likely you may be able to get four across the line with residential funding. An example would be if you were a highly paid PAYG or successful business owner with strong financials. The loan LVR will also play a role, and the lower the LVR and the more equity you have in the deal, the more likely you may be able to get residential financing up to 4 units. As you can see this is very individual. In general though, assuming you are a standard borrower at 80 to 90% LVR, and your serviceability allows it – you should be able to finance the development of up to 3 units via a residential loan. This residential finance model is what will be focussed on in this section, so we are talking here about developing a duplex, a triplex, or even starting with an existing house and developing an extra two, thus giving three in total.

There is an exception to the rule, however, and this is where you may choose to obtain commercial finance for a project of 3 or less units that would normally be residential financing. The reason why you may choose to go commercial financing is because your personal serviceability does not support the project, e.g. your age is prohibitive to lending or your income is. Instead, with commercial financing, it is less reliant on your personal serviceability, and more looking at the strength of the project. If the project's profitability is strong and your personal serviceability is weak, commercial lending may be an opportunity for you.

As suggested above, the fundamental characteristic of residential financing is that the lender is looking at your personal serviceability to service the loan. Hence, for a three unit development project, the lender is looking at your income, plus the expected income from the products you will develop, e.g. the rental of the units. Even if your intention is to sell all three units, the bank will not take this into account, but rather will assess the deal on the basis that you in fact end up holding all units and renting them out. From the bank's perspective this is a safety measure to ensure that even if you can't sell the units, you in fact can still afford to hold them all, and pay the monthly interest. For this reason you can see that good rental appraisals on the units that you intend to develop is essential, because it will assist your financing of the deal. For this reason, obtain rental appraisals from at least three property managers in the area and submit to the bank only the best appraisal.

Once you have purchased the property you will generally have to pay for the development approval (DA) phase out of your own funds (either cash or a line-of-credit).

It's only once you have DA approval that you would approach the bank to then fund the construction phase of the project. This means that you generally need to fund 100% of all costs, except for construction, including the purchase costs, DA, BA, hold costs, and selling costs. It is only a percentage of the construction costs that the bank will finance. Typically the bank will lend 80% of the construction cost or 80% of the end value, whichever is the lesser. With the end value of a residentially funded development, typically the bank will request that it's an 'in 1 line' valuation. This means it's valued on the basis that the 3 units are not strata titled and cannot be sold individually. Instead the 3 units are being sold in a single transaction, hence the term 'in 1 line'. Definitely the in 1 line valuation is going to be less than the total of the 3 units sold individually. And this is no accident, because by valuing it at a lower figure, the bank will have less money in the deal, and this is a risk management strategy from the banks perspective.

As indicated above, the bank is looking at your personal circumstances with regards to funding the construction phase. The bank is less interested in the feasibility of the deal and more interested in your capacity to service the loan, and your equity contribution to the deal. For this reason, your feasibility on the project may not even be submitted to the bank. Whether you are likely to achieve a 15% profit on costs, or 30%, the bank has limited interest. Definitely you need the deal to stack up, but the lender is less impacted, as long as you have the equity to contribute and you can afford the loan!

Loan Application and Valuation

The finance broker will submit to the lender the DA, Build contract, Building plans and Building approval (if obtained) and the bank will order a valuation of the end product. The valuer will look at the plans, the design, the level of finishes proposed, the location and amenities, and will compare against the value of recently sold similar properties in the area i.e. they will compare your 3 bedroom 2 bathroom townhouses against recently sold similar townhouses in the area.

It is common for the bank's valuation to be less than your expected end value and at the low end of the market. Whilst this is very frustrating and can result in you having to find additional funds to contribute to the project because of the shortfall, you should expect it to happen. In fact, you should have set aside buffer funds to accommodate this, or at least have made a plan of where you could get access to funds if this situation arose. That way you are not unprepared for this eventuality, and it does not put a spanner in the works. Remember that the banks are protecting themselves, and so if they can require you to contribute more equity to the deal, thus lowering their exposure during construction, then that's what they will try to do.

This lower valuation at the construction stage does not mean that the valuation on completion will be similarly low. This is because the risk of construction and the risk of titling will have been overcome, and therefore valuation of the completed product typically more closely resembles the true market value. It should definitely now be based on the individually strata titled units, not on an in 1 line valuation.

With three units or less financed with residential funding, there will typically be no requirement from the bank for presales. This is because the bank is assessing your capacity to hold all units on completion as a matter of course, and is not relying on any being sold.

Refer to the construction strategy section detailed earlier in this module for more specifics around construction financing and drawdown claims, valuations, inspections, etc.

Refinance

Once construction is complete, the construction loan will cease and a term loan will be put in place. Depending on whether you have strata titled the units, or retained them all on one lot, the term lending on the units on completion will differ. If the units are strata titled, you have the flexibility to retain them with the same lender, or refinance to different lenders, hence, spreading your risk. Obviously you also have the option to sell individual units on completion. The refinancing terms should be based on residential lending at 80-90% LVR and a 25-30 year loan term. If all three units are not strata titled and remain on the same lot, the LVR may be lower, although again your own personal financing strength will come into play. An in 1 line valuation will still apply in this scenario.

7. Multi-unit Development Project – Commercial Financing

Commercial financing of a development project is necessary when there are four or more entities being developed. Whether they are units, townhouses, villas, or apartments, the product type is less relevant than the total number of them. From the bank's point of view, quantity is more important.

Purchase Finance

The most common process in this strategy is that you will have purchased the property initially as a residential property with a residential loan, hence 80-90% LVR. Then, once you have DA approval for the development, and know what the project is, you then submit the deal for commercial financing.

Strategy Finance

Generally, it is a good idea to be working with a commercial finance broker when it comes to lending for the actual development phase, as they will be able to shop the deal around to the various lenders, and present the deal the way the lenders want to see it. Because lenders' policies change regularly and their appetite for lending varies, as does the amount of funds they have available to lend, this means that different financiers will be more willing to lend at different times. For that reason you can't assume that the bank with which you previously dealt, will still be the best bank to work with for the next project. Also, commercial brokers know who is who in the zoo and have very good relationships with the financiers to know what financiers will suit what deals. The brokers also have access to mezzanine finance and private lending money that in some instances may be required to get a deal over the line and fill a gap if there is a shortfall in finance. Commercial brokers do charge a higher fee for negotiating a commercial loan, and the lender's finance application fees are higher than those for residential loans, as is the cost of valuation.

Presenting a Development Proposal

As a professional developer, you will live and die by the quality of your finance application. This is because without money, there is no project, and without a project, there is no profit. When doing your proposal, make it as aesthetically pleasing as possible – you would be surprised just how much presentation counts. A development proposal submitted with your finance application should cover the following content:

- Seeking Development Finance By: Your Name, Address, Phone/Fax/Email Contacts, Today's Date, Your Signature.
- Contents Page: Executive Summary, Financing Proposal, Site and Locality, Authorities, Environmental Factors, Design Concept, The Market, Financial Analysis – Summary of Total Capital Cost, Cash Flow Analysis, Project Team, Conclusions, Attachments.
- Executive Summary: Confirm site for sale, comprehensive feasibility completed and financially viable, list admirable features of site and market, state how site will be secured and funds used, state if DA & BA completed, financial cash flow summary, statement of the amount of funding required and the % of total capital costs and when required.
- Financing Proposal – State your loan requirements.
- Site and Location – A physical description of the suburb and site, e.g. dimensions, area, frontage, real property description, lot/plan/parish/county etc.
- Authorities – Site zoning, confirmation that design complies, copy of DA or date until approved.

- Environmental Factors – Address traffic flow, National Trust classifications if applicable, prior rights use, landscaping etc.
- Design Concept – Synopsis of the design plans – with plans attached, description in words, e.g. height of land, entrances, median strips, paving, pedestrian access, parkland/public space etc.
- Market – Detail current needs, jobs, growth rates (population, jobs), infrastructure spending, current trends in property prices and projected figures.
- Financial Analysis – How you determined the funds required, outline of costs including construction, sales realisation in current market, making note of rising trends if relevant, plus comparable sales in the area.
- Cash Flow Analysis - Copy of the project detailed feasibility including all itemised costs, total sales realisation, profit before tax, profit on cost %.
- Project Team – Names of consultants and professionals and their contact details, builder's CV (if builder selected), plus your experience as a developer/project manager.
- Attachments – Street directory with arrow to street, copy of rates notice, survey plan, DA approval, build contract or formal quote, real estate agent's letter summarising comparative sales and rental appraisal, preliminary or BA plans, your CV and builder's CV.
- Conclusion – Site attributes, compliance with authority regulations, accurate end value of the development.

Strength of the Deal

With commercial lending the finance is based on the strength of the deal. The financier is looking at the deal's strength and specifically its profit potential, rather than your personal serviceability. Typically, the bank wants to see 20% profit on costs. For commercial financing, i.e. 4 or more units, the bank is likely to also require presales to cover their debt exposure.

For example, if the bank lend is $1M, they are likely to want to see presales that will cover their $1M debt – because they get their money first – before you get paid. Your profit is usually tied up in the sale of the last units. The bank will engage a valuer to complete a commercial valuation. This commercial valuation will assess the feasibility of the project, the end value of the units, and comparable sales. In addition, it will address the demand for the end product units, and the cost of the project compared to similar projects, plus the ability of the developer to cover cost overruns, as well as the exit strategy/s.

If presales have occurred and there are contracts in place, these will also be reviewed by the valuer. It is possible for you to be able to work with the bank to select a valuer that you may have a preference for.

Gross Realisable Value or GRV finance is the most common funding model for commercially funded development projects. It provides funds based on the projected end value (excluding GST) of the property development. Typically, this finance lends on 60% - 75% of the expected end value of the final development. It is quite common, however, for lenders to assess against a second factor, being 80% of the total development cost. Whichever is the lesser figure is what the lender will finance on. For example, if the total project cost is $1.5M, then 80% of that is $1.2M. If the GRV of the total project is $1.8M (e.g. 5 units valued at $360,000 each – excl. GST), then 60% is $1.08M. Hence, the lesser of the two is 60% of the GRV, and this is likely to be the basis of the loan. The bank will lend a total of $1.08M. Given the total costs are $1.5M, the difference is the amount you need to contribute to the deal - $420,000.

You can now see the impact of the end value of the project on the financing, because let's say the project value on completion is $2M rather than $1.8M as stated above, that means 60% of $2M is $1.2M. This then is the same as 80% of the total cost. Therefore, the bank is likely to lend $1.2M on this basis, meaning that you now only need to contribute $300,000 not $420,000 to the deal.

The bank will lend on the total project cost not just the construction costs, so they will lend on the soft costs including DA and BA costs, on the council contribution costs, finance costs, selling and marketing costs, contingency allowance etc. If you have paid these from your own cash reserves, this will be your equity contribution to the deal. If you have more equity in the deal than the bank requires, you may be able to have the bank reimburse you from the development finance for a number of the costs you have already paid, e.g. DA and BA costs. This can greatly assist with your cash flow.

It can be common to capitalise the interest that accrues during the construction phase of a commercial loan. This means that the interest is actually added to the loan, instead of being paid monthly. This is done to assist cash flow during construction. If interest is being capitalised, the LVR must still not be exceeded and so the interest added to the loan needs to be factored into the overall loan amount.

The experience of the developer can also play an important role in securing finance. That is not to say that if you are new to property development that you won't be able to secure funding. New developers, however, may have to contribute extra capital and may

not be able to borrow as much. Depending on the lender, new developers may also be required to appoint an approved and experienced project manager in order to secure suitable finance.

The more equity (deposit/capital) you can provide at the outset of a development project, the more favourably a lender is likely to view your application. A greater equity stake will reduce the risk of financing the project for the lender.

The location of the proposed development may also play a significant part in securing property development finance. The valuer will look particularly at how suited the site is to the development and also the surrounding area regarding population. The valuer will make recommendations to the lender. For very specialist developments, such as childcare centres, or motels, additional conditions may be required by the lender prior to approval, because of the very specific nature of these uses. A more general development like an apartment block may be easier to find development finance for.

Mezzanine finance is the other method of financing development projects, although is usually only available to experienced property developers. Mezzanine finance involves the use of money from external investors rather than deposit capital from the developer or equity partners. This funding supplements the primary debt, e.g. GRV funding. It traditionally involves both specialist lenders and private investors. The interest rate on a mezzanine finance facility is normally higher than other property development finance methods, and is based on a number of factors, including risk and level of security offered.

Quantity Surveyor – Build Review

As part of the standard loan approval process, the lender will engage a licensed quantity surveyor (QS). The QS will come from the bank's panel of QS's that have experience in the type of project being reviewed. The QS will review a range of factors associated with the project including:

- Construction cost
- Build contract – including contract terms, costings etc.
- Builder's credentials - including license class, financials, experience, insurances
- Developer's credentials and those of the project management team
- Approvals - ensuring the necessary approvals are in place to allow construction to commence, e.g. Development Approval, Building Approval, Demolition Approval (if relevant), and that the conditions of these approvals have been met.

- Insurances – including Contract Works Insurance, the builder's insurances, and ensuring that the lender is appropriately noted as an interested party on the insurances.

It is highly advised that you develop a relationship with a QS early on in the project, so that you understand what their requirements will be in the review process. Ask the QS which bank panels they are on, and go with the one with the most experience. This is because in some instances, you may be able to request from the lender the use of the QS you have already been working with.

The lender is utilising the QS to obtain independent advice to confirm that the figures in your feasibility for construction are in fact realistic, at market price, and are able to be delivered in the open market. While you may think that is great for the project that you have been able to get a cut-price contract for the construction, the lender does not see it that way. They do not want to finance a project where the construction costs are not market value, because if anything happens to the cut-price builder and they can't complete the project, then it may be impossible to get another builder to take over the contract for the same price, and clearly this is a huge risk to the lender. So, for this reason, the QS will review the construction costs to ensure they are market value and not over or under estimated. Over estimated costs are also a red flag for the QS, because it may flag that you are in fact trying to build fat into the project by inflating the construction cost. If the costs are higher, and the lender is financing based on a percentage of total costs, this may be a way that you can increase the amount the bank contributes and thus reduce your contribution. Clearly this is a risk to the bank and one that they want to avoid, hence, the QS review.

The QS will need the valuation report along with a breakdown of the construction costings, the build contract and all plans and specifications, DA and BA approvals etc. It can be common for the QS to require the builder to justify certain construction costs and provide evidence of quotes that they have to support the figure quoted. This is not something to be scared off by, but it is something you need to be prepared for, and you need to brief the builder in advance to ensure they are prepared with their quotes in order in case of this event. What you don't want is for the QS to request more information, and for the builder to be caught off guard and be unable to supply it and consequently hold up the QS review.

The QS will also review the terms of the build contract. It therefore is important to find out in advance what the financier and QS want to see in the build contract terms so as to ensure that you have negotiated this with the builder up front and reflected this in the

contract. For example, the bank and the QS do not like to see lots of PC items, as this could result in the contract price blowing out. They may also want to see a retention clause in the build contract, where a percentage of the builder's payments are not paid up front. Rather they are retained for a period of time, as an incentive to encourage the builder to complete the job and to attend to all follow-up maintenance items. Assuming good conduct, the retention money would be released in say 12 months post construction, depending on what was allowed for in the contract. Clearly, this is something you need to negotiate with the builder early in the process, to ensure it is agreed on and included in the build contract. Again, you don't want this to be a surprise at the QS review stage and then mean that you have to go back to the builder and renegotiate with them. Clearly, this doesn't put you in a strong negotiating position, so once again preparation is key. The end product of the QS review is their report to the bank.

The QS is also reviewing the builder's qualifications and experience, plus their financials, to ensure they are capable of completing the project. Clearly, a highly experienced builder in the style of construction of this project, is much more desirable than a new builder that has never done this size or style of project before. This is because there is a significant difference between a residential house build versus a multi-unit development construction. Equally, the builder needs to be licensed for this style of build. As part of your submission to the QS, there will be a résumé from the builder.

Lenders are less likely to finance the deal when the developer and the builder are the same. This is because the lender wants to know that the construction contract is independent of the developer, and hence, if there were any issues with the builder (e.g. they went bankrupt during the build), then the bank would have the right to engage a new builder to complete the project.

Solicitor – Presale Contracts Review

If the lender requires a certain number of presales as a condition of the loan approval, the lender will use an independent solicitor to review the presale contracts and to provide recommendations back to the lender. The solicitor will require a copy of each sale contract and evidence that the deposit has been paid. There are a range of things this review aims to highlight to the lender, including:

- A high proportion of sales to investors as opposed to owner-occupiers can be a flag to the bank, as is a high proportion of non-local buyers. This is because it may signal that marketers have been used to market the product, and hence, the sale prices may be inflated.

- A high proportion of international buyers will also be flagged, because if an international buyer chooses to not settle, it can be very difficult to force them to settle. Also, it's easier for them to just 'disappear'.
- A cash deposit of 10% held by the developer's solicitor is typically required by the lender for it to be a qualifying presale from the lender's perspective. Therefore presales with less deposit paid, may be an issue and may not be included in the tally of compliant presales.
- Sales to people or entities perceived to be related to the developer will also be flagged, because the lender considers that this may not be a legitimate sale. Purchasers with the same last name as the developer can raise this query.

GST

With development finance the lender assumes that you are registered for GST, and therefore the lender will typically lend on the amount excluding GST figures. This is because it's assumed that you will submit your BAS and be reimbursed the GST you paid on costs throughout the project. This means you need to have sufficient cash flow to cover the payment of the GST on invoices until the ATO reimburses it. There is the potential for the lender to provide a facility similar to an overdraft for GST to assist with the shortfall, and you need to negotiate this as part of your financing terms.

Understand that on completion of the project and with the sale of the units, the bank will be paid back first. Therefore, come settlement, 100% of the sale proceeds will go to the bank to pay down the loan. You will only receive proceeds from the sale after the bank has been fully repaid. This is why developers are often highly motivated to sell the final units in a project, because it's these units that hold the developer's profits from the project, and it's only on the sale of those units that the developer will reap their profits from the project.

Finance Letter of Offer Phase - Conditional

Once the lender is happy that the deal meets their financing criteria, a Letter of Offer will be issued. This letter will outline the terms of the offer being made to you. It will detail the total funds to be loaned, terms of the loan including the loan duration, proposed interest rate, fees payable, equity to be contributed and evidence required, plus the conditions required to be fulfilled prior to the finance being fully approved and unconditional. It is here that presales will be detailed if required, and the conditions of the presale contracts noted, e.g. amount of deposit held. Finally, anything still outstanding will be highlighted, including copies of insurances, the QS report etc.

Finance Approval Phase – Unconditional

Once all conditions of the loan offer have been satisfactorily met, the lender will issue an unconditional finance approval. Mortgage documents will follow soon after and will need to be signed and returned. The project is then in a position to commence and be funded by the bank.

Construction Phase

Once construction commences and the builder submits drawdown claims, the developer must contribute their equity funds first, prior to the bank releasing its funds.

The financier will require the QS to conduct an inspection for each drawdown claim made by the builder. The QS will inspect the site and prepare a report for the bank to confirm that the project is on track, and that the amount being claimed by the builder is accurate for the works that have been completed. The QS will also review any variations being claimed by the builder, and confirm if they are justified. The QS will also review the inspection certificates to ensure that the required approvals have been achieved, e.g. engineer's footings and slab inspection, building certifier's frame, lock-up and practical completion inspections. The QS will also review the builder's works schedule to ensure the project is on schedule, plus will review any wet weather claims by the builder. If everything is in order, the QS will recommend to the financier to pay the builder's invoice. As the developer, you will also need to approve the builder's claim.

It is highly recommended that you attend the QS inspections with the builder onsite, in order to liaise between all parties and ensure that the process goes smoothly and that the QS has everything that they need to approve the claim in a timely manner. This is because a delay in the bank paying the builder will result in a delay in the build and ultimately higher hold costs for you. It's very much in your interest to manage this process.

In the first drawdown claim, it is sometimes possible to claim from the lender, re-imbursement of funds paid for by the developer early in the project, e.g. DA and BA costs. This is certainly the case if the developer has already contributed more equity to the project than required by the lender. Confirm this with the broker and lender to ensure you are all on the same page, as obviously this will aid in your cash flow if a reimbursement is approved.

Project Completion and Titling Phase

On construction completion, the QS will complete a final inspection and at that point will require evidence that the necessary insurances are in place. This is because once the Practical Completion Certificate is signed by you the developer, then the builder's contract works insurance ceases, and the appropriate body corporate building insurance needs to be in place to ensure coverage of the building.

The QS will also want a copy of all final inspection and compliance certificates, e.g. electrical, glazing, termite protection, truss etc. A copy of the Occupation Certificate issued by the building certifier is also required, as this authorises the building to be occupied for its approved use, e.g. as multi-units.

Council will also re-inspect the completed project and ensure that all development works comply with the conditions of the development approval (DA) and that all DA conditions have been met. It is important to manage this process and ensure it happens in a timely manner, because a satisfactory inspection is required before council will consent to stamping and sealing the final plans to be lodged with the Titles Department for strata or freehold titling of the project.

Prior to lodging with Titles Department, the council sealed plans need to be lodged with the lender for mortgagee consent. This is because the lender has the registered first mortgage on the property and so they must consent in advance to any change in the security property, as in cancelling the current single title of land and creating multiple titles. Working with your finance broker to obtain the bank's consent is essential because the broker will know the right department within the lender to lodge this request.

Once all relevant documentation is lodged with the Titles Department and the new titles are issued, the off-the-plan sale contracts that involve finance will need to have their lender order a valuation of the completed property. This is to ensure that the value of the property on completion is consistent with the presale contract purchase price. As with any valuer's inspection, it is highly recommended that you attend to ensure that it goes smoothly, and that the valuer is provided with all necessary information, including your comparable sales evidence. Also you are best positioned to answer the valuer's questions. This valuation process can make or break the smooth settlement of the off-the-plan sales contracts and should therefore be given your undivided attention.

Refinance and Term Lending

If you intend to retain and hold the last of the units, instead of selling them, generally speaking, it's the equity in these properties that equates to your profits. At this point you have two options. The first is to remain with the same lender and convert from a development loan to a term loan. The development loan is paid out and the term loan is created taking the remaining held units as the security. The term loan will be financed as per a standard residential home loan, based on an 80-90% LVR lend, depending on your strength as a borrower and your desire to pay mortgage insurance. The loan would be for a 25 to 30 year loan term, based on the current interest rate.

Let's say you choose to retain two units of the project. You would have each unit financed as a stand-alone loan, which then gives you the maximum flexibility in the future. You may decide to keep one unit with the current lender and refinance the other with a different lender to ensure that you don't have all your eggs in the one basket so to speak – or don't have all your loans with the one lender. By shopping the refinance around to various lenders, you may end up with a better deal. Just because the lender you went with was the best for the development loan, that's not to say they will give you the best loan for the residential term loan – so do your homework and research all alternatives.

Also, keep in mind that lenders typically will not expose themselves to more than 20% of any one development – particularly for large unit complexes. Therefore, if there are 10 units in the complex and you intend to retain three, the one bank may not be willing to take on the residential loans of all three units, and you may need to split them up between lenders. Another consideration is if you want to keep four or more units or blocks of land from a project. You need to understand that this may push the lender into commercial lending territory, rather than residential. This is because four and above generally triggers commercial lending, and the terms may be less favourable than stand-alone residential loans. Be mindful of this also, and ask the questions of the lender up front, before entering into the deal, so that you have a plan in advance of how you intend to exit the deal on completion.

8. Financing the Purchase of a DA Approved Site

Purchasing a site with a Development Approval (DA) in place involves the standard financing process. However, the valuation will need to confirm the value of the DA. You cannot assume that a DA approved site is going to be worth any more than a non-DA approved site. This is because it all comes down to the quality of the DA, the favourability of the DA conditions, the quality of the end product approved, and demand for it in the market, plus the potential to make a profit from the deal. For example, a DA for 6 units that are all squeezed onto a site with minimal privacy, and are not appealing in design, in

fact devalues the approval. Similarly, if the approval is for three-storey townhouses when the market only demands ground level villas – this is an issue. Alternatively, if site constraints like steep slope or flooding or road access issues means very costly site works to comply with the DA conditions, this is disadvantageous and may not even be worth the money spent on the DA.

The final clincher is where there is no profit to be made from doing the deal. It is for this reason that the valuation report will review the DA and will assess the feasibility of the project, taking into account the purchase price, the development costs, and the end sales value. If at least a 20% profit on cost cannot be achieved, then the valuation will not support the property purchase price, and is likely to value the property for less e.g. a purchase price that would allow a 20% profit margin.

Understanding this process now provides you with an understanding of how you can assess the value of a DA approved site yourself, and the likelihood of being able to get finance to purchase it and ultimately develop it.

9. Subdivision – Commercial Financing

The financing of land to be subdivided into four or more lots is very similar to financing the development of multi-units of four or more, in that both are based on commercial financing. Land development cost finance provides developers with the funds to undertake the acquisition and construction of the development. It also includes soft costs such as engineering, approvals, interest costs and marketing. This finance is generally limited to 70%-80% of the overall land development costs of the project. A predetermined level of presales may be required before finance approval will be granted. Mezzanine finance is another financing model used for larger land subdivision projects. However, it is still generally only available to experienced developers. A subdivision development proposal submitted with your finance application would cover the same content as detailed above for a multi-unit style development proposal.

10. Cash Cow Strategy - Regional/Mining Areas

Financing cash cow properties in resource/mining towns has its own set of considerations. Because of the volatility of drivers that underpin these areas, and the consequent market volatility of the towns themselves, bank financing reflects this greater risk profile. Apart from the actual terms of the finance, just the number of lenders willing to operate in this space is less. Typically, only the major bank lenders will be willing to take exposure in these areas, and even then, their appetite fluctuates substantially and from one day to the next, and lenders can restrict funding. Also the mortgage insurer participation in these markets can be reduced, and they can put complete bans on

certain postcodes, to prevent lending in those areas. These are very important considerations, because with fewer lenders and mortgage insurers, purchasers and active investors have fewer options. Just because you choose to refinance at a certain time, or you choose to sell at a certain time, if lenders are not willing to lend, then your options may be limited, and you just may not be able to do what you had intended.

Purchase Finance, Strategy Finance and Refinance

Whether you are funding for the initial purchase, funding the strategy such as construction, or development to create a cash cow, or refinancing on completion - the fundamentals are very similar. In order to balance the higher risk of purchasing into mining/resource towns, financiers will typically only lend at a lower LVR, e.g. 60-80%, as a way of ensuring that their exposure is less, and yours is greater. Other strategies they use to manage their risk are to reduce the term of the loan. For example, instead of a 30year loan, the funders may reduce this to a 20 or 25year loan, thus increasing your monthly repayment amounts. Also they may require the loan to be principal and interest (P&I), meaning that you are having to pay off the principal in addition to the interest, thereby reducing the loan balance over time, and creating a bigger buffer for the bank. Generally the interest rate is also inflated and it will not be as keen as if you were purchasing in a metro area.

The number of valuers that work in these areas is also significantly less, and so once again you may be limited to only 1 or 2 valuers. It is important to understand this from the outset, so that you can start building a relationship with them sooner rather than later.

Even though the property may be cash flow positive and income producing, and adding to your serviceability capacity, you need to be aware that the bank's internal calculators are likely to shave the rental income back to a more standard market value. For example, if your current lease is the equivalent of a 10% yield, it can be quite common for the bank to trim this back to a 5% yield in their calculations. This is being very conservative, and substantially reduces your serviceability. The bank wants to ensure that you can afford to pay the mortgage even if the rent reduced substantially. While this may be viewed as a negative, you should also consider this as a forced measure of conservatism from your perspective.

11. Rent by Room and Student Accommodation Strategy

With rent by room or student accommodation, sometimes, depending on factors outlined below, residential funding may be approved, while in other scenarios, commercial financing will be required. When the size of the property moves into that of a boarding house style, i.e. over 300m2 floor area designed to accommodate more than 12

people, commercial lending will most likely apply. In contrast, where the number of bedrooms is consistent with a domestic use, residential finance is the most likely. This section will cover off on the two scenarios, the first being where you are converting an existing house, and the second where you are constructing it from scratch.

Purchase Finance

When you are purchasing an existing house to convert to rooming accommodation, residential finance is most likely, based on standard terms, because for all intents and purposes this is simply a house purchase. You would not disclose to the valuer or lender your intention to operate under a rent by room strategy, so the LVR is likely to be 80-90%, the standard 30 year loan term, interest only, and a competitive interest rate would apply. In contrast, if it was being built from scratch and it was land you were purchasing from the outset, then residential financing is likely to be at a 60-70% LVR.

Strategy Finance

All funds to undertake the rent by room strategy and conversion of an existing dwelling will need to be paid by yourself as the owner, because the bank will not finance this, including renovation works, furnishing etc.

If, however, you were constructing this type of property from scratch, it will come down to the design of the property, and how different it looks from a residential house. The more like a house it is, the more likely you will get residential construction finance (see Construction section above). If, however, the lender or valuer pick up from the plans that it's being approved as a Class 1B building, or that the design is not like a residential dwelling, i.e. more bedrooms, minimal lounge dining area, possibly higher ratio of bathrooms to bedrooms than normal, then this may trigger assessment as a commercial loan – hence, lower LVR of 60-70%, higher interest rate, potentially shorter loan term, e.g. 15 – 25 years, and possibly principal and interest rather than interest only.

Refinance

Once you are operating the rent by room or student accommodation and you are looking to refinance, you need to be mindful of what the valuer will 'see' on inspection and how they interpret this. For example, locks on every bedroom door, names on the kitchen cupboards, and furnishings that look more like a room rental, e.g. bar fridge in each bedroom etc. This will all ring alarm bells with the valuer. The result is that they are likely to want to value it as a commercial business and base it on commercial financing. Because the risk profile of this style of accommodation is classed by the lenders as higher risk than standard residential, then it may be at a lower LVR of 60-70%, higher interest rate, potentially shorter loan term, e.g. 15 – 25 years, and possibly principal and interest

rather than interest only. Also, in the bank's serviceability calculations, they are likely to want to reduce the rental income, and in fact may base it on the market rent from a standard residential lease, and they may account for a longer vacancy than you are achieving in reality. Factoring in all this, you may end up with a lower loan than what you started with, hence caution needs to be shown prior to entering the refinance phase. Certainly it is essential to have open conversations with your mortgage broker to understand in advance the potential results of a revaluation.

12. Executive Leasing/Holiday Leasing/Short Stay Accommodation

Executive leasing, holiday leasing, and short stay accommodation are funded in a similar manner to that described above for rent by room. The same distinctions exist between buying an existing property to convert to short stay, versus building it from scratch. The difference between residential and commercial financing is also relevant, so will not be repeated here. If it is a unit or apartment, then size matters, and being greater than 50m2 internal floor space will optimise the financing options.

13. Commercial Property Strategy
Purchase Finance, Strategy Finance and Refinance

Commercial property always involves commercial finance, whether it's at the purchase phase, the strategy phase, or refinance stage. In general the LVR's of commercial loans are around 50% to 70%, with most tenanted ordinary commercial properties being around 65% to 70%. To get the higher LVR, it needs to be a 'prime' deal in the lender's mind, for example a long lease term remaining with long running quality tenants. In contrast, where it is an industry specific and business oriented commercial property, it will be at the lower end of the LVR scale. Examples include tourism parks, worker's accommodation, retirement villages etc.

A commercial loan term is typically less than that of a residential loan and is around 10 - 15 years. Plus, often the lenders require the loan to be principal and interest to ensure that the loan is being paid off from the very beginning. This reflects the lender's perception that larger commercial deals are higher risk. This requirement to pay principal upfront benefits the lender because it reduces their exposure over time. For bigger deals the lenders will often require substantial principal reductions over the first 2 to 5 years of the loan. These extra repayments need to be factored into the cash flow of the new deal. The interest rate is also generally slightly higher than residential.

For ordinary commercial financing, a mortgage broker and retail financing is often sufficient. However, for larger deals, a specialist commercial broker is most likely going to be required as they can often access private funds and other creative funding

alternatives. Commercial managers with the banking institutions are another avenue, although they are less likely to be able to offer you unique financing solutions like a specialist commercial broker can.

Where there is an existing lease in place, a lease doc loan is likely to be the most appropriate. The unique aspect with commercial property is that the bank looks at the strength of the lease to repay the loan, and the lender is less interested in your personal serviceability. This creates a unique opportunity for those people with good available equity, but poor serviceability. This is because lease doc commercial finance may allow them to purchase a property when they could not currently borrow through residential lending.

The valuation process with commercial property is unique and is detailed below.

Commercial Property Valuation

The valuation of commercial property differs from the valuation of residential property. Commercial properties are typically valued on a basis of a capitalisation of their income yield – called 'income capitalisation method'. This means that if a property is leased for a good return, it will be worth more than if the property is leased for a poor return, regardless of what other properties have sold for in similar condition in the surrounding area.

The process is called 'capitalisation' and works in the following way. Let's assume that a particular commercial property has a net annual income of $100,000 and the accepted capitalisation rate of that particular area is 10%. The value of the property would be $1 million (i.e. $100,000 divided by 10%). If the property was in an 8% capitalisation rate area, the property would be valued at $1,250,000 (i.e. $100,000 divided by 8%). You can see that the net income from the property is very important, as is the capitalisation rate in that area for that commercial property type.

The capitalisation rate of a property is the percentage return of the property, and is calculated by taking the net annual income (excluding GST) and expressing it as a percentage of the sale price. This information is deduced from sales of comparative properties, where the objective is to determine the capitalization rate the property was sold on. For example, if a commercial property sells for $2 million and the net annual income (excl. GST) from the property was $100,000 per annum, then the deduced capitalisation rate is calculated as ($100,000 / $2,000,000) x 100 = 5% capitalisation rate. By doing this calculation for a number of comparable sales, you should get a good

indication of the capitalisation rate for the area. Asking commercial valuers and commercial real estate agents the capitalisation rate is also valuable research.

Understanding this formula is essential in commercial property, because it allows you to also calculate the potential purchase price for any currently tenanted commercial property. For example, if through your due diligence into a particular commercial property market, you determine based on your research into comparable sales and respective income yields, that the capitalisation rate for the area is 11%, and you find a property that has a net rental income of say $68,000 per year, you are now able to calculate the maximum price you should pay for the property. The calculation is the net income divided by the capitalisation rate percent - $68,000 / 11% = $618,181 or 68,000 / 0.11 = $618,181.

There are a number of factors that can influence the capitalisation rate and while the list is by no means exhaustive, it does give an indication of the types of influencing factors specific to the property. Other types of influencing factors are more general to the area, the general economy, and the performance of alternative investments - for example:

- Vacancy now and in the future
- Rent received
- Ability of tenant to meet current and future rental commitments
- Prospective rental growth – potential and contracted into the lease agreement
- Frequency of rental reviews and basis of review, e.g. fixed yearly or linked to CPI
- Lease covenants, which may be reasonable or unreasonable, as this may impact on ease on re-tenanting
- Permanency of tenants
- Economic strength of tenants
- Relativity of rents received compared to market rents
- Potential for alternative uses of the property, e.g. redevelopment
- Risk to cash flow, e.g. unrealistic or unacceptable increases in rents or outgoings
- Availability of finance for the particular property type
- Contracted deferred payments, e.g. restoration or rehabilitation of commercial site.

As an example, the capitalisation rate or cap rate for short, for inner city commercial might be 5%, whereas the cap rate for suburban commercial may be more like 7% or 8% -

even up to 10% for a weak tenant. Commercial in a more regional area or industry specific area might be as high as 10% to 14%.

It is worth making the distinction at this point between the cap rate and yield of a commercial property, because often the two are used interchangeably. Cap rate has an inbuilt 'judgement factor', and hence, it's somewhat subjective. It's a property's net market rental income stream (either actual or predicted), expressed as a percentage of the asking price. Whereas yield is the net income actually produced by the property expressed as a percentage of its sale/purchase price, when a property is for sale.

There are several other methods used by valuers to value commercial property and while listed below, we are not going into detail about their calculation method:

- Summation of Land and Improvements Method – Involves breaking down the individual components of each property, and is often used to value unusual properties than can be industry specific, or where an equivalent cap rate isn't available.
- Discounted Cash Flow Method – A formula that tries to account for the net present value of the future income of the property. It's not used on regularly commercial property, but sometimes when valuing large assets like shopping centres.
- Units of Production Method – Very similar to the summation method but takes into account the value of work in progress if you are buying a commercial building or enterprise that is in the business of manufacturing.
- Hypothetical Development Method – Used since the early 1900's, primarily to guide legislation, and lately as a basis for professional practice standards for public accountants and licensed valuers.
- Before and After Valuation Method – Has a strong history in our litigation and court system, particularly when it comes to the awarding of damages.

Financing a small commercial property is not that much different from financing a residential property in terms of the loan application process. Financing a larger more complex commercial enterprise with a business component, however, can range from full feasibility studies, business plan and SWOT analysis, through to a comprehensive finance application.

The types of headings that would be included in a commercial property business plan include:

- Cover page – with headings and informative photos of the property.

- Executive Summary – 1 or 2 pages summarising the deal, how much money is involved, value of security, LVR, profit from the deal, and exit strategies.
- Company Structure – name of the purchasing entity, the directors, age of the entity, other assets owned, diagram depicting the relationship between the ownership entity and other structures.
- Business Plan – who does what, who pays for what, your expectations for the project, forecasts on how the deal will work, exit strategy/s.
- Market Analysis – identifying different market segments and where this project sits in the market based on price, location, market forecasts etc.
- Industry Analysis – supporting documents (articles/reports) for infrastructure expenditure at government and industry level. Competitors and comparables.
- Strategic Implementation – SWOT analysis (strengths, weaknesses, opportunities and threats). Your competitive edge and your marketing strategy.
- Management Summary – who is involved, what they do, what is their previous experience or education, who is the management team, and who are the consultants to be used.
- Financial Forecast – spreadsheets including important assumptions, projected income and expenses, holding costs, break-even analysis, exit strategy, projected cash flow, how the deal will pan out in numerical terms.

PLATINUM
ACCELERATOR

Joint Ventures

When looking at financing projects, another opportunity is to undertake a joint venture. A joint venture (JV) is when two or more parties come together to achieve a common objective. It is relevant from a financing perspective, because it's a tool that can be used when individual parties cannot finance a project due to a lack of serviceability, equity or experience, but together they can do the project. People may choose to do a JV for many reasons, so in this section we will cover JV's in much more detail - what they are, how you conduct a JV in practice, and tips on how to conduct a JV successfully. As with many things in property, if you approach a JV in an ad-hoc manner, the result is likely to be less than positive. Instead we want to detail for you the systematic way of doing a JV in order to significantly enhance your likelihood of success.

Types of JV's

There are a number of types of JVs, including JV with seller, JV with owner, and JV with investor. Each is outlined in more detail below:

1. JV with Seller

Renovation Example:

When a property is on the market and you have identified that the property has renovation potential, you may be able to negotiate to do a JV with the seller.

Commercial / Development Example:

Another option with a seller JV is where the property has development or commercial potential. In this instance, the property remains owned by the seller and therefore the advantage is that there are no transfer costs. It is desirable if the owner has no or low debt on the property, because then the equity in the property may be available to use to fund the actual deal. This becomes a no or low money down deal.

2. JV with Owner

The next type of JV is with a property owner when the property is off market. This is a property that's not on the market, but that you have identified as having potential and you have approached the owner to do a JV with them. The strategy discussed above with the seller JV, including renovation and commercial/development applies equally with this type of JV structure.

3. JV with Investors

The third JV type is a JV between investors. This is where two or more investors come together to do a project.

Reasons Why People Do a JV

There are a number of reasons why people do a JV together. The first reason would be that some people have equity and serviceability but they have no time. Alternatively, some people have equity and serviceability, but don't have the knowledge. Some people have equity but no income, and vice versa, and some people have income but not equity. Alternatively, some people have no income or equity, but have the knowledge and the skills. And finally, some people choose to do JV's just because by pooling their resources they can do more deals or larger deals than they could do individually.

In summary, it's because:

- Some people have equity and serviceability but no time
- Some people have equity and serviceability but no knowledge
- Some people have equity but no income
- Some have income but no equity
- Some people have no income or equity but have knowledge
- Some people can do more by pooling their resources – more deals or larger deals
- Some people JV with more experienced investors for the experience and to learn the process

Joint Venture – A Valuable Tool

Joint ventures are absolutely a valuable tool to have in your property investing toolbox. Some people will be doing a JV because they have to, because they're limited in certain components and have to do a JV to be able to do their next deal, as compared to those people that choose to do a JV. So in your investing journey, you will get to a position where you in fact choose to do JVs, because you're able to leverage your resources. You may have additional time, and by being able to do a JV you can do another deal. You can put the time or your knowledge or your expertise into it, but not have to put the money in or the serviceability. In this situation it's a choice decision that you're doing a JV, and you're doing it because you can leverage your position.

A common question asked is, "What types of strategies suit JV's?" The answer to this is quite simple – all strategies. There's no one particular strategy that works best - whether it's a renovation or a subdivision or a commercial deal or multi-units – all strategies suit a JV.

Roles in a JV

There are four basic roles in a JV, including:

- Doing/working party
- Experience/expertise/knowledge party
- Equity party
- Serviceability party

The doing party or working party has to have the time to do the doing. The experience, expertise or knowledge party needs to know how to do the strategy, or have had experience in doing the strategy in the past. They need the knowledge and the capacity to do the strategy. The equity party is the one with either the available equity or the cash – essentially the one with the money. Finally, the serviceability party is the one with the strong income, whether that's as a PAYG employee or business owner.

This doesn't mean that you have to have four different individuals coming together in the JV. Instead we are just showing you the four different roles that make up any one deal. In any deal, somebody has to do the doing, somebody has to have the experience, somebody has to have the equity, and somebody has to have the serviceability, but they may not be different people. If you're not doing a JV, then in fact, you yourself are playing all those four roles. But with a JV, it is two or more parties coming together to divvy up these various roles.

You as the Doing Party

If you are the doing party, you are generally responsible for finding the deal, or engaging with a buyer's agent or an agent to find the deal for you. Essentially, you are responsible for finding the deal, presenting the deal to the other JV partners, project managing the deal, and then delivering the deal as you had proposed or presented it at the beginning. It means that the doing party generally does have a higher level of pressure on them because in fact they're responsible for doing the doing and delivering what they said the deal was going to do.

Considerations:

- Security, e.g. caveat on purchased property
- Payment – if paid during or at end, more cash/equity up front to start deal
- What if the deal makes a loss – do you have to contribute cash?

The first consideration here is if you are the doing party, what security are you going to have over the property or over the deal? If you're the doer and you're not on the title or contributing funds in any way, then there is a question as to what security are you going to have for all the time and effort you're going to put into the deal? In that instance you may look at putting a caveat on the purchased property. This is a conversation you need to have with your lawyer, but that's certainly something that you can consider.

The second consideration is whether you are actually going to be paid during or at the end of the deal.

If you are paid during the deal, obviously there needs to be much more cash and equity upfront to start the deal. For example, if you intend to get paid $30,000 for the 12 months that you are doing the deal, then that $30,000 needs to be available upfront. That means that the equity party has to have this sort of cash or equity to be able to do a deal with you.

Another consideration is if the deal makes a loss. As the doing party, if you haven't contributed any cash or equity to the deal at the beginning, and there is a loss situation, then you have to ask the question, 'Do I actually have to contribute cash at the end to make up for that loss?' This is definitely a question that needs to be addressed and answered very early on in the process.

You as the Equity Party

When you are the equity party there are two options. The first option is where you as the equity party are also a JV partner. You are part of the deal. You experience both the upside and the downside risk of being in the deal. You also get a split of the profit or loss from doing the deal. The second option is where you are putting money into the deal, but you're purely a private moneylender. In that instance, you're putting cash into the deal and you will get a fixed return on your funds – and that's regardless of the success of the deal. In that instance, you would have a loan agreement or a mortgage in place to provide security for you in that situation.

Considerations:

- Security provided, e.g. caveat
- Contribution of all funds up front
- Return of funds if can't sell or refinance

An important question to consider if you're putting money into the deal, regardless of whether it's as a JV party or private moneylender is, "What security are you going to get over the funds that you have contributed"? Once again, it may be a caveat, it may be a mortgage, or it may be a registered mortgage. These are alternatives that need to be considered and discussed with your lawyer in preparation of the agreements.

You also need to consider your capacity to provide the funds upfront. When doing a JV, it can be dangerous if you don't have all the funds available upfront to complete the project. The situation where the funds are being drip fed into the project is very risky. What if something happens and the funds don't become available and this can compromise the whole project? It is always recommended that if you are the equity party, you need to put all of the funds to complete the deal upfront, in an account that is quarantined for that particular deal. That way all parties know that the funds are available to complete.

You also need to consider how the funds are going to be returned if there is an event where in fact you can't sell the property or you can't refinance the property. In this instance, if you put cash into the deal, how do you actually get your cash back out? This needs to be covered early on in the negotiation of the joint venture.

You as Serviceability Party

The third component is you as the serviceability party. This means that you're the one whose name is going on the loan. You're providing the serviceability for the deal, in

which case you need to be market ready from a lending perspective. If you're not market ready, then you're not able to fulfil your role in the JV agreement.

You also need to be aware that if you are the serviceability party and you're on the loan, then this is going to impact on your future borrowing capacity, because you already have your serviceability somewhat tied up in this deal. If you are on title and on the loan, you also need to be aware that you may be required to lodge tax returns and even possibly BAS statements on a regular basis throughout that project depending on what the project is.

Which Comes First – Deal or JV Partner?

A very common question asked is, "Do you find the deal first or do you find the JV partner first?" There are pros and cons, advantages and disadvantages with each, so we will cover each separately.

JV Partner First

In this instance, you're going out and finding the JV partner first, without having a deal on the table. The advantage of finding the JV partner first is that it's a less stressful situation to put yourself in when you do come to then look at finding a deal and negotiating on the deal. Once you've found the deal you typically have a limited timeframe to fulfil the conditions of the purchase contract, in which case if you haven't got a JV partner in place, it can be very stressful. This is because you're not only trying to fulfil the contract conditions, but you're also trying to find somebody to actually do the deal with. The advantage of finding the JV partner first is that it's generally less stressful once you come to the deal finding aspect.

There's also the benefit of being able to have multiple JV partners waiting in the wings. You can have a number of people sitting there interested in doing a JV with you, and then depending on the deal that you find, you can match that deal to the JV partners that you've already pre-negotiated with. As you will come to see, it can take time to make decisions on the many aspects that need to be decided between the parties in the JV, so having a JV partner in advance can definitely be advantageous. You've already got all of the negotiations done, and agreed on the terms of your JV agreement ahead of time, and this means that when you come to find a deal, you're ready to hit the ground running.

Being able to match the deal to the JV partner's capacity is also very advantageous. If you've got the JV partner first and you know what their equity and serviceability capabilities are, then you can go and find a deal that matches their capabilities.

Finding the Deal First

Let's look at the advantages and disadvantages with finding the deal first, and then going out and finding a JV partner to match that deal. When you're finding the deal first, and you in fact don't have a JV partner sitting there ready to go, you're going to have to make some assumptions in terms of the location of the deal, what price point you're able to be looking at, and what strategy you're going to do. You have to make assumptions in order to be able to go and find the deal, and then hope that those match the party that you eventually do the JV with.

For example, you will have to make an assumption on a median price to be able to target area of interests. That might mean doing your numbers and your feasibilities on, say, a $450,000 purchase price, and then finding the deal that matches that criterion, and then taking that to the market in terms of finding a JV. Obviously when you have found the deal first, you know what amount of money the JV partner needs to have and what serviceability is required, so you can then find the JV partner that fulfils that requirement – hence, simplify the process.

Another consideration when you find the deal first without having a JV partner ready to go is that it can be a stressful situation. This is because having found the deal, you then have to put a contract on it, decide on the purchasing entity name to put on the contract, get finance, do your due diligence on the deal, and then add to this the stress of having to find a JV partner.

This is an extra pressure, in that you may find yourself becoming increasingly desperate to find that JV partner. In your desperation, it can result in poor decisions being made, a poor JV partner match, or not going through the JV process thoroughly, and there can be major implications with doing that.

Even though you can find the deal first – there are absolute advantages in having a JV partner waiting in the wings. And that's what we would advocate, because this is a more manageable process.

Finding Deals and JV Partners in Tandem

It takes time to find the right JV partner, and it takes time to find the right deal. If they are done sequentially one after the other, the timeframe can therefore become drawn out, and may not be the most efficient process. Instead, it is recommended that you do the two in tandem and spend time cultivating joint venture relationships at the same time as actually researching deals. That way the two processes can be married together and it expedites the whole process.

Structuring JVs

There are three different ways to structure a JV deal. The first is where you have equal party contributions. The second is where you have an unequal contribution, so one party is contributing more than another party, and the third is where you have the money partner and the working party scenario. Before detailing each of these structures, it is important to remember that you must get legal and accounting advice in advance before you consider any structuring of a joint venture. You need to put every JV opportunity in front of your lawyer and accountant to confirm what the specific structure needs to be for that joint venture. Every situation is slightly different and you need to get the advice upfront, because it can be very costly if you get this step wrong.

1. Equal Contributions

There are several scenarios that are classed as equal contributions. One being where both parties are contributing equal amounts of money and both are included in the loan documents. Another is where one party has equity but little serviceability for the loan and the other party has good serviceability but little or no equity. In each scenario, both parties need to come together in order to borrow efficiently.

There are two main ways that this type of arrangement can be structured and each are described in detail below:

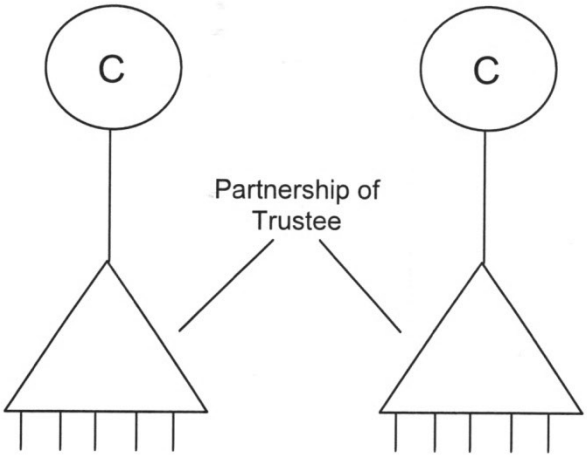
1) Partnership of trusts
2) Newly formed corporate trustee.

Partnership of Trusts:

In this structure, each party has their own corporate trustee and a partnership is created between the two trustees. The property would be owned as tenants-in-common between the trusts. The purchasing entity is the two trusts in partnership; hence, the corporate trustees are shown both on the purchasing contract and on the loan.

This structure allows for fractional ownership as well as 50/50 deals, and that's because the tenants-in-common ownership arrangement can be split in any percentage. It could be 20/80 or 70/30, so it gives a level of flexibility. In this instance, each individual party is taking on each other's debt, and that's a very important consideration. When the bank comes to look at your capacity to borrow, they're looking at both of you and your capacity to in fact take over the serviceability of each other's part contribution.

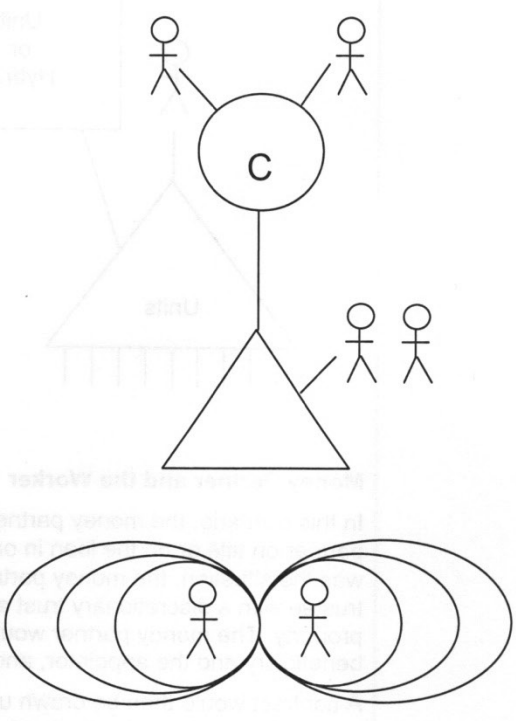
The diagram opposite outlines this structure.



Newly Formed Corporate Trustee:

The second opportunity is to set up a completely new corporate trustee. The new corporate trustee is set up where both parties become the directors. Both parties are also primary beneficiaries of the discretionary trust, and both parties are nominated as the appointors of the discretionary trust. It important to ensure that no one party has more control than the other, hence, why both are listed as appointors. This sort of structure though does not allow for fractional or uneven ownership. It is a 50/50 split. However, it can be slightly easier to finance than the previous partnership arrangement example.

The diagram below outlines this structure.



2. Unequal Contributions

When each of the parties in the JV is contributing an unequal amount there are three main ways to structure this type of arrangement, including:

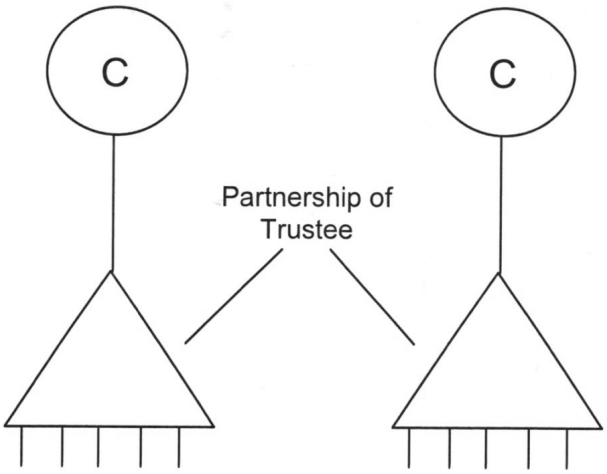
1) Partnership of trusts
2) Unit Trust
3) Hybrid Trust

Partnership of Trusts:

As described above, with a partnership of trusts, and the property bought as tenants-in-common, there is the ability to manage an unequal contribution between parties.

An example could be where one party contributes 70% to the deal and the other party contributes 30% to the deal. These percentages may reflect their time and effort input into the deal, or their expertise, or the amount of cash that they have brought to the table. It all depends on their role in the JV. Hence, you will need to negotiate on what your percentage split is going to be.

The diagram below outlines this structure.



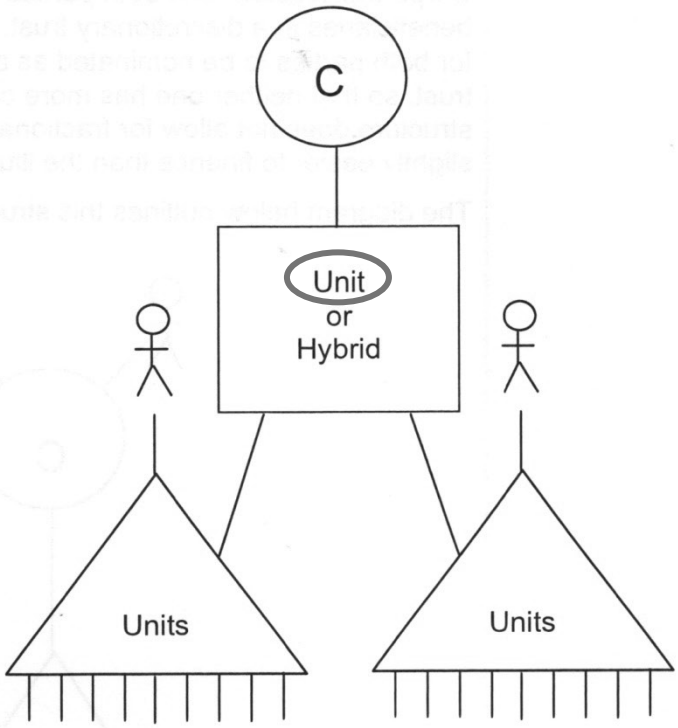
Unit Trust:

An alternative, when you have unequal contributions between JV parties, is to set-up a unit trust with a corporate trustee, and with the units held in each of the individual parties' discretionary trusts (Piggybank Trusts). This will be a new entity set up for this project. The property is purchased in the unit trust.

There can be a few Capital Gains Tax problems or issues when dealing with a unit trust type structure. For example, if it's treated as a fixed trust, it may not be entitled to the

50% exemption for owning a property for more than 12 months. You will need to consider this in your choice of structuring.

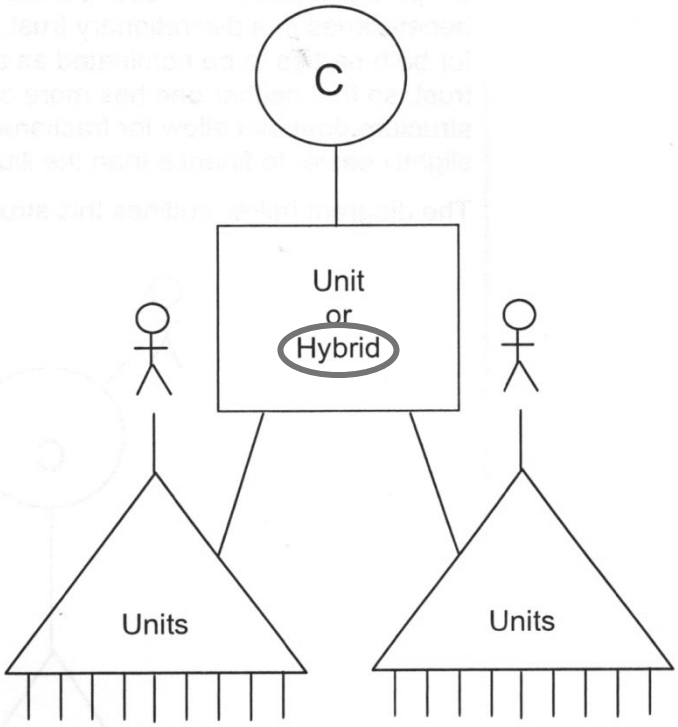
The diagram below outlines this structure.



Hybrid Trust:

The third way to structure an unequal contribution between JV parties is to do the deal under a hybrid trust type arrangement. This involves a corporate trustee at the top, then a hybrid trust, and the units owned in the discretionary trusts of each party. In this instance the discretionary trust could be your piggybank trust. This hybrid trust structure eliminates any Capital Gains Tax issues, because a hybrid trust is entitled to the 50% exemption for owning the property longer than 12 months. A hybrid trust can, however, be difficult to finance, and this needs to be considered early on in the process. The percentage ownership can be apportioned in whatever percentages are agreed upon.

The diagram opposite outlines this structure.



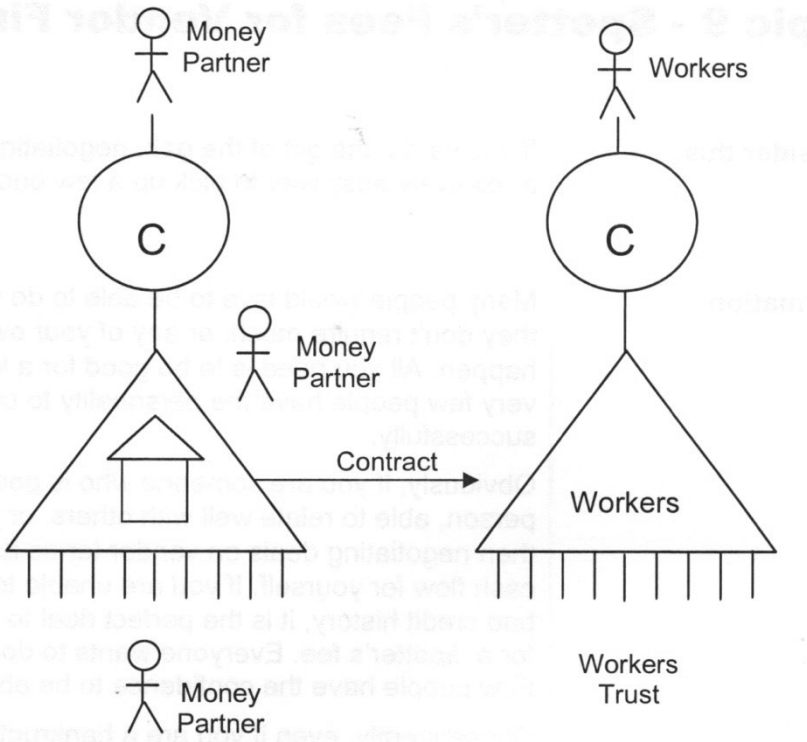
3. Money Partner and Working Partner Scenario

The third structuring alternative is where you have a money partner and working partner scenario. This is where you have a money partner that does not need the working partner on title or on the loan in order to buy the property. The money partner contributes both the cash and the serviceability to the deal, and the working party does the doing and brings the expertise.

The money partner and the working party would each set up their own corporate trustee with a discretionary trust. The money partner has the serviceability and they are the ones that the bank wants to see on the loan, as that party is the one that is purchasing the property and will be the one on the contract. Hence, the money partner's trust would own the property, and they would be named as the primary beneficiary and the appointor of the trust, and director of the corporate trustee. The working party would be the director of their own corporate trustee and would be the primary beneficiary of their discretionary trust.

The working party is the one doing the doing in the joint venture arrangement. A contract would therefore be drawn up between the money party's entity and the worker party's entity (company as trustee for a discretionary trust). The worker's trust would be protected by the contract, which would outline the duties and responsibilities of each party, and the agreed upon distribution of profits.

The diagram below outlines this structure.

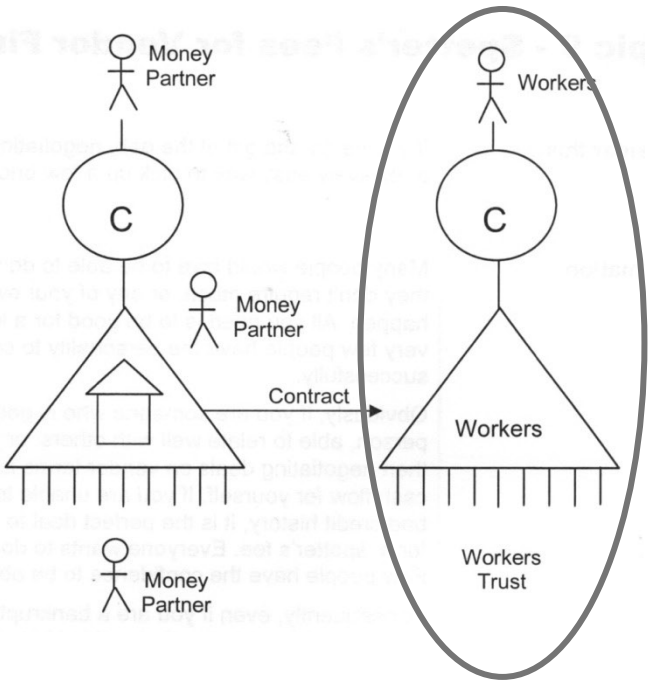


Working Partner Business Structure

The final consideration when looking at structuring is the opportunity to create a business structure when doing joint ventures. Ultimately, you want to have a project management entity that actually runs your property management business. This is so that the worker party in the joint venture is able to create an income stream over time that is seen as income rather than a profit split, and therefore allows the worker to generate serviceability from a borrowing perspective down the track. The entity that is being created is the same corporate trustee with a discretionary trust beneath and would be called the project management or business entity. That entity never actually owns property, it is just a service management entity that is paid fees for the work that it does. It doesn't get a profit split. It is paid a fee for service, which over time is classed as a legitimate income from a serviceability perspective in the future for lending.

Instead of getting a chunk of money that is classed as profit, you would receive smaller amounts of money that are classed as income, because it's from a project management role. An added advantage of this structure would also be that the project management entity would be able to claim business expenses, e.g. car, office expenses, phone, business travel etc.

The diagram opposite highlights in red the project management entity.



Profit Split – What's Fair?

The next consideration when doing a JV is the profit split, and a common question asked is, "What profit split is fair?" The answer to this seemingly complicated question is in fact quite simple. It is whatever all parties agree on, or whatever is negotiated. A way to consider how you might split the profit is to base each of the contributing roles as 25% of a deal – for example:

25% = Doing/working party

25% = Experience/expertise/knowledge party

25% = Equity party

25% = Serviceability party

In this example, the doing/working party, is the one that has the time and is doing the doing, and this is classed as 25% of the deal. The person who's bringing the experience, the expertise and knowledge to the deal is 25%. The equity party, the person that's bringing the equity or cash to the deal represents another 25%. Then the serviceability party is the final 25%. So in that instance, a typical 50/50 JV split or profit split might be where you have one party who is bringing the experience and is the working party and is going to be doing all the doing, and then the second party is the equity and serviceability party. This is the person who has the cash and has got the serviceability, but for whatever reason doesn't have time to do the deal, or doesn't have experience to do the deal, or is just choosing to leverage their equity and serviceability to get into another deal. This situation would be a perfect 50/50 split.

Alternatively, if you had somebody that was only bringing the serviceability, and the working party was in fact bringing the time, the experience, plus the equity, well then you would look to modify your profit split accordingly.

Some JV's work on a 30/30/30 split where the doing partner represents 30%, the serviceability partner represents 30% and the money partner represents 30%. Ultimately, the split will be whatever two parties agree upon.

Selling Versus Holding in a JV

When doing a JV, a consideration is whether you should be looking to sell or hold a property in a joint venture. There's no right or wrong answer to this, and you can do both. However, if you are holding a property on completion, you have to consider how you're going to refinance that property at the end. Also, if you have a working party involved in the JV, how are you going to pay out that party if you're not intending to sell? Again, is it through refinancing, or are you able to pay them out of another fund? Be aware that there may also be tax implications with this situation.

Let's now consider the scenario where both parties are choosing to hold some of the deal. In this instance you might have to consider selling your half of that property to the other JV party, and vice-versa with their property. This is so that you end up with both properties having standalone loans that are 100% secured by your own property.

Here's an example of this to explain it a bit better: You are holding two properties and each of those properties are owned 50/50 between the two parties (depending on how you've structured the JV). If you each want to hold, then you may not want to be in the 50/50 arrangement for the duration of your hold, e.g. 5 to 10 years let's say. In that case you may need to consider selling half of your share in one of the properties to the other party, and they sell their half share in the other property to you. This is so that you each end up with your own property wholly owned in your own structure and under your own lending capabilities.

The payment of GST on newly created product that's sold within the first 5 years is also a consideration in a JV scenario. For example, if one of the JV parties chooses to hold some of the deal on completion, but then decides to sell within the five years, and hence GST is potentially payable on that sale, then the question is who should be paying for that GST? Should it be the JV in the early instance, or is it the party that ended up holding the property. Again, there is no right or wrong answer to how this should be dealt with, but definitely it is something that needs to be flagged from the outset and some decisions

made so that everyone is clear on the agreed process from the very beginning of the deal. This is definitely not a conversation you want to be having 3 years after the deal is completed.

Documentation for JV's

The next component to consider is the documentation required for JV's. There are two main documents that can be used, and it just depends on the way you've structured the JV as to which is most relevant.

1) **Joint Venture Agreement:** Usually used when all JV parties are on the loan.
2) **Project Management Agreement:** Usually used when there is a working party involved in the JV and they are not on the loan. This is the 'contract' between the working party and the money party discussed above in the structuring section.

Regardless of which documentation is used, it must be in writing, it must be signed by all parties, and absolutely it should be formalised by a lawyer prior to you starting the deal. Even though you can get JV agreements off the Internet, and you can get project management agreements off the Internet doesn't mean you should, and this is a perfect example of when you shouldn't. You need to ensure that this document is legally prepared and covers all parties, because at the end of the day, that's the only thing that you have got to fall back on to protect your interests. Given that we are generally talking hundreds of thousands of dollars, this is definitely not the place to money pinch, and to try to save a few bucks – keep that for other parts of the project like the renovation or the landscaping!

So, what needs to be covered in the JV agreement and what are the questions that you need to ask and the decisions that you need to make with your JV partners to put that agreement together? The best thing you can do is sit down with your JV partner and write down all the questions that need to be addressed, and what decisions need to be made. It's recommended when you are going through this process that you are in front of the JV parties that you're looking to do the deal with, because this is a long-term relationship, usually 6-12 months depending on the length of the deal, and it needs the required time to ensure that all parties are the right mix.

Sitting down and discussing all of the possible outcomes for that deal is essential. Obviously, you need to decide on the structure and get legal and accounting advice on that. You need to determine the duties and responsibilities of each party. You need to know who's doing what and who's responsible for what. You need to confirm how decisions will be made, who is going to make the decision on what the paint colour is,

and who's going to ultimately make the decision on which builder to go with, or which real estate agent you're going to list the property for sale with. These are all very important roles to be determined and documented.

The next is to determine the financial commitment between the parties. Who's putting in money, who's providing serviceability, and then having that documented. You need to also consider who's authorised to pay the bills and what bank account it is, what money is to be held and who's actually going to be physically paying the bills. It's a simple thing but it's very important and this is where every role and every process needs to be considered and identified. Ensure that the person/s identified have the capabilities to do whatever is required. The next consideration is how regular your communication between the parties will be, and in what manner? Is this a weekly email or is it a fortnightly meeting? Because at the end of the day, communication is essential in a JV and you need to plan for it and agree to how you're going to communicate, and how frequently, so that it's upfront and everybody understands the expectations.

Another consideration is dispute resolution. What happens if you can't agree on something? What is the dispute resolution process? This needs to be well documented in your JV agreement so that it's already on the table from the outset, and it's very clear what the process would be if a situation arose where you just couldn't come to an agreement. In summary, the decisions to be made need to include:

- The JV structure
- Roles, duties and responsibilities of each party
- Decision making process, e.g. paint colour, builder, landscaping, real estate agent etc.
- Financial commitment of each party
- Who authorises and pays the bills and from what bank account
- How regularly will you communicate and in what manner – email, meetings, recorded Skype calls etc.
- Dispute resolution process.

The next step in putting together the JV agreement is to ask yourself the 'what if' questions. Consider what you would do if the property doesn't sell for asking price? Can you drop the price and if so, what do you drop it to and when do you drop it? You need to have a process in place in advance of purchasing the property, for if these situations arise. There's no use just sweeping it under the carpet and saying, "Oh, well, our intention is that it is going to sell for asking price." You need to consider and have

answers written into your agreement about how you will handle the situation if it arises. You need to have it documented.

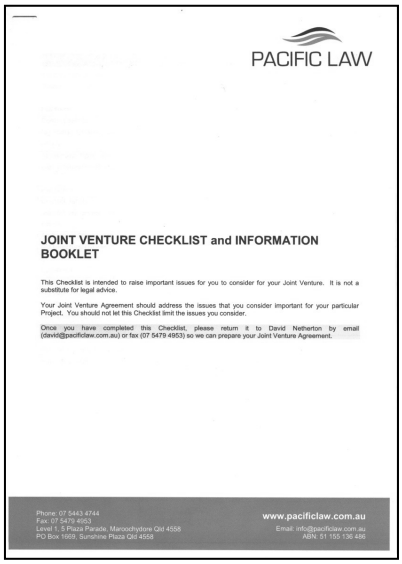
What if it doesn't sell at all - what happens then? Or what if you can't rent it, then what happens in that situation? What if you run out of money? What do you do in that scenario? What if somebody in the JV dies or gets divorced, how is the JV going to cover off on that? What if the doing party can no longer do the doing? What happens in that situation? What if somebody in the JV gets sued or goes bankrupt? These are all things that we hope not to ever happen, but if they do, you need to have them addressed and covered off upfront. What if you don't agree on something? What processes are you going to have in place for this? What if you don't get the approval required? If you're getting council approval, what's the fallback scenario for example if you were applying for four units and you only got approval for three? What happens in that scenario?

What if it takes longer than expected? Your best estimate may be that it is a six month deal, but what happens if it ends up taking 12 months? Can the parties sustain that duration, and what measures are going to be put in place to manage that? And finally, what if the deal makes a loss? What happens in that situation if money is lost from doing the deal? Are the parties equally contributing to making up that loss, or is one party wearing that downfall? Once again, this needs to be considered, discussed and agreed to.

In summary, the major 'what if' questions that need to be answered and included in the JV agreement, include:

- What if it doesn't sell for the asking price – do we drop price and to what and when?
- What if it doesn't sell/rent?
- What if we run out of money?
- What if someone dies/gets divorced etc.?
- What if the doing party can no longer do?
- What if someone gets sued or goes bankrupt?
- What if we don't agree on something?
- What if we don't get the approval required?
- What if it takes longer than expected?
- What if we make a loss?

Pacific Law has a fantastic Joint Venture Checklist on their website and it's also included in the appendix of this module. Some of what has been covered above is included in the checklist, however, it also gets down to specifics in terms of, who is going on title, and who is going to be the serviceability party etc. It is highly recommended that you complete the checklist and add additional details as discussed throughout this module, in preparation for having a JV/project management agreement drawn up.



PACIFIC LAW

JOINT VENTURE CHECKLIST and INFORMATION BOOKLET

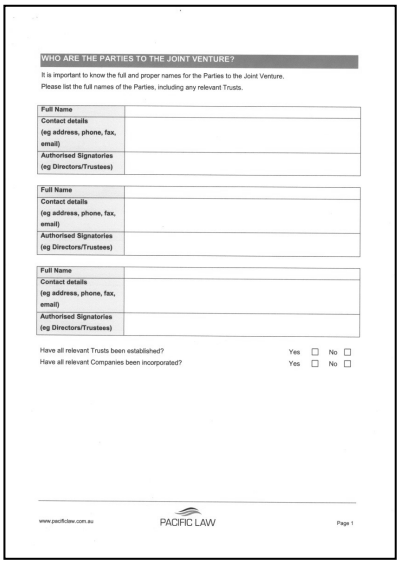
This Checklist is intended to raise important issues for you to consider for your Joint Venture. It is not a substitute for legal advice.

Your Joint Venture Agreement should address the issues that you consider important for your particular Project. You should not let this Checklist limit the issues you consider.

Once you have completed this Checklist, please return it to David Netherton by email (david@pacificlaw.com.au) or fax (07 5479 4953) so we can prepare your Joint Venture Agreement.

Phone: 07 5443 4744
Fax: 07 5479 4953
Level 1, 5 Plaza Parade, Maroochydore Qld 4558
PO Box 1959, Sunshine Plaza Qld 4558

www.pacificlaw.com.au
Email: info@pacificlaw.com.au
ABN: 51 155 136 486



WHO ARE THE PARTIES TO THE JOINT VENTURE?

It is important to know the full and proper names for the Parties to the Joint Venture.
Please list the full names of the Parties, including any relevant Trusts.

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Have all relevant Trusts been established? Yes ☐ No ☐
Have all relevant Companies been incorporated? Yes ☐ No ☐

www.pacificlaw.com.au PACIFIC LAW Page 1

Once you've agreed on the answers to the questions above, the JV parties would consider signing a document that's often called a 'Memorandum of Understanding'. That's where all of the parties in the JV agree on the terms and the questions and the answers that they've discussed. The Memorandum of Understanding along with your JV checklist can then be given to the lawyer to formally draw up the JV agreement. The more questions you can answer in advance and the more 'what if' questions you can cover off on before you actually get to the lawyer, the less time it's going to take the lawyer to prepare the document and the cheaper it's going to be for you. This is where taking the time in advance is very advantageous.

Legal documents are there to protect both parties and minimise misunderstanding and miscommunication, which is why they are so essential. You are now aware that a handshake deal is NOT good enough and should never be entered into, and neither is an agreement that's written on the back of an envelope, or downloaded off the Internet. It must be a purpose prepared document for your deal and for the parties involved. Each party must sign, date and witness it, and each party must get a signed copy and keep it in a safe place. This is because if an issue arises and if all you have is an undated and unsigned agreement, it won't legally hold water. You absolutely need to be diligent in this aspect. Don't be swayed by a less informed party, just because they say the deal can

be done without an agreement, you must stick to your guns and demand it, otherwise do not do the deal – there is too much at stake.

One other consideration is to cover off on the lawyer that prepared the JV agreement, and who they represent. For example, if there was ever an issue between the JV parties, which party is the lawyer actually going to represent? This is because the one lawyer can't represent both parties - that would be a conflict of interest. So, you will need to consider upfront which party ends up with the lawyer that prepared the document. The other party/s, need to understand that they would have to find their own lawyer if a situation arose. Having that conversation upfront so that you're in agreement before you get into the deal is key.

Project Management Agreement and Profit Share Agreement

A project management agreement and a profit share agreement should cover everything that's been covered above for the JV agreement, plus they also cover how the project management fees are going to be paid to the working party, or how the profit is going to be split or adjusted if project management fees have also been paid. Hence, they may be very similar documents, but they do have different names depending on whether the party or parties are on the loan agreement, or whether there's a working party involved.

Sourcing JV Partners

A critical part of the JV process is actually sourcing JV partners and confirming that you are the right mix to work together and what deals are right for you. The section below details out this process, including:

- Where to source JV partners
- Conducting your due diligence to ensure you are right for each other – otherwise referred to as the interview process
- Questions to ask at the interview
- Confidentiality agreement
- What does the perfect JV partner look like?
- Presenting yourself as a 'doing' JV partner – when you don't yet have a deal
- Presenting a deal.

Where to Source JV Partners

Where do you find people that want to do JVs and want to be in a deal with you? The answer to this is simple – NETWORKING. There is no other way to create joint ventures, other than being prepared to get out there and talk to people. It's about forming relationships and connecting with people, in order to find out what their needs are, and

being able to bring both parties together. Some suggestions on where you may find potential JV parties include:

- Meet up Groups
- Investor groups
- Conference attendees/students
- Your mobile phone
- Friends and relatives
- Colleagues/acquaintances
- Referrals – accountant, lawyer, broker, town planers, tradies etc.
- Cultivating and building relationships

There are lots of investor and small developer meet-up groups that come together purely for networking, and are a fantastic source of potential contacts. You've got conferences and seminars, and so all of the Success Accelerator Mastermind events, Ultimate events and Quantum events should be on your radar. Every time you attend these events you should be talking to the people around you, talking to the students, talking to the attendees, and in that process identifying other people's needs and whether they match your requirements. Have your business cards ready to hand out and don't be afraid to ask people for their business card or contact details if there is a potential connection there. Yes, for some of you there may be a minute or two of discomfort to start the conversation and ask for their contacts, but it will yield you tenfold if you push yourself through the discomfort. It's from discomfort that we know that we are growing and stretching ourselves.

If you are not used to initiating the conversation, some simple questions you can use to break the ice and to introduce yourself are –

"Is this your first time to this event?" or

"So, where are you at in your investing journey?" or

"What did you think of that last presentation/session?"

Remember, the more prepared you are when going into any situation, the more confident you will be and the more likely you will be to push yourself out of your comfort zone. Then what you will find is that it's never as bad as you thought it was going to be. And just by pushing yourself to do it, you will be proud of yourself and inclined to keep doing it, so that it no longer becomes an issue for you.

The next source of potential JV partners is in your mobile phone. You will be absolutely amazed if you take the time to go through all of the contacts in your phone, as to how many potential people there are that you could contact to have this discussion with, and find out what their requirements are and whether they are likely to be, or know someone who would be likely to be interested in a JV.

Obviously you have relatives as potential JV partners too. This is an interesting consideration and you have to make a judgment call on this, and whether in fact you want to do deals and joint ventures with your relatives. Keep in mind that regardless of the outcome of the deal, there's a good chance you're going to have to spend Christmas together and birthdays together, so you will need to consider the worst-case scenario. What happens if you don't make money from the deal? Is that going to strain relationships between the relatives and is that what you want to do? On the other hand for some people, doing JVs with relatives is absolutely fantastic. They may have been in business before and work fantastically together. For other people, however, it will be a definite NO and that's perfect as well – there is no right or wrong answer to this – as long as you have thought through the process thoroughly and diligently asked all the questions that need to be addressed.

Doing JV's with friends is a similar consideration. Do you have the sort of relationship with your friends that you want to potentially do deals together, or do you put that friendship ahead of everything else and don't want to compromise that with a potential outcome from a deal. We are talking worst-case scenarios here, but you need to think about it because you are dealing in the open market, and regardless of all the efforts that you put in, things do happen in the market that are outside of our control, and you need to consider what the worst-case scenario could be, and decide if you are comfortable with that.

You've also got colleagues and acquaintances that can be a fantastic source of potential JVs, and also referrals. So yes, you can talk to your accountants and your lawyers and your mortgage broker and your town planners and tradespeople. Find out from them if they have clients, or if they are working with other people that may be interested in doing a joint venture, and you could complement each other by coming together. You need to put yourself out there as to what it is you're looking for, and leveraging off the contacts of the team around you. Ultimately, this is about cultivating and building relationships, so you've got to be prepared to have these conversations and to ask the question of people around you, as to whether they're in a situation or want to be in a situation to do a joint venture with you. The worst-case scenario is that they say NO – and in that situation don't take it personally, just recognise that this is a numbers game, and

that the more people you speak with the more likely you will be to find your perfect match from a JV perspective.

The Interview Process

Once you have sourced potential JV partners, the next thing is to sit down and have an 'interview process' style conversation with them to work out whether you're right for each other. As much as you want to be friends and have a fantastic relationship with your JV partner – at the end of the day, this is business, and you should treat your review of potential JV partners from that perspective – from a very business-like perspective. That is why the reference to an interview process is being used here – because becoming best friends with your JV partner could actually complicate the situation. This is because when you're doing a JV, there are instances where difficult situations have to be dealt with, and you need to ensure that you're working with people that can work through these situations with you.

Preparation is key, not only in the sourcing of JV's, but also in the interview process. The more time you can spend preparing for the meeting, the better the outcome is going to be. In fact, it is recommended that you spend more time preparing for a meeting, or preparing for a phone call, than actually in the meeting, or on the phone call. That is because spending that time being prepared, actually gives you significant confidence. You can go into that meeting with confidence that you know how the conversation is going to progress. Obviously you don't know what the outcome of the conversation is going to be, but you know what you are going to be covering in that conversation.

Part of the preparation process also needs to be you putting yourself in the shoes of the other party, and making a list of all of the questions that they might have. Remember that they may never have thought about doing a joint venture at all, and here you are now having a conversation, proposing to them the possibility of doing a JV. Be sensitive to this and think about all of the questions as if you were in their shoes. What sort of questions would you have? Spend the time in advance to think of answers to each and every one of those questions, so that when you come to have the meeting, you've already thought about a lot of the questions that they could potentially have for you. It's unlikely that you are going to be able to cover off on absolutely everything, but the more prepared you are, the more confident you're going to be to go into that negotiation and have that discussion.

Another important point when you are having a meeting or having phone calls with potential JV partners is to ensure that all of the decision makers are present at every meeting or conversation. This is because of the effect of 'Chinese whispers'. The danger

with this is that when you don't have all the decision makers at the meeting, and then somebody has to relay to another party what was covered in that meeting, you can get distortion of information. It's possible that in the transfer of that information, the other party has got a completely different perspective from what was initially discussed. For efficiency, you absolutely want to have everybody at every meeting, so that everything that is discussed is agreed on with all the relevant parties present. For example, if you are dealing with a husband and wife, but only the husband is at the meeting, you need to realise that the wife is probably going to ask a whole series of questions once the husband comes home, and maybe the husband isn't the most equipped to answer her questions. He may be a bit vague on the details, or may miss-relay some of the information, whereas you are much closer to the process and will be much better equipped to answer her questions and explain to her the process, and so for that reason, it is much better to have the husband and the wife at the meetings together. That way you can address both of them in the one go. Having all the decision makers in the one place is very important and should not be underestimated.

It is also highly recommended that you spend time after the meeting to review the process and make yourself notes. This is because you don't want to have to reinvent the wheel every time you meet with a new JV partner. By taking notes that you can come back to and review before your next meeting or next phone conversation will save you significantly in time and will greatly enhance your outcome, because you are constantly improving on your methodology. This whole process can definitely be a learnt skill, so for those of you that this doesn't come naturally to – which is most of us – just know that by following the process detailed in this module, you can learn the techniques and teach yourself how to become comfortable and proficient with this process.

Some questions that you would ask yourself and document after each meeting and conversation include:

- What worked?
- What didn't work?
- What would you do differently next time?
- What extra questions did they ask that you hadn't previously thought about?

With this last point – you want to write down the questions and then come up with a valid answer to each, so that every time you go through this process of looking for a JV partner, you're continually improving on the process and documenting your process. This is because it might be another 6 to 12 months before you come to do your next JV and you don't want to have forgotten everything you did the first time and then be forced to reinvent the wheel. By documenting it all as you go, you will then always have it to refer

back to and you will create a template for yourself. You will have something to go back to and review before the next meeting, so you are already pre-prepared and feeling much more confident in going into the process. This documentation process will take you an extra 5 to 10 minutes after each conversation or meeting, but it will be the best 5 or 10 minutes that you spend. Please do not tell yourself that you will be able to remember what you did in 6 to 12 month's time, as for the majority of us, this is just not the case, and you don't want to waste the previous learnings that you had. Remember, we are about continually striving for improvement!!

Questions to Ask in the Interview Process

During the interview process, you need to ask a lot of questions in order to better understand the other party. Ask questions to understand their:

- Risk profile
- Capacity to tolerate change (flexibility)
- Nature – worrier, stressful, poor sleeper, aggressive, negative attitude, poor-communicator.
- History/previous experience in business, property etc.
- Money management capacity

This process may take a number of meetings before you can agree to become JV partners, but consider having them sign a Confidentiality Agreement at the first meeting if you are talking deal specifics, and then summarise your intentions in a Memorandum of Understanding (MOU) to be taken to your lawyer.

So let's review these one by one.

1. Risk Profile

You need to ask questions to get a handle on what their risk profile is. You're not necessarily asking them outright, "What's your risk profile?" but instead it's asking questions like, "What type of job do you have and how long have you been doing it?" This is because their job can give you clues on what their risk profile is. For example, if they've been in the same job for the last 20 years, then that gives you an indication that they're used to a very consistent, regular, reliable process in their daily affairs. Similarly, if they've been an employee versus self-employed person. A self-employed person generally has more uncertainty in their life, and has to chase new work on a weekly, monthly, yearly basis, and often it comes with a lot more complexities in their daily routine. This is in contrast to somebody that's an employee and who knows that their job is always going to be there.

2. Capacity to Tolerate Change (Flexibility)

You need to gain an understanding of their capacity to tolerate change - if they are flexible or not. A type of questions that you can ask in that regard is, "How would you handle it if your luggage got lost on an international flight?" For some people that would be absolutely traumatic - they would be stressed, experience anxiety, be beside themselves. Well maybe that sort of person is not the best person to go into a JV with, given that there can be lots of uncertainty when doing a deal, e.g. uncertainty with regards to council approvals, uncertainty with regards to bank finance, uncertainty with regards to the sale of properties, and the list goes on. So, you want people that have a capacity to be flexible and not too highly-strung. You could specifically ask them, "How would you handle changes in council approval or conditions? For example, if you are applying for four units and council came back with approval for three units - how would you handle that?" If a potential JV partner shows signs of being highly stressed by that scenario, then that is potentially a flag to show you that they might not be the right person to be in a JV with.

3. Nature

The aim here is to identify the nature of the person or the people that you're looking to do the JV with. Are they stressful people, poor sleepers, showing signs of aggression, having a negative attitude, or poor communicators? These are all flags that you need to be looking for, because this is going to be a 6-12 month or longer relationship, and you need to ensure from the outset that you are working with people that you are going to be able to sustain a relationship with. You don't want to get halfway through the deal and find out that in fact the person is a complete stress head and it doesn't matter what happens, they are just beside themselves with worry, and putting that worry onto you, when you're trying to do the doing with the deal. You need to unearth this as early on in the process as possible.

4. History

Additional questions are to be asked in terms of their history and the previous experience that they bring. It might be previous experience in business or with a property, or in a property deal. What you are trying to identify is whether they are bringing baggage from previous dealings, as this is something you really want to know about upfront. For example, if their last business went broke, then there is a likelihood that they are going to be bringing negative baggage with them. This is not a reason to not do a JV with them; it just means that you need to ask more questions. Another question might be, "Did their employees ever steal money from them?" Potentially there could be some trust issues that may come out during the JV, and again we want to be aware of this sooner rather than later. Perhaps their last business partner was a complete nightmare? Again, they are probably going to bring baggage with them in that regard. "Did they lose everything in

the GFC?" That is going to impact on people's approach to deals in the future, and you need to be aware of that if you're going to go into a long-term relationship with this person. Another question to ask them is whether they have had a bad experience with a real estate agent in the past. That may bring up challenges that you need to have identified upfront. It's not that every person that has been in business and that has gone broke, or that has had employees steal money from them, or that has a bad experience with an agent, is not a good JV partner. That's not what's being said here. Instead this is about awareness, and understanding that you need to do some further digging to really understand people's history and their previous experiences, in order to know what they might be bringing with them to this deal.

5. Money Management

You will also want to consider their money management. Have they been a long-term saver with good money management skills, or are they a poor saver? If they are the one responsible for the money in the deal, and in fact their previous history hasn't shown that they have good money management skills, then that's a red flag. Maybe they are coming into the deal because they've got a significant amount of money from an inheritance, but that doesn't necessarily mean that they are actually good with money management. Identifying this from the outset is important.

Confidentiality Agreement

You might want to consider having the potential JV partner sign a confidentiality agreement when you are having your initial dealings with them, particularly if you are talking about specific deals that are real and on the market. If you are discussing locations, addresses, and deal specifics, then you certainly might want to consider them signing a confidentiality agreement before you start those conversations. Alternatively, if you come together to discuss formalising the JV in advance, and then you go and find a deal later, a confidentiality agreement isn't going to be relevant.

Certainly getting to know your JV partner can take numerous meetings. It isn't just a one meeting and we're done situation, because there is a lot to consider and there are a lot of questions to be asked, so you need to be prepared to have multiple meetings. Once you're comfortable that the parties are the right mix and you have asked all of the questions as to how you would look to put the JV together, and all of the 'what-if' questions have been covered, then that's where you would summarise those intentions in a Memorandum of Understanding (MOU). It's the MOU that you would then provide to the lawyer or solicitor for them to draw up into a formal agreement.

What Does the Perfect JV Partner Look Like?

A perfect JV partner is a partner that complements your contribution to the deal. For example, if you are the doing party, you don't necessarily want another doing party. You want people that can do what you can't, so whatever it is that you can't bring to the deal, that's what you want in your JV partner. If you are the doing party and you don't have serviceability or equity, then serviceability and equity is what you need from your JV partner. You are looking for someone to fill the roles that you can't.

You also want people that do what they say they are going to do, or what they agreed to do. If someone says, "I'll ring you next Tuesday and we'll organise a meeting time," and in fact they don't ring until Thursday - that's a red flag. If they are doing that at the very early stages of your dealings together, how responsive are they going to be when you get to loan documents stage, for example, and when there are specific timeframes for when documents need to be signed? As you can see, you definitely need people that do what they say they are going to do. Also look for solution focussed, pragmatic, flexible, positive people. This is because the opposite traits of all of these would be people that would be much harder to maintain a relationship with over the duration of the JV.

So again, don't ignore it when you're having those initial conversations and initial interviews. Don't ignore red flags or signs that you pick up – just because you are desperate to do a JV. You want people that are easy to work with and that are positive, and are a good mix for you. It is absolutely essential. Look for good communicators, people that you can sit down and be very specific with, get answers from, and then move on.

Presenting Yourself as a 'Doing' JV Partner – When You Don't Yet Have A Deal

In the earlier part of this Module, it was suggested that the best scenario is to develop the JV relationship first and then go and find the deal that suits. This then raises the question, – particularly if you are the 'doing' party – "How do you present yourself as the 'doer' to potential JV partners, when in fact you don't have a deal on the table?"

The answer to this is being able to demonstrate your experience to the JV party, which is often best done using a written document. After you have had your initial meeting and your general discussions, you would at that meeting then provide the JV party with a written document that details all the items outlined below – and that you would step them through, item by item:

- Demonstrate your experience/expertise
- Detail your process for finding a deal and indicators for what makes a deal stack up

- Present a sample deal and the process involved - expected timeframes and key milestones, likely cash/available equity required, and likely serviceability required.

1. Demonstrate Your Experience/Expertise

To promote yourself as the doing party, you will need to demonstrate your experience and expertise. Think about it like a resume. If you've got previous deals that you've done, previous renovations, previous builds even if it's a PPR, or experience in subdivision – then showing those previous projects with photographs is fantastic. If, however, this is your first deal, then you really need to leverage off the skills of the team around you. You can acknowledge to them, "This is my first JV, but I have been actively researching and educating myself on property investment for 'x' period of time. I'm part of a mentoring program and I have a coach that I work with that has the experience and the skills in doing these types of deals." You can also emphasise your team of lawyers, accountants and town planners, and their expertise, in order to demonstrate that you have the skills to pull this sort of joint venture together and do the deal.

2. Detail Your Process for Finding Deals

You should detail your process for finding a deal and explain what makes a deal stack up. Show them that you've got the capacity as a 'doer', to go and find the deal. Educate them on what sort of population size you are going to be focussing on, what sort of volume in the market you are looking for and why; what manufactured growth strategy you plan to target and why. You need to give the JV party confidence that you know what you are doing and you know how you are going to go about it.

3. Present a Sample Deal and the Process Involved

Even though you may not have a deal on the table to present to the JV party, it is recommended that you present a sample deal to them and detail the process to do that sort of deal, including the feasibility. For example, if you are looking at doing a subdivision deal together, you would put a sample subdivision deal to them, maybe a one lot into two. You would include a sample feasibility, and show them what the process would involve, including the timeframes and key milestones along the way, the cash/equity required and serviceability required. Outline what the likely cash or available equity required is going to be, because they'll need to know this. Do they need $100,000 to do this type of deal? Are they going to need $300,000? You'll need to provide that information when you are presenting, and also outlining the likely serviceability that's going to be required. This will give them confidence that you can do the deal, and that you can manage the process and that this is the sort of numbers, and the sort of profit that you are looking to achieve, and that they could expect.

Certainly having a professional presentation is important. The more professional you can be in your approach to your JVs, the better the outcome is going to be.

The above description has been framed around the doing party. However, if you are the serviceability party or the equity party, then you should expect this same level of detail from everybody that you are looking to go into a JV with. So, whether you're the doer or whether you're the equity or serviceability partner, you should still have covered off on all of the items that have been discussed. You should understand the expected timeframes and the key milestones so that you have an understanding of whether you are targeting a six month deal or a 12 month deal, and once you find the deal, what the actual process is.

Presenting a Deal

When you have found a deal, you will want to present it to your JV partner through a written document or PowerPoint presentation. Ensure that it is professionally presented and covers off on the following:

- **Project proposal summary -** In point form, summarise all of the important components of the particular deal that you are presenting.
- **Photos -** The more photos that you can include the better.
- **Draft feasibility -** Include a draft feasibility covering the amount of cash required upfront to do the deal and what serviceability is required.
- **Project timeline and stages** - Include information on the project timeline and the stages.
- **Exit strategies** - Outline multiple exit strategies in your proposal. The exit strategy on a subdivision might be that you could sell it with a DA, or you could go ahead and do the subdivision and sell the vacant land, or you could sell the existing front house. You could build on the back or on the subdivided land, or instead of selling, you could rent. If for example, you end up with five different exit strategies, you will need to articulate and explain these to the JV partners so that they're aware of what the deal entails.
- **Risk factors and mitigation** - Detail what the risk factors are and how you're going to mitigate against them. Be upfront with what the risks are with doing this sort of deal. For example, there may be no guarantee that you get the approval through council. Maybe this is the first time that this sort of deal has been done in this suburb, and therefore, there are not a lot of comparable sales. The risk is then that the end product may be undervalued. There may be a risk from a financing perspective. Flag these risks in your proposal.

- **Property details** - Give specifics around the property details, e.g. land size, address, lot and plan number, zoning, frontage, and any other relevant details.
- **Contract details** - If you have a contract in place or are looking to put a contract in place, you should outline the contract details? What entity are you proposing to purchase in? What sort of conditions would you propose to put in the contract or have already put in the contract? What price are you proposing to offer or have already offered?
- **Comparable sales** – Do not forget to include comparable sales. In your feasibility, you will have an amount that you have purchased the property for, or are looking to purchase the property for. You will also have an estimated amount that the end product is either going to be sold for, or its market value on completion if it's going to be held. You need to be able to justify these figures and you do so with comparable sales. For example, if you are buying an 800 square meter block with a three bedroom house on it and paying $450,000, you will need to demonstrate that that $450,000 is market value or is under market value. This is so that the JV partners have an understanding as to what the deal is that you are purchasing, and then the comparable sales on the end product. If you are subdividing and ending up with vacant land, what are the comparable sales, and what is the end value of the vacant land? What is the end value of townhouses, if you are producing townhouses? What are the comparable sales to justify the end value that you are using in your feasibility to calculate the profit in the deal?
- **Location research** – This is a summary of the macro and micro factors that explain why you have been looking at a deal in that particular city or town, why are you actually looking in that suburb, and why are you looking in that particular street. You should be able to give a robust conversation and justification as to why you are choosing a property in that particular area.
- **Real estate agent's feedback** – Speak with local real estate agents about what you are proposing with the deal, explain your strategy whether it's a renovation, subdivision, or multi units, and ask for feedback from the agents in terms of what the market wants and where. Summarise the real estate agent's feedback for your JV partner.

Doing JV's with Professionals (Builder/Real Estate Agent/Town Planner/ Engineer)

If you are looking to do a joint venture with a professional, like a builder, real estate agent, town planner or an engineer, there are some specific considerations with this, because this arrangement can be more restrictive. If you are doing a JV with a builder for example, you need to be aware that you may not have the flexibility to source external builders for quoting. It's most likely that the JV partner, being a builder, has the intention that he/she will be building the end product. It means that you may not be able to then

take the project out to the open market to ensure that you are getting competitive build prices.

Similarly, let's say you are doing a JV with a town planner. If you at some point don't feel that you are getting the right advice from your town planner JV partner, it can then be complicated to go and get advice from other town planners and then present that to your town planner JV partner. Certainly, doing JV's with professionals can be somewhat more restrictive as opposed to doing a joint venture where you can source the professionals outside of the deal.

The flipside to this is if you are the professional, then of course it is okay for you to be in a JV with other parties and offer your skills as part of the agreement. You do, however, need to be confident in your own skills. If you are a builder, you will need to bring the best build price to the table. Or if you are a town planner, but this deal is in an area that is not your expertise, then you need to disclose this to the JV so that external advice can be sought – and you can oversee the process.

JV With or Between SMSF's

When doing joint ventures with or between self-managed super funds (SMSF's), it is vital that you seek specialist advice. SMSFs can be very restrictive, so you need to seek professional advice before considering doing a JV with a SMSF.

Taxation in JV's

Equal Party JV

To better understand the taxation implications in joint ventures, you are best to seek specialist and professional accounting advice. Looking at it from a general perspective, however, if you are doing a JV where you have equal parties in the JV, whether it's a partnership of two trusts or one corporate discretionary trust who's distributing to two piggybank trusts - the tax implications are very similar. Each party needs to look after their own tax implications (Capital Gains Tax or Income Tax) on the money that they've received from the deal.

Worker/Money Partner Deals

When it is a worker/money partner deal, there will be a contract in place. From the money party's perspective, the trust owning the property will be entitled to the normal investment Income Tax and Capital Gains Tax rulings. Provided that the ownership structure isn't in the business of real estate, then any gains made when the property, if

sold, will be subject to the Capital Gains Tax and also potentially the 50% exemption if its been owned for more than 12 months. This gain will be calculated net of any payment that's been made to the working party.

From the working party's perspective, the entity that the working party is operating under is not entitled to Capital Gains Tax exemption. thus all of the money that is generated, regardless of whether it's a percentage of profit from the sale, will be treated as income for tax purposes. So in that situation, the money party who owns the property and has sold the property can actually be in a better tax situation than the working party, because of the exemptions with Capital Gains Tax. This is something that needs to be understood in advance and agreed on, so that all parties understand how they are going to exit the deal.

Common Mistakes in JV's

The biggest mistake hands down with joint ventures is lack of communication. As soon as parties stop talking, stop communicating, and stop emailing - then that is the time to notice a red flag. It is essential that the communication channels remain open, and even though there might be difficult conversations to be had, the parties need to continue to talk to each other. As soon as that fails, then you've got major problems.

Detailed below are some other common mistakes:

Doing JV for the Shared Excitement and 'Doing with Friends'

When people do a JV together because they are really excited to be doing something together, or because they want to do something with their friends - this can be a recipe for disaster. This type of JV can become very emotional and risky, because there are hundreds of thousands of dollars at stake. Instead, JV's need to be entered into in a very business-like manner, to ensure that decisions are being made based on the numbers, while removing as much emotion as possible.

Not Considering Worst-case Scenarios

Problems arise when parties come together without considering the worst-case scenarios and not thinking the deal through to the full extent. All the questions detailed above need to be asked. This is where having an agreement in place that outlines these 'what if' scenarios in advance with solutions documented becomes very helpful.

Too Many Decision Makers

Having too many decision makers can also cause problems within the JV arrangement. Essentially, too many cooks in the kitchen bogs down the whole decision making process. There are hundreds of decisions to be made throughout a deal, and if that process becomes difficult and time consuming, then the whole deal can be jeopardised. Think of the example of selecting paint colours and selecting the real estate agent. If there are three parties in the JV, and all three want to have input and make decisions on paint colour, it is going to be a really difficult JV to manage. Instead, you want to set out each person's role/s and be very clear on what each person manages, and then stick to this throughout the JV. That is why you want complementary roles. You don't necessarily want two project managers, both making decisions on paint colour for example. Having that conversation and getting that cleared up from the very outset is very important.

Insufficient Profit in the Deal After % Split Between Parties

Another common mistake is where the deal is too skinny and there really is insufficient profit by the time you split it between parties. If you are working on a 50/50 % split deal and there is only $30,000 profit in a renovation, that's only $15,000 for each party. For all of the effort involved, it may not be worth the process. Knowing that there is a split in profit, you generally need more profitable deals to make it justified in a JV arrangement.

No Written Agreement in Place

One of the biggest common mistakes is not having a written agreement in place, or the agreement not being signed, or the JV parties not having a copy of the agreement. The solution to this is simple - ensure that you have a written agreement and that all parties have signed and have a copy of it.

Settling for a JV Partner That Doesn't Really Fit Your Needs

Sometimes people are so desperate to get into a JV that they settle for any JV partner, even though they don't really fit their needs. For example, choosing a JV partner that in fact doesn't really have enough money to do the deal, which means that you then have to tip in some extra funds that you weren't really intending on doing, or the JV party really doesn't have great serviceability, so now instead of having one equity/ serviceability party, you have to find a second person for serviceability, resulting in a three-way JV split as opposed to a two-way JV split.

Clearly, the more people you've got in the JV, the more complicated the process is going to be and the more negotiations and coordination that needs to happen. The solution here is not to 'settle for' someone you are not 100% happy with. For example, if you are the working party and you have done your research and the numbers, and you know that

you can find deals where the feasibility stacks up and it's going to make a decent profit margin but it requires $300,000 equity upfront, do not then settle for a JV party that has only got $100,000. If it is $300,000 that you need, then be proactive and find the person that's got that amount. Otherwise, you are going to either have to go for another deal that may potentially be a lower quality deal than what you would have preferred to have gone for, or you are going to have to find additional parties to do the JV with, and this will further complicate it.

Partner Not Market Ready and You Miss Out on Deals

It's important to check that your serviceability party is market ready, otherwise you will end up missing out on deals because the parties don't have their structures in place or they haven't got their loan documents ready. Make sure all parties are ready to do the deal.

Not All Funds are Made Available at the Start of the Deal

Be sure to check that all the funds are available at the start of the deal. If this hasn't been taken care of from the start, there is a potential to run out of money. For example, the equity party might need $100,000 to do the deal, but they have only got $50,000 available at the beginning of the deal. Maybe they are relying on the sale of another property, or they are relying on something else to happen to supply the extra $50,000. Clearly, if something happens and that second $50,000 doesn't come to fruition and you're already halfway into the deal, then this is a major issue and the project is in a very compromised situation. Instead, you really want to ensure that all of the funds required to complete the whole deal are put in place upfront and are set aside and quarantined for that particular deal, so that parties can't use it for other purposes. That then gives everybody confidence that in fact the funds are available to complete the deal.

Running Out of Money Partway Through Deal

Running out of money can be a big problem, e.g. the deal ends up costing more than anticipated, or the bank valuation comes in lower than expected, and therefore you have to contribute more funds. This is something that needs to be considered in the 'what if' questions and answers. You've done the numbers on needing say $150,000 to do the deal, but what if in fact it ends up costing $200,000? Do any of the JV parties have another $50,000 sitting in a buffer somewhere that could be contributed in a worst-case scenario? Making those provisions upfront and having those conversations at the start is very important.

Lack of Communication

The antidote to lack of communication is to specify the frequency of your communication and in what manner in your JV agreement. If you're the working party, then you need to

ensure that every week you provide an email with an update on the project, if this is what has been agreed on in the initial set up. When you are reporting on progress, you should also be reporting on the positive and negative developments, e.g. if there are delays happening, or if there are issues with council, you need to flag them with your JV parties as they eventuate. You don't want to go to your JV party three months down the track and say, "We have NOT ended up getting council approval because of X, Y, Z," and in fact that had been flagged by council for the last three months, but you just never chose to communicate that with your JV party. It's always better that your JV parties know what the hold-ups are from the start of the issue. This means making them aware of it the moment it eventuates, rather than three months down the track, when the deal is actually going to finish three months later, and that's the first time the JV partner has heard anything about it. Certainly having transparency and trust in your JV partners is essential, and that means open and trustworthy communication.

Personality Clash

Another common stumbling block is personality clashes. This is where there are mismatched personalities. For example, if you have a highly stressed JV partner paired with a really solution focussed person, then this can be a real issue. Similarly, a really detailed person with somebody who's very general can cause problems. Also mismatches in your risk profile can be an issue, e.g. where one party has a high risk tolerance and is a very aggressive investor, while the other party is a very low risk conservative investor. This too, can be a recipe for disaster. That is why having the initial interview meetings with your JV parties and really getting to understand each other's nature and history is very important.

Project Manager Lacks Attention to Detail

You definitely need to keep an eye out for whether the project manager party lacks attention to detail. If you are the doing party, and doing the project management, you need to have attention to detail. You are the one responsible for the detail and delivering on the deal, and the other parties, being the serviceability and equity parties, are relying on your capacity to deal with the details. If you don't have this attention to detail then you will have to learn it! Yes, this can be a learnt skill if you have systems and procedures in place to remind you and prompt you at each stage, and that's where taking notes at each point can assist with this.

Deal Takes Longer Than Expected

The deal taking longer than expected can certainly have an impact. If a certain amount of money has been set aside for the deal, and it ends up taking another six months to complete, and therefore costs more, that can be a major issue. You really need to be realistic and allow for buffers in your timeframe. You also need to do good research on

what the likely timeframe is going to be for the type of deal, and then add some extra time, and ensure that you have got the resources to deliver on that adjusted timeframe.

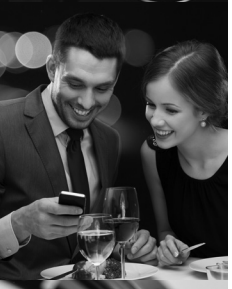
Deal Changes Midway

What happens when the deal changes midway? An example of this might be where Council doesn't approve what you originally proposed. You could be proposing four units and council only approves three, so you need to consider how you are going to deal with those types of changes and flag it upfront with your JV partners. Have the conversation at the beginning, so you know how all parties are going to handle that sort of situation. Even though you don't expect it to happen, you need to be on top of how to handle it if it did happen. Consider the opposite situation as well, for example, where council encourages you to go a higher density than what you had initially planned. Let's say you purchased a property and were planning to put in an approval for five dwellings, and then council make a change in the regulations that allow you to put on ten dwellings. Whilst you would think that would be a great outcome, developing ten is going to require more financing, will require more money upfront, and will require more time. If that's not what you agreed on when you entered into the JV, then that sort of change can cause issues and friction between parties, where one party wants to do the ten, whereas the person with the money on the line may only want to do the five initially planned. So again, where there are changes, you need to try and pre-empt and accommodate them upfront.

Maintaining JV Relationships

Once you have begun a JV, the next question is how do you maintain it so that you can do the next deal and the next deal, and the next deal with that same JV party? There is one simple answer to this and it's all about relationships. Joint ventures are about forming strong and reliable relationships, maintaining the relationships, having trust between all parties involved, and having respect between all parties. If you have got that, then you have got a perfect match, and you will be able to roll from deal to deal with the same JV group - assuming that everybody in the group is happy with the outcomes. This is an ideal situation, because not having to reinvent the wheel and go and find new JV partners, will significantly speed up your capacity to do deals, and the group just moves onto the next deal together.

Remember – No potential profit is worth the break up of a family or a relationship.







PLATINUM
ACCELERATOR

MODULE
8

MODULE 8 APPENDIX

- **JV CHECKLIST**
- **GST PROPERTY & MARGIN LENDING SCHEME**

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

PACIFIC LAW

JOINT VENTURE CHECKLIST

This Checklist is intended to raise important issues for you to consider for your Joint Venture. It is not a substitute for legal advice.

Your Joint Venture Agreement should address the issues that you consider important for your particular Project. You should not let this Checklist limit the issues you consider.

Once you have completed this Checklist, please return it to David Netherton by email (david@pacificlaw.com.au) or fax (07 5479 4953) so we can prepare your Joint Venture Agreement.

Phone: 07 5443 4744
Fax: 07 5479 4953
Level 1, 5 Plaza Parade, Maroochydore Qld 4558
PO Box 1669, Sunshine Plaza Qld 4558

www.pacificlaw.com.au
Email: info@pacificlaw.com.au
ABN: 51 155 136 486

WHO ARE THE PARTIES TO THE JOINT VENTURE?

It is important to know the full and proper names for the Parties to the Joint Venture.

Please list the full names of the Parties, including any relevant Trusts.

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Full Name	
Contact details (eg address, phone, fax, email)	
Authorised Signatories (eg Directors/Trustees)	

Have all relevant Trusts been established? Yes ☐ No ☐

Have all relevant Companies been incorporated? Yes ☐ No ☐

WHAT TYPE OF PROJECT WILL THE JOINT VENTURE UNDERTAKE?

It is important that the Parties agree on exactly what work is involved in the Project.

No Construction	No Construction	☐
	Obtain Development Approval only	☐
Subdivision	Subdivision	☐
	Body Corporate Required	☐
	Other _____	☐
Construction	House	☐
	Duplex	☐
	Residential Unit Building (Number of units _____)	☐
	Commercial/Industrial Building	☐
	Other _____	☐
Renovation	Renovate current dwelling	☐
	Add Granny Flat	☐
	Add Second Dwelling	☐
	Demolish Current Dwelling	☐
	Other _____	☐
Other		
	Other _____	☐

It is important that the Parties agree on the long term plan for the project after the work is completed.

Rent	Rent entire property	☐
	Rent some lots or units (_____)	☐
	Who is to determine the rent price (_____)	
Sale	Sell all lots or units	☐
	Sell some lots or units (_____)	☐
	Minimum price the lots or units will be sold for (_____)	
	Who is to determine the sales price (_____)	
Other		
	Other _____	☐

What is your target location for the project? (eg suburb or 'Qld mining town'): _____

WHAT ARE THE PROJECT TIME FRAMES?

Your Joint Venture is likely to have three (3) phases: Buy, Build and Rent/Sell.

It is important that the Parties agree on a target for each stage of the Project.

What are the intended Project timeframes?

Phase	Action	Timing
Buy		
	eg locate property *enter Put and Call Option* *perform due diligence* *apply for finance* *apply for development approval* *settlement of contract for purchase*	
Build		
	eg subdivide land *Construct dwelling*	
Rent/Sell		
	eg appoint agent *market property* *sell property*	

What is the total estimated project timeframe? _____

FEASIBILITY AND FINANCIAL GOALS

Have you performed a feasibility of the Project?

If so, please attach a copy to this Checklist.

What is the financial goal of the Project?

_____

What is the financial goal of the each Party and by what date do you expect this result?

Party 1 _____

Party 2 _____

Party 3 _____

WHAT CAPITAL IS REQUIRED TO COMPLETE THE PROJECT?

Have you prepared a budget of the expected cost of the Project?

If so, please attach a copy to this Checklist.

What is the expected capital required to complete the Project?

_____

Over what timeframe will the capital be required? _____

WHAT CAPITAL CONTRIBUTIONS WILL BE REQUIRED OF THE PARTIES?

The Parties should be clear from the outset the money they will be required to contribute to the Joint Venture and when that money must be contributed.

What capital contribution will be required? $ _____

When must the capital contribution be made? (*date*) _____

How is the capital contribution to be made and stored?

_____

(eg Joint Venture bank account, stakeholder's bank account)

Does the capital contribution differ between the parties? If so, describe the requirements.

_____

(eg party 1 contributes $100,000, party 2 contributes $200,000)

Who will control the monies? (eg dual signatories)

_____

WHAT BORROWINGS ARE REQUIRED?

The Parties should agree on the anticipated borrowings and the nature of the facility.

What are the expected borrowings required to complete the Project?

_____

Over what timeframe will the borrowings be required? _____

WHAT ROLES DO THE PARTIES FILL?

For each of the parties, consider their contribution.

Party	Land Owner	Financial	Building Work	Other

WHO ARE YOUR TEAM OF PROFESSIONALS?

The parties should agree on who will be engaged to perform work for the Joint Venture.

Who will fill the following roles?

Lawyer _____

Accountant _____

Builder _____

Financier (bank) _____

Town Planner _____

Surveyor _____

Real Estate Agent _____

Project Manager _____

WHAT IS THE ROLE OF PROJECT MANAGER?

If you will have a Project Manager, all parties should be clear on what they will do and when.

Who is the Project Manager? _____

What are the terms of their role?

_____

(eg limits of their authority, ability to make design, budget and legal decisions)

If there is a monetary limit to which the Project Manager is free to spend, what is it? $ _____

WILL THERE BE A PROJECT COMMITTEE?

You should decide if you will delegate any of the decisions to a Committee comprising representatives of some or all of the parties.

Will there be a Project Committee? Yes ☐ No ☐

If so, what decisions will they make?

_____

(eg colour choices, design choices etc.)

How often will the Project Committee meet?

_____

(eg twice per quarter, once a week)

WHO WILL ADMINISTER THE FINANCIAL SIDE OF THE JOINT VENTURE?

Aside from the actual Project, you may have specific ideas about how the finances are to be managed.

Will the financial decisions be made by a meeting of the Joint Venturers? Yes ☐ No ☐

Will the voting be: proportionate to ownership ☐ equal between each joint venturer ☐

WHAT WILL BE THE DISPUTE RESOLUTION PROCEDURES?

The parties may not see eye to eye at all times. What happens when you cannot agree on how the Project is to be managed?

Must the party enter mediation? Yes ☐ No ☐

Who will be the mediator? Chosen at the relevant time by the parties ☐

Chosen at the relevant time by the president of the Law Society ☐

WHAT HAPPENS IF A PARTY DIES?

It is important that the parties agree on what is to happen if one of the parties dies?

If a party dies, their Estate: Will become a party to the Joint Venture with full rights ☐

Will become a party to the Joint Venture with no voting rights ☐

Will be entitled to demand payment for its interest ☐

Must sell its interest to the other Joint Venturers if they elect ☐

Any other provisions? *(eg different rules for different Joint Venturers)*

_____

Will the parties obtain life insurance to protect the Joint Venture? Yes ☐ No ☐

Do you require a referral for Life Insurance? Yes ☐ No ☐

WHAT ARE THE CONDITIONS FOR EXITING THE JOINT VENTURE?

A party may wish to leave the Joint Venture after commencement, but before completion of the Project. You must agree to what circumstances will allow a party to leave the Joint Venture.

A party can leave the joint Venture at their choice ☐

with the approval of the majority of the parties ☐

with the unanimous approval of the parties ☐

if they can find a buyer for their interest ☐

When a party leaves the Joint Venture, they will receive payment for their interest

At the time they leave ☐

Within a certain time after they leave, namely _____

At the completion of the Project ☐

WHAT HAPPENS ON COMPLETION OF THE PROJECT?

You should have a clear understanding on what happens to the profits on completion of the Project.

To whom the profits will be distributed and in what order?

_____

(eg equally to all Joint Venturers, firstly in repayment of capital and then equally to all Joint Venturers)

order?

How will 'profit' be calculated and when will the profit be distributed?

(eg if not selling the lots/units, three market valuations to be obtained and take the average

THE NEXT STEP…

Return this Checklist to David Netherton by email (david@pacificlaw.com.au) or fax (07 5479 4953) and we can assist you by preparing your Heads of Agreement or Joint Venture Agreement.

Pacific Law **www.pacificlaw.com.au**
Phone: 07 5443 4744 **Po Box 1669, Sunshine Plaza 4558**
Fax: 07 5479 4953

Australian Government
Australian Taxation Office

Print entire document

GST and property

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/ (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/)

Last modified: 24 Jun 2015

QC 21960

GST and property

For GST, Luxury Car Tax and Wine Equalisation Tax purposes, from 1 July 2015, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

Many people are actually carrying on an enterprise when making property transactions, but do not register for GST (goods and services tax) when they are required to do so. Even with a one-off transaction, you may still be required to register for GST because your activity, or activities, in carrying out this one-off property transaction may constitute an enterprise.

If you are dealing with property – for example, you buy, sell, lease or develop – you may be considered to be conducting an enterprise. If this is the case and your turnover from these activities is more than the GST registration threshold, you will be required to register for GST.

Find out more

Registering for GST (/Business/GST/Registering-for-GST)

> GST definitions (/Business/GST/How-GST-works/Definitions): business, GST credits, payment, property, purchases, sales
>
> MT 2006/1 (http://law.ato.gov.au/atolaw/view.htm?DocID=MXR/MT20061/NAT/ATO/00001) *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

This guide will help you work out how GST applies to property sales and other transactions involving the following:

- residential premises
- commercial residential premises
- commercial premises
- retirement villages
- farmland.

It includes some comments about record keeping and also information on GST and:

- selling a going concern
- the margin scheme
- body corporates
- non-resident property owners
- real estate agent services

In this guide, property includes any of the following:

- land
- land and buildings
- an interest in land
- rights over land
- a licence to occupy land.

You apply GST differently to property, depending on whether it is **either**:

commercial premises

residential premises.

When you sell a property, the sale may be:

taxable – this means you are liable for GST on the sale, and you can claim GST credits for anything you purchase or import to make the sale (subject to the normal rules on GST credits))

GST-free – this means you are not liable for GST on the sale, but you can claim GST credits for anything you purchase or import to make the sale (subject to the normal rules on GST credits)

Input taxed – this means you are not liable for GST on the sale and you cannot claim GST credits for anything you purchase or import to make the sale

mixed – this is a combination of any of the above.

Your property transactions may need to be included in your GST turnover calculation.

Find out more

Common GST errors and property (/General/Property/In-detail/GST/Common-GST-errors-and-property/)

Working out your GST turnover (/Business/GST/Registering-for-GST/Working-out-your-GST-turnover)

Residential premises

Residential premises include houses, units and flats. It does not include vacant land.

Properties are residential premises if they can be occupied, are occupied, or are intended to be occupied as residences.

Find out more
GSTR 2012/5 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20125/NAT/ATO/00001) *Goods and services tax: residential premises*

In addition to how GST applies to new residential premises and existing residential premises, you also need to know how it applies to rent or bonds from residential premises.

New residential premises

Residential premises are new when **any** of the following apply:

- they have not been sold as residential premises before
- they have been created through substantial renovations
- new buildings replace demolished buildings on the same land.

Residential premises are no longer new residential premises if they have been continuously rented for five years after first becoming new residential premises. However, the premises may still be considered new residential premises, even if they have been rented out continuously for five years if at the same time they were being actively marketed for sale.

You can claim GST credits for things you purchase to make a sale of new residential premises (subject to the normal rules on GST credits), and you are liable for GST on the sale.

If you sell residential premises that are no longer new – for example, they have been continuously rented for more than five years – your sale is input taxed.

If GST applies to your sale of new residential premises, you generally pay GST of one-eleventh of the sale price. You may be eligible to use the margin scheme to work out the GST you must pay – see Margin scheme for eligibility.

Renting new residential premises before you sell them

If you build new residential premises for sale, you can claim GST credits for purchases made for construction purposes.

If you rent the new premises while you are planning to sell them, you will need to adjust the amount of GST credits you have claimed.

You must show you intend to sell the premises – one way of showing this is by actively marketing the premises for sale.

Example: Renting before sale

Helki plans to sell a new residential property she has built.

The property has been on the market for some months, so Helki decides to both:

- rent it out
- continue to actively market the property for sale.

Helki must adjust the amount of GST credits she previously claimed because her use of the property has changed from the way she originally intended – that is, she originally intended to sell new residential premises. However, she is now renting out these premises while still actively trying to sell them – this is known as a change in creditable purpose, so Helki is not entitled to the full GST credits.

New residential premises – off the plan

An off-the-plan purchase occurs when you enter into a contract to purchase new residential premises before the construction is completed. At this stage, you are purchasing a contractual right to have the premises built.

Generally, you pay a deposit and sign a contract with the developer. You pay the balance of the purchase price on settlement.

On settlement, you are purchasing new residential premises and the purchase price will include GST.

However, if you sell the contractual right before settlement, you are not selling new residential premises, and GST may apply if your sale of the contractual right forms part of your business' transactions.

The activities involved in selling an off-the-plan property may constitute an enterprise in its own right and the proceeds of the sale may form part of your turnover in working out whether the GST registration threshold is met.

Find out more

GSTR 2009/4 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20094/NAT/ATO/00001) *Goods and services tax: new residential premises and adjustments for changes in extent of creditable purpose*

GSTR 2003/3 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20033/NAT/ATO/00001) *Goods and services tax: when is a sale of real property a sale of new residential premises?*

GSTR 2000/24 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR200024/NAT/ATO/00001) *Goods and services tax: Division 129 - making adjustments for changes in extent of creditable purpose*

Existing residential premises

You cannot claim GST credits for anything you purchase for the purpose of making a sale of existing residential premises (that is, residential premises that are not new), and you are not liable for GST on the sale.

If you sell residential premises, your sale is input taxed unless the property is new – see New residential premises.

If you sell existing premises that, based on their physical characteristics, are used in part for residential accommodation and in part for commercial purposes, GST may apply proportionately on the sale.

If you purchase existing residential premises, the sale from the vendor to you is input taxed, so you cannot claim a GST credit on the purchase.

Example: Mixed supply

Estella sells a two-storey building that has commercial business premises downstairs (a taxable supply) and residential premises upstairs (an input-taxed supply). This is a mixed supply.

Rent or bonds from residential premises

Rent

If you lease residential premises:

- you are not liable for GST on the rent you charge
- you cannot claim GST credits for anything you purchase or import to lease the premises.

Bonds

If you receive a bond or security deposit for leased residential premises:

- you are not liable for GST on the bond or security received
- you cannot claim GST credits for anything you purchase or import to lease the premises.

Commercial residential premises

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=2 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=2)

Last modified: 24 Jun 2015

QC 21960

Commercial residential premises include:

- hotels, motels, inns
- hostels, boarding houses
- caravan parks, camping grounds
- establishments that provide residential premises that are similar to hotels, motels, inns, hostels and boarding houses.

Commercial accommodation is accommodation in these commercial residential premises.

Some characteristics of commercial residential premises include:

- multiple occupancy
- central management
- providing accommodation to paying guests.

Selling commercial residential premises

If you sell commercial residential premises, such as hotels, motels, inns, hostels or boarding houses, you are generally making a taxable sale and you are liable for GST of one-eleventh of the sale price.

You may also sell commercial residential premises in either of the following ways:

- under the margin scheme – see Margin scheme
- as a going concern – see Going concerns.

You can claim GST credits on purchases you make that relate to selling your property (subject to the normal rules on GST credits) – for example, the GST included in real estate agents' fees.

If you purchase commercial residential premises, you can claim the GST included in the purchase price of the property only if the seller did not use the margin scheme to work out the GST included in the price.

You may also be able to claim a GST credit on other expenses, such as solicitors' fees, that relate to buying the property.

Leasing commercial residential premises

If you lease commercial residential premises, such as hotels, motels, inns, hostels or boarding houses, to be operated by the lessee to provide accommodation to individuals, you are making a taxable supply and you are liable for GST of one-eleventh of the lease payment made to you.

You can claim GST credits on purchases you make that relate to leasing your property (subject to the normal rules on GST credits) – for example, the GST included in real estate agents' fees.

Supplying commercial accommodation

As a general rule, if you are registered, or required to be registered, for GST, you are liable for GST on any commercial accommodation you supply to your guests.

The amount of GST you are liable for depends on whether you provide short-term, or long-term accommodation, and whether your premises are predominantly for long-term accommodation.

GST concessionary treatment

If you supply long-term commercial accommodation, you can apply a concessionary GST treatment to your supplies of such accommodation. The applicable treatment will depend on whether or not your premises are predominantly for long-term accommodation.

What supply attracts the concessionary treatment

As a general rule, the GST concessionary treatment applies to the supply of the long-term accommodation including incidental supplies made in the course of providing that accommodation. They may include the supply of the following:

- electricity

- gas
- air-conditioning or heating
- cleaning and maintenance
- phone, television and radio.

What supply does not attract the concessionary treatment

Where fees are charged separately for phone calls, mini-bar items, meals, personal laundry or in-house videos, there is a separate supply of these things and the concessionary treatment does not apply to such a supply. You must charge GST on your supplies of these things at the normal rate.

Accounting for short-term accommodation

You provide short-term accommodation to an individual when they stay for less than 28 continuous days in your premises. You must pay GST of one-eleventh of the price you charge for the accommodation.

If you are using the accounts method, use your accounts to work out the amount of GST you need to report at **1A** (GST on sales) or **1B** (GST on purchases) on any short-term accommodation you provide.

If you are using the calculation worksheet method, use the worksheet to calculate the amount to be reported at **1A** and **1B**.

Accounting for long-term accommodation

You provide long-term accommodation to an individual when they stay for 28 continuous days or more in your premises.

Your premises are **predominantly** for long-term accommodation if, at least, 70% of your guests stay for 28 or more continuous days.

You can choose to account for GST on your supplies of long-term commercial accommodation by:

- treating all supplies of long-term accommodation as input taxed, ***or***
- applying the concessionary treatment for long-term accommodation if your premises are not predominantly for long-term accommodation
- applying the concessionary treatment for predominantly long-term

accommodation.

Treating long-term accommodation as input taxed

If you choose this option, you:

- do not pay GST to us on long-term accommodation you supply
- cannot claim any GST credits for the GST included in the price of goods and services you purchase to provide the long-term accommodation.

> **If you treat your long-term accommodation as input taxed, you must apply it to all long-term accommodation you provide for a period of at least 12 months.**

Report the amount for all long-term accommodation you supply in the reporting period at **G1** (total sales) on your activity statement.

Because you do not pay GST under this option, you do not report anything in relation to your supplies of long-term accommodation at **1A** (GST on sales) on your activity statement. You also cannot claim GST credits at **1B** (GST on purchases) for any things purchased that you use for supplying long-term accommodation.

If you use the calculation worksheet method to work out your GST liability, you need to report the total sales amount for long-term accommodation at **G1** (total sales) and also at **G4** (input-taxed sales) on your worksheet.

You must also pay GST on any short-term accommodation you supply. You can claim GST credits for the GST included in the price of purchases you make for the purpose of providing that short-term accommodation.

Long-term accommodation – the concessionary treatment

If you provide long-term accommodation, you can apply a concessionary GST treatment to your supplies of such accommodation. You do this by:

- charging full GST for the first 27 days – in the same way as short-term accommodation

calculating GST on half of the normal GST-inclusive price of the accommodation from day 28 onwards.

See GST concessionary treatment for information about what supply attracts the concessionary treatment.

Example: Long-term accommodation

Joshua accepts a temporary transfer to Brisbane for six months. He stays for the whole time at Eiffel Towers, a hotel that usually provides short-term accommodation.

Eiffel Towers usually charges $220 a night, including GST.

For the first 27 days of his stay, Joshua is charged at the normal rate – that is, $220 ($200 plus GST at 10%).

From day 28 onwards, Eiffel Towers calculates GST on half the usual GST-inclusive price ($110). It adds GST of $11 (10% of $110) to the normal GST-exclusive charge ($200) to arrive at the price actually charged.

So, Joshua is charged:

$220 a night for the first 27 days, and
$211 a night for the rest of his stay.

Predominantly long-term accommodation – the concessionary treatment

If you provide long-term accommodation and your premises are predominantly for long-term accommodation, the concessionary GST treatment you apply to your supply of that accommodation is different. If this is the case, you calculate GST on half of the normal GST-inclusive price of that accommodation from the beginning of the occupant's stay.

See GST concessionary treatment for information about what supply attracts the concessionary treatment.

Example: Predominantly long-term accommodation

Moon River is a Motel **predominantly** for long-term accommodation.

The standard short-term room rate is $66 a night – that is, $60 plus $6 GST.

To calculate the GST on its supplies of long-term accommodation, Moon River Motel halves the normal GST inclusive price of $66 to $33 and calculates 10% of $33 ($3.30). It adds GST of $3.30 to the GST-exclusive rate of $60, and accordingly charges long-term occupants $63.30 a night. This is the amount Moon River Motel would report for one night of long-term accommodation at **G1** total sales on its activity statement.

Another way of working out the GST is to multiply the GST-exclusive rate by 5.5% – for example, $60.00 x 5.5 /100 = $3.30.

By applying this concessionary treatment, Moon River Motel is liable to pay $3.30 GST to the ATO for each night of long-term accommodation it supplies. If the concession did not apply, the normal GST would be $6.

Find out more

GSTR 2012/7 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20127/NAT/ATO/00001) *Goods and services tax: long-term accommodation in commercial residential premises*

Accounting for purchases of long-term commercial accommodation

If you purchase long-term commercial accommodation, you report your purchases of long-term accommodation on your activity statement in the following way if:

- you have purchased long-term accommodation in commercial residential premises for the purposes of your business, and

GST was included in the amount you paid or are liable to pay.

Report at **G11** (non-capital purchases) the total amount of GST you paid in the price of the commercial accommodation (usually shown on the tax invoice) multiplied by 11.

If you are using the accounts method to prepare your activity statement, use the information in your accounts to work out the amount of GST to report at **1A** (GST on sales) or GST credit at **1B** (GST on purchases).

If you are using the calculation worksheet method, use the worksheet to calculate the amount of GST to report at **1A** (GST on sales) or **1B** (GST on purchases).

Leasing your holiday apartment or unit

You make an input-taxed supply if you lease your individual apartment or unit to either:

a guest, or

a management company (that will use it as part of commercial residential premises).

This means you:

are not liable for GST on the income

cannot claim GST credits for anything you purchase or import for the purpose of leasing the premises.

Example: In a commercial residential complex

Aiko owns a strata titled apartment in an apartment complex. When she leases her apartment to Mink Management Services (MMS), the supply is input taxed.

MMS will group Aiko's apartment with other apartments in the complex and let them out in the same manner as a hotel, motel, inn or hostel would.

Even though Aiko's apartment is located within **commercial** residential premises, her apartment does not, by itself, have the characteristics of commercial residential premises – it is **residential**.

This means Aiko:

- is not liable for GST on the lease income
- cannot claim GST credits for anything she purchases or imports for the purpose of leasing the premises.



Find out more
GSTR 2012/6 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20126/NAT/ATO/00001) *Goods and services tax: commercial residential premises*

Selling your holiday apartment or unit

If you sell your apartment, you are selling:

- residential premises, and
- unless the apartment is new residential premises, your supply is input taxed, regardless of whether the apartment is located within commercial residential premises.

This means you:

- are not liable for GST on the income
- cannot claim GST credits for anything you purchase or import for the purpose of making the sale.



Find out more
GSTR 2012/5 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20125/NAT/ATO/00001) *Goods and services tax: residential premises*

Commercial premises

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=3 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=3)

Last modified: 24 Jun 2015

QC 21960

If you sell commercial premises, such as shops and factories, you are generally liable for GST on the supply.

How GST applies

You can claim GST credits on purchases you make that relate to selling the property (subject to the normal rules on GST credits) – for example, the GST included in real estate agents' fees.

If you sell commercial premises, you may be able to use the margin scheme to work out the GST that applies to the sale. Using the margin scheme means your GST liability is equal to one-eleventh of the margin for the sale of property, rather than one-eleventh of the total selling price – see Margin scheme.

If your commercial premises is being leased when you sell it, you may be able to treat your supply as a GST-free sale of a going concern – see Going concerns.

If you purchase commercial premises to use in your GST-registered business, you can claim the GST included in the purchase price of the premises. You may also be able to claim GST on other expenses that relate to buying the property – for example the GST included in solicitors' fees.

You cannot claim GST credits if **any** of the following apply:

- the seller used the margin scheme to work out the GST included in the price
- you are not registered or required to be registered for GST.

Find out more

GSTR 2000/28 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR200028/NAT/ATO/00001) *Goods and services tax: attributing GST payable or an input tax credit arising from a sale of land under a standard land contract*

Leasing or renting commercial premises

As a lessor, you are liable for GST on the rent you charge if the following applies:

- you lease a factory or shop
- you are registered, or required to be registered, for GST.

You can claim GST credits on purchases you make that relate to renting out your property (subject to the normal rules on GST credits) – for example, the GST included in the managing agent's fees.

As a lessee, you may be able to claim GST credits for the GST included in rent you pay if the following applies:

- you lease the property to carry on your business
- you and the lessor are registered, or required to be registered, for GST.

Find out more
GSTR 2000/35 (http://law.ato.gov.au/view.htm?DocID=GST/GSTR200035/NAT/ATO/00001&PiT=99991231235958)
Goods and services tax: Division 156 - supplies and acquisitions made on a progressive or periodic basis (paragraphs 58 to 65)

Retirement villages

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=4 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?

page=4)

Last modified: 24 Jun 2015

QC 21960

What is included

Within the industry, the term 'retirement village' is used to describe various types of accommodation provided to village residents. A village may:

- be operated by charitable bodies, government, or commercial businesses
- consist of different types of premises, such as independent living units, serviced apartments, care facilities, or a combination of these
- offer different occupancy arrangements
- provide a wide range of facilities and services to residents.

How GST applies

GST may apply differently, depending on who is making the supply, or what is being supplied.

The term 'retirement village' has a particular meaning under GST law. The GST definition is only relevant for working out whether a supply is GST-free under specific GST concessional provisions. In this guide, we refer to these as 'GST retirement villages'.

A GST retirement village is residential premises in which:

- the accommodation is intended for people at least aged 55 years or older
- there are communal facilities for the residents to use.

However, premises used, or intended to be used, to provide residential care (within the meaning of the *Aged Care Act 1997*) by an approved provider, or commercial residential premises are not a GST retirement village. This means that GST retirement villages are not commercial residential premises for GST purposes.

Types of living arrangements

Types of living arrangements can include

independent living units

serviced apartments

charitable retirement villages.

Independent living units

An independent living unit in a retirement village is generally:

- described as a unit or villa
- designed for retirees who are able to live independently within a retirement village.

The unit can have one or more bedrooms and can be:

- a high- or medium-rise complex
- a terrace
- semi-detached
- stand-alone.

Leasing an independent living unit

Leasing an independent living unit (including the use of common areas, such as paths, driveways, gardens and communal recreation facilities) to a resident of a retirement village is generally an input-taxed supply of residential premises. This means that you will not be liable for GST on the lease of the unit. You cannot claim GST credits for purchases that relate to making input-taxed supplies.

If you charge the resident an ongoing maintenance fee as part of the lease, this fee is generally consideration for an input taxed supply, being a payment in connection with the supply of the residential premises.

Selling an independent living unit

If you sell an independent living unit (that has not been continuously leased for a period of at least 5 years) in a retirement village for the first time since it was constructed, you are making a taxable sale of new residential premises – for example, an operator that sells a newly constructed unit for the first time to a resident.

Later sales of the unit (usually made by an existing resident to an incoming resident) are input taxed.

In a strata/freehold situation, ongoing maintenance fees you charge the owner resident represent consideration for a taxable supply.

Serviced apartments

A serviced apartment in a GST retirement village is different from a serviced apartment that would ordinarily be provided by an apartment chain providing short-term rental accommodation.

An apartment is a serviced apartment in a retirement village if **all** of the following apply:

- the apartment is designed to be occupied by aged residents who need assistance in a full range of daily living activities or nursing services (irrespective of whether individual residents require all or only some of the services)
- at least one responsible person in reasonable proximity to the apartment is continuously on call to provide emergency assistance, such as first aid or arranging other mobility, nursing or medical assistance, to the residents of the apartments
- the apartment is part of a single complex of apartments and is accessible from a common corridor linking the apartment to the other apartments in the complex
- there is a communal dining facility in the retirement village for the residents to use.

A serviced apartment is not a:

- detached house
- row house
- terrace house
- town house
- villa unit
- independent living unit.

If you supply a serviced apartment

Supplying a serviced apartment in a retirement village by lease, hire, licence, freehold or under a share arrangement may be GST-free if you supply it:

- to a resident who needs help with daily living activities or nursing services
- with the necessary care services and other services, such as meals, laundry and

cleaning, that meet the GST-free requirements.

The GST-free requirements for care services are that the services must:

- be provided to an aged or disabled person in a residential setting
- be a kind covered by Schedule 1 to the Quality of Care Principles (http://www.comlaw.gov.au/Details/F2011C00126) (made under section 96-1 of the *Aged Care Act 1997*)
- include daily living activities assistance or nursing services that are only provided to people who require them.

Charitable retirement villages

A supply of accommodation, services related to the supply of the accommodation or meals, in a retirement village is GST-free if:

- the supplier is an endorsed charity that operates the village, and
- the supply is made to a resident of the village.

If **all** of these conditions are met, you will not be liable for GST on these supplies. You will be entitled to claim GST credits for any creditable purchases you make that relate to making your GST-free supplies (subject to the normal rules on GST credits).

Find out more
GSTR 2007/1 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20071/NAT/ATO/00001&PiT=99991231235958)
Goods and services tax: when retirement village premises include communal facilities for use by residents of the premises

Farmland

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=5

(http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=5)

Last modified: 24 Jun 2015

QC 21960

Selling or leasing farmland

When you sell farmland, your sale is GST-free if:

- the land was used for a farming business for at least five years immediately before the sale; and
- the buyer intends to use it for a farming business.

A lease by an Australian government agency of, or a long-term lease of, farmland is also GST-free if the above conditions are met.

A long-term lease is:

- a lease for at least 50 years
- a renewed or extended lease expected to continue for at least 50 years after the option to renew is exercised or the extension is granted.

Sub-divided farmland

A sale of land sub-divided from land on which a farming business has been carried on for at least five years will be GST-free if:

- it is permissible to use the land for residential purposes, and
- the sale is made to an associate of the supplier without consideration or for consideration that is less than the market value of that piece of land.

The lease by an Australian government agency of, or long-term lease of, land under the above conditions will also be GST-free.

The sale of farmland together with certain assets may, in some cases, also be a GST-free sale of a going concern.

If you sell farmland and you do not meet the above conditions, the sale is taxable and you are liable for GST on the sale price.

Find out more
GST and property adjustments (/General/Property/In-detail/GST/GST-and-property-adjustments/)

Going concerns

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=6 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=6)

Last modified: 24 Jun 2015

QC 21960

For GST purposes, when you sell a business, you are selling a going concern if you sell to the purchaser all of the things that are necessary for the continued operation of the business and you carry on (or will carry on) the business until the day of the sale.

A sale of a going concern is GST-free if, in general, **all** of the following apply:

- the sale is for payment
- the purchaser is registered, or required to be registered, for GST
- the purchaser and seller have agreed in writing that the sale is of a going concern.

Selling property as part of a going concern

If you sell property that is part of a GST-free sale of a going concern:

- you are not liable for GST on the sale
- you and the purchaser may be able to claim GST credits on expenses that relate to selling and buying the property respectively – for example, the GST included in

solicitors' fees.

Property that is part of a sale of a going concern can include **any** of the following:

the business' premises, when it is sold together with the assets and operating structure of the business

a fully tenanted building, where the property and all leases, agreements and covenants are included in the sale

the sale of a partially tenanted building, where

- the vacant part of the building is either being actively marketed for lease or undergoing repairs or refurbishment
- all leases, agreements and covenants are included in the sale.

Find out more

Sale of a business as a going concern (/Business/GST/When-to-charge-GST-(and-when-not-to)/GST-free-sales/Sale-of-a-business-as-a-going-concern)

Sale of a business as a going concern - checklist (/Business/GST/In-detail/Managing-GST-in-your-business/Ceasing-business/Sale-of-a-business-as-a-going-concern---checklist/)

GSTR 2002/5 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20025/NAT/ATO/00001) *Goods and services tax: when is a 'supply of a going concern' GST-free?*

GST and property adjustments (/Business/GST/In-detail/Your-industry/Property/GST-and-property-adjustments)

Margin scheme

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=7 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=7)

Last modified: 24 Jun 2015

QC 21960

Generally, the amount of GST you must pay on property sales is equal to one-eleventh of the sale price. If eligible, you may be able to use the margin scheme on your property sale. The margin scheme is an alternative way of working out the GST you must pay when you sell property. Under the margin scheme the amount of GST payable on your property sale is one-eleventh of the margin for your sale. You can only apply the margin scheme if the sale is taxable.

The margin is generally the difference between the sale price and one of the following:

- the amount you paid to purchase the property
- an appropriate property valuation.

Whether you can use the margin scheme depends on how and when you purchased your property.

Work it out

To work out if you can use the margin scheme on the sale of your property, refer to GST and the margin scheme (/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/).

If you have purchased property that was sold to you under the margin scheme, you cannot claim GST credits on this purchase.

Find out more

GST and the margin scheme (/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/)

GSTR 2000/21 (http://law.ato.gov.au/atolaw/view.htm?

DocID=GST/GSTR200021/NAT/ATO/00001) *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000*

GSTR 2006/7 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20067/NAT/ATO/00001) *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000*

Body corporate

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=8 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=8)

Last modified: 24 Jun 2015

QC 21960

A body corporate is a group of individual owners responsible for maintaining and administering property held in common – for example, a block of strata titled home units.

If you are a body corporate, for GST purposes, you are carrying on an enterprise. You must register for GST if:

- you are considered to be a non-profit body and your turnover is more than $150,000 (turnover must include levies on unit owners)
- you are not considered to be a non-profit body and your turnover is more than $75,000 (turnover must include levies on unit owners).

You may be considered to be a non-profit body if you do not have the intention to distribute interest income or profits from rental or other activities to your members.

The fees or levies you charge your members will include GST – for example, car parking or administration.

You can claim GST credits on purchases you make that relate to maintaining and administering the property held in common, including:

- electricity
- landscaping
- management
- cleaning
- repair and maintenance services.

Find out more
Working out your GST turnover (/Business/GST/Registering-for-GST/Working-out-your-GST-turnover)

Non-resident property owners

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=9 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=9)

Last modified: 24 Jun 2015

QC 21960

If you are a non-resident property owner who is registered or required to be registered for GST then your sale or lease of commercial or commercial residential property in Australia, along with your sale of new residential property, will generally be taxable.

If you own commercial, or commercial residential, property that you lease or rent in Australia, you can claim GST credits on purchases you make that relate to renting or leasing your property (subject to the normal rules on GST credits).

However, if the property you rent or lease is a residential property, you are making an input-taxed supply. As a result, you:

are not liable for GST on the rental income

cannot claim GST credits for anything you purchase or import to rent or lease the property.

Find out more
GSTR 2000/37 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR200037/NAT/ATO/00001) *Goods and services tax: agency relationships and the application of the law*

Providing services to non-resident property owners

The provision of services in Australia to non-resident owners of Australian residential properties is taxable – for example, the management services of a resident real estate agent (if the real estate agent is registered for GST).

Example: Foreign-based owner

Sam, a British citizen, lives in London and owns a residential rental property on the Sunshine Coast in Australia. He is not registered for GST.

Sam's rental property requires some plumbing repairs, so his real estate property manager in Australia calls Pete's Plumbing to do the repairs.

Pete's Plumbing is registered for GST, so the provision of their repair services to Sam is taxable. Pete's Plumbing must include GST on the tax invoice they provide to Sam.

Find out more
GST and tax return services to non-resident property owners (/Business/GST/In-detail/Your-industry/Property/GST-and-tax-return-services-for-non-resident-property-owners/)

Real estate agent services

http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=10 (http://www.ato.gov.au/General/Property/In-detail/GST/GST-and-property/?page=10)

Last modified: 24 Jun 2015

QC 21960

If you are a real estate agent and you are registered for GST, or required to be registered, you are liable for GST on your service fees, including:

- letting fees
- lease preparation fees you charge the landlord
- lease preparation fees you charge the tenant
- agency commissions
- statement and administration fees
- property inspection fees.

Your provision of services in relation to a non-resident's property is taxable even if the property owner is not in Australia when the services are performed.

A property owner, who is renting or selling existing residential premises, such as a house, cannot claim the GST included in your fees and charges, because the rent or sale is input taxed.

Example: Non-resident company uses local agent

Bourne Ltd (a non-resident company) is GST registered. Bourne Ltd owns a six-storey building in Sydney. A family rents the first two floors as their residential home, and the remaining floors are rented out as commercial premises.

Bourne Ltd uses an Australian real estate agent to manage the property. The provision of services by the real estate agent for the whole property is taxable.

Bourne Ltd:

can claim GST credits proportionately for real estate services provided by the agent that relates to the commercial premises

cannot claim GST credits for real estate services provided by the agent that relates to the residential part of the building.

GST-registered property owners may be able to claim the GST included in their agent's fees as GST credits when they:

sell new residential premises

sell or lease commercial, or commercial residential, premises.

Find out more
GSTR 2000/37 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR200037/NAT/ATO/00001) *Goods and services tax: agency relationships and the application of the law*

Completing your activity statement

You may use either the calculation worksheet method or the accounts method to complete your activity statement.

The amounts you report on your activity statement will depend on the accounting basis you have chosen, or are required to use. You can account on a cash basis or a non-cash basis.

Find out more

GST– completing your activity statement (/Business/GST/In-detail/Managing-GST-in-your-business/Reporting,-paying-and-activity-statements/GST---completing-your-activity-statement/) chapter 5

Choosing an accounting method (/Business/GST/Accounting-for-GST-in-your-business/Choosing-an-accounting-method)

GSTB 2003/2 (http://law.ato.gov.au/atolaw/view.htm?docid=GSB/GSTB20032/NAT/ATO/00001) *Goods and services tax: long-term accommodation at marinas*

GSTR 2012/5 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20125/NAT/ATO/00001) *Goods and services tax: residential premises*

GSTB 2001/2 (http://law.ato.gov.au/atolaw/view.htm?docid=GSB/GSTB20012/NAT/ATO/00001) *Accommodation in caravan parks and camping grounds*

GSTR 2000/20 (http://law.ato.gov.au/atolaw/view.htm?Docid=GST/GSTR200020/NAT/ATO/00001) *Goods and Services Tax: commercial residential premises*

Find out more

We provide video tips, online answers tailored to your questions, assistance visits and a range of phone services to help you meet your GST obligations. You can also write to us for information.

To find out more, refer to How we can help (/Business/GST/How-we-can-help).

Record keeping

You can keep your accounting records in either paper or electronic format. Regardless of the format you choose, you must keep your record for five years.

When dealing in property transactions, it is recommended you keep all relevant documentation to support your reporting obligations, such as:

- contracts of sale
- records of any calculations you made (such as those used under the margin scheme)
- any other documentation that supports the way you have applied the law.

Any calculations you make must give a fair and reasonable result.

Tax invoices

When you purchase property and you intend to claim GST credits for your purchase, you must make sure you obtain a tax invoice for the sale. You cannot claim GST credits without supporting documentation. A tax invoice can only be provided to you if the sale is taxable and the seller has not used the margin scheme.

Contracts for the sale of the property are not normally valid tax invoices. You will also need to check that the contract price includes GST.

Find out more
When you need a tax invoice (/Business/GST/Claiming-GST-credits/When-you-can-claim-a-GST-credit/When-you-need-a-tax-invoice)

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

Australian Government
Australian Taxation Office

Print entire document

GST and the margin scheme

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/ (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/)

Last modified: 30 May 2014

QC 18646

GST and the margin scheme

This guide will help you:

- decide whether to use the margin scheme
- calculate GST correctly if you use it.

This document takes into account the legislative changes to the margin scheme that came into effect on 9 December 2008.
This measure intends to ensure that the interaction between the margin scheme provisions and the going concern, farmland and associate provisions does not allow property sales to be structured in a way that results in GST not applying to the value added to property once it enters the GST system.

Find out more
Definitions (/Business/GST/How-GST-works/Definitions)

About the margin scheme

The margin scheme is a way of working out the GST you must pay when you sell property as part of your business. You can only apply the margin scheme if the sale of the property is taxable.

If you purchase property where the margin scheme was applied to the sale, you cannot claim a GST credit for the GST included in the purchase price of the property.

The margin scheme cannot be used on your property sales if you originally purchased the property as fully taxable and the margin scheme was not used. In this situation you may be able to claim the GST included in the purchase price if the property is going to be used in your business.

Using the margin scheme

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=2 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=2)

Last modified: 30 May 2014

QC 18646

The amount of GST you must normally pay on a property sale is equal to one-eleventh of the total sale price.

When you use the margin scheme, the amount of GST you must pay on a property sale is equal to one-eleventh of the margin.

Your margin is generally the difference between the sale price and one of the following:

- the amount you paid for the property
- the value of the property provided in an approved valuation of the property as at 1 July 2000 (if certain conditions are satisfied).

Your margin is not:

- the profit margin; unlike an accounting profit margin, the margin on the sale does not take into account costs you incurred to develop the new property or subdivide the land
- the selling price minus a valuation of the property for a property purchased after 1 July 2000
- worked out the same way as a capital gain, it is possible that you still pay GST under the margin scheme when you have no capital gain for income tax purposes.

Using the margin scheme when you sell property

If you sell property as part of your business and you are registered for GST, you may be able to use the margin scheme to work out how much GST you must pay.

Whether you can use the margin scheme depends on how and when you first purchased your property. For GST purposes the date when settlement occurs will be the date that you have purchased the property.

You can use the margin scheme if you purchased the property before 1 July 2000 (the start of GST), or if it is purchased after 1 July 2000 from someone that:

- was not registered or required to be registered for GST
- who sold you existing residential premises
- who sold the property to you as part of a GST-free going concern
- who sold you the property using the margin scheme.

You cannot use the margin scheme if when you first purchased the property the sale to you was fully taxable and the margin scheme was not used. In this case the amount of GST included in the price you paid is one-eleventh of the full purchase price.



Certain requirements have to be met for you to use the margin scheme. These requirements vary depending on when you bought the property and when you are selling the property.

In terms of the purchase you made, requirements vary depending on whether you purchased your property:

- before 1 July 2000
- on or after 1 July 2000
- on or after 9 December 2008.

In terms of the sale you made or make, the requirements vary depending on whether you make the sale:

- on or after 17 March 2005
- on or after 29 June 2005.



Find out more
Working out the margin and GST payable

Methods you can use to work out the margin

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=3 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=3)

Last modified: 30 May 2014

QC 18646

There are two methods you can use to work out the margin:

- the consideration method
- the valuation method.

What method you can use will depend on when you originally purchased the property you are selling.

When you cannot use the margin scheme

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=4 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=4)

Last modified: 30 May 2014

QC 18646

If you were charged the full rate of GST when you originally purchased the property, the margin scheme can't be used. Generally, if you were charged the full rate of GST when you purchased a property as part of your business you would have claimed the GST back.



There are special rules that may allow you to use the margin scheme where you amalgamate the fully taxable purchased property with other property purchased where the margin scheme can be used.

The consideration method

You can use the consideration method regardless of when you purchased the property you are selling.

Using the consideration method, the margin is the difference between the property's selling price and the original purchase price. That is, the sale price less the purchase price equals the 'margin'.



The sale price must include any settlement adjustments contained within the sales contract.

When working out the margin using the consideration method, do not include any of the following as part of the purchase price:

- costs for developing the property

legal fees

any options you purchased

stamp duty

any other related purchase expenses.



Find out more

GSTD 2006/3 (http://law.ato.gov.au/atolaw/view.htm?DocID=GSD/GSTD20063/NAT/ATO/00001&PiT=99991231235958)
Goods and services tax: are settlement adjustments taken into account to determine the consideration for the supply or acquisition of real property?

Example 1: using the consideration method for property purchased on or after 1 July 2000.

Bob is a GST registered builder. On 1 December 2002, Bob purchased a block of land for $150,000 from a vendor who was not registered for GST.

Bob paid $550 in conveyancing fees and $7,000 in stamp duty on the purchase of the land.

Bob later constructed a house on the land and sold the house and land for $315,000. Bob chose to use the margin scheme to work out the GST on the sale.

The margin for the sale of the house and land package is $165,000, the sale price of the property minus the purchase price of the property ($315,000 - $150,000).

The GST Bob must pay on the margin for the sale is $15,000 ($165,000 x 1/11th).

Bob has a tax invoice for the conveyancing fees and can claim a GST credit of $50 ($550 x 1/11th) in the tax period in which the purchase applies to.

Bob also holds tax invoices for $110,000 of business purchases he made when building the house. Bob is able to claim $10,000 in GST credits for these purchases.

Bob is not entitled to any GST credits on the stamp duty as GST is not included in the cost.

Example 2: using the consideration method for property purchased before 1 July 2000.

James is registered for GST and reports GST quarterly.

On 15 June 2000 James purchases vacant land for $110,000 as part of his business. In May 2008, James contracts to sell the land for $220,000 and specifies in the contract that he will apply the margin scheme.

The margin for the sale of the land is $110,000, the sale price of the property minus the purchase price of the property ($220,000 - $110,000). The GST James must pay on the margin for the sale is $10,000 ($110,000 x 1/11th).

Because James chose to apply the margin scheme, the purchaser cannot claim a GST credit.

The valuation method

You can generally only use the valuation method to work out the margin if you originally purchased your property before 1 July 2000. Using the valuation method, the margin is the difference between the selling price and the value of the property (usually as at 1 July 2000). That is, the sale price less the value of the property (usually as at 1 July 2000) equals the 'margin'.

You can only use the valuation method if you hold an approved valuation, see Section 05, Valuations. See also, Record keeping

---

Example 3: using the valuation method.

Bayview Limited is a GST registered property developer and reports GST on a monthly basis.

Bayview bought land in 1970 for $30,000 and entered into a sales contract to sell the land in September 2008 for $1.44 million. The contract stated that the margin scheme would be used to work out the GST on the sale. Settlement occurred on 2 December 2008.

Bayview obtained a professional valuation of the land (as at 1 July 2000) of $1 million. in November 2008 (Bayview's tax period ends on 31 December).

Using the valuation method, Bayview calculates the margin as the selling price minus the value of the land provided in the professional valuation that they received, that is ($1,440,000 - $1,000,000) which equals $440,000.

When lodging their December 2008 activity statement, Bayview reports and pays the $40,000 GST on the sale of the land.

Because Bayview chose to apply the margin scheme, the purchaser cannot claim a GST credit for the GST included in the price they paid for the property.

Changing methods

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=5 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=5)

Last modified: 30 May 2014

QC 18646

You can change how you calculate the margin, using either the consideration or valuation method, up until the due date for lodgment of your activity statement for the relevant tax period if you apply all of the following:

- purchased your property before 1 July 2000
- choose to apply the margin scheme at or before the time you sell the property.

If you have an approved valuation by your activity statement due date, for the period the GST on the sale applies, and you work out the margin based on that valuation, you cannot later change to:

another valuation

a different method of valuation

an amount based on your purchase price (the consideration method).

If you have more than one approved valuation by the activity statement due date, you must choose one of these by the activity statement due date. After that time you cannot change.

Working out the margin and GST payable

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=6 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=6)

Last modified: 30 May 2014

QC 18646

Certain requirements have to be met for you to use the margin scheme. These requirements vary depending on when you bought the property and when you are selling the property.



In terms of the purchase you made, requirements vary depending on whether you purchased your property:

before 1 July 2000

on or after 1 July 2000

on or after 9 December 2008.

In terms of the sale you made or make, the requirements vary depending on whether you make the sale:

on or after 17 March 2005

on or after 29 June 2005.

Use the sections in this guide to find the information relevant to your particular situation.

Selling property you purchased before 1 July 2000

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=7 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=7)

Last modified: 30 May 2014

QC 18646

If you are selling property under the margin scheme and you originally purchased, or held an interest in it, before 1 July 2000, you can choose to pay the GST on the difference (that is, the margin) between either the sale price and the:

price you paid when you purchased the property – the consideration method

value of the property at a relevant valuation date, usually 1 July 2000 – the valuation method.

Example 4:

Tom is registered for GST and is carrying on a business of leasing commercial property. Tom bought one of his commercial properties in 1989 for $50,000. He sells this commercial property in 2003 for $105,000 using the margin scheme. If Tom applies the consideration method to calculate his GST liability, the margin is $55,000 ($105,000 - $50,000). Tom's GST liability is 1/11th of this amount, which is $5,000.

However, if Tom decides to use the valuation method and obtains a market valuation (approved) of the property as at 1 July 2000 and the property is valued as $61,000, then the margin is $44,000 ($105,000 - $61,000). Tom's GST liability would then be 1/11th of this amount, which is $4,000.



Work it out

For ways of working out the valuation at 1 July 2000, refer to GSTR 2006/7 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20067/NAT/ATO/00001) *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000.*

Selling property you purchased on or after 1 July 2000

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=8 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=8)

Last modified: 30 May 2014

QC 18646

If you are selling property under the margin scheme and you originally purchased, or held an interest in it, on or after 1 July 2000, you:

must use the consideration method, that is, you must pay the GST on the difference (margin) between the sale price and the price you paid when you purchased the property

cannot use the valuation method.

Example 5:

John is registered for GST and is carrying on an enterprise of property development. He buys vacant land from Jenny, who is not registered for GST for $100,000 on 25 September 2007. John improves the property with roads and other services and sells it to George for $210,000 on 2 October 2008. Then, the margin is $210,000 - $100,000 = $110,000. John must pay 1/11th of the margin, that is, $10,000, as GST.

Generally you will use either of the above two ways to work out the GST payable when the margin scheme is used when selling property.

Selling property on or after 17 March 2005

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=9 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=9)

Last modified: 30 May 2014

QC 18646

Eligibility to use the margin scheme changed for sales of property made from 17 March 2005 onwards. This means you cannot use the margin scheme if you:

purchased the property as fully taxable and the margin scheme was not used

inherited the property from a person who could not use the margin scheme

obtained the property from a member of the same GST group who could not use the margin scheme

obtained the property as a participant in a GST joint venture, from the joint venture operator who could not use the margin scheme.

Selling property on or after 29 June 2005

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=10 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=10)

Last modified: 30 May 2014

QC 18646

Sales of property using the margin scheme that are made from 29 June 2005 onwards require a written agreement between the seller and purchaser to use the margin scheme.

As a seller you must agree with the purchaser in writing to sell the property under the margin scheme, before the settlement date. Prior to the 29 June 2005 there was no requirement to agree in writing with the purchaser to use the margin scheme, but records must be kept that indicate you made a choice to sell the property using the margin scheme.

> **The change in eligibility rules that apply from 17 March 2005 onwards, continue to apply to sales from 29 June 2005 onwards, see Sales of property you make on or after 17 March 2005.**

Selling property you purchased on or after 9 December 2008

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=11 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=11)

Last modified: 30 May 2014

QC 18646

If you are selling property under the margin scheme that you originally purchased, or entered into a contract to purchase, after 9 December 2008, in some circumstances there may be some changes to your eligibility to use the margin scheme and the way

your margin is calculated.

You cannot use the margin scheme if the entity you purchased the property from was not eligible to use the margin scheme and the property was purchased:

- as part of a GST-free going concern
- as GST-free farm land
- from an associate for no consideration (no payment).

If the entity you purchased the property from was eligible to use the margin scheme and you purchased the property through one of the above, you must include the value you and the previous seller added to the property when you calculate the margin.

Property you purchased as a mixed supply

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=12 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=12)

Last modified: 30 May 2014

QC 18646

If the property you are selling is a mixed supply, that is, partly input-taxed or GST-free and partly taxable, you can apply the margin scheme to the taxable part of the sale.

Working out the purchase price for subdivided land

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=13 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=13)

Last modified: 30 May 2014

QC 18646

You may use any reasonable method of apportionment to work out the proportion of the purchase price for a subdivided allotment or stratum title unit.

If you purchase land and subdivide it, or build strata title units on it and later apply the margin scheme, the margin is the selling price less the corresponding portion of the price you paid for the property.

Example 7: working out the margin on subdivided land or stratum title units

Josephine is a GST registered property developer. She purchases a 2,000 square metre block of land for $240,000 from a private individual that was not required to register for GST. The block is of equal value per square metre. She subdivides the block into two allotments of 600 square metres each, and one allotment of 800 square metres.

Josephine decides to use an area basis to work out the purchase price of the subdivided allotments. The purchase price for each of the 600 square metre allotments was $72,000 (600/2,000 x $240,000), and the purchase price of the 800 square metre allotment is $96,000 (800/2,000 x $240,000).

If Josephine sells the 800 square metre allotment for $140,000, she must pay $4,000 GST on the sale of this allotment, that is, the selling price minus the purchase price of the property divided by eleven, that is ($140,000 - $96,000) x 1/11th.

If the purchase price is the same as, or more than the selling price of the property, you do not have a margin so you do not have to pay GST on the sale.

Find out more

GSTR 2006/8 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20068/NAT/ATO/00001) *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July*

2000 - refer to paragraphs 58-68

Valuations

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=14 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=14)

Last modified: 30 May 2014

QC 18646

If you are selling property under the margin scheme, you may need to have your property valued to work out the margin, using an approved valuation method. An approved valuation is generally only required for property that you have owned prior to 1 July 2000.

Valuation methods you can use

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=15 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=15)

Last modified: 30 May 2014

QC 18646

There are three valuation methods available. As a general rule, if you have chosen to apply a valuation method to work out the margin, you must have undertaken a valuation by the due date for lodging your activity statement for the tax period the sale applies to.

From 1 December 2005, valuation methods include:

the market value, in writing by a professional valuer

the purchase price in a contract entered into before 1 July 2000 by parties dealing at arm's length

the most recent value set by a state or territory government department for rating or land tax purposes, made before the valuation date.

For properties that are partly completed premises at the valuation date, you must use the value in writing, obtained from a professional valuer.

A professional valuer is any of the following:

a person registered or licensed to carry out real property valuations under a Commonwealth, state or territory law

a person who runs a business as a valuer in a state or territory where that person is not required to be licensed or registered to do so

a person who is

- a member of the Australian Property Institute, and accredited as a Certified Practicing Valuer
- a member of the Royal Institute of Chartered Surveyors, and accredited as a Chartered Valuation Surveyor

a member of the Australian Valuers Institute, and accredited as a Certified Practicing Valuer.

Find out more

MSV 2005/3 (http://law.ato.gov.au/atolaw/view.htm?docid=GLD/MSV20053/00001) *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination*

MSV 2009/1 (http://law.ato.gov.au/atolaw/view.htm?docid=GLD/MSV20091/00001) *A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination*

If you do not have a valuation when your activity statement is due

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=16 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=16)

Last modified: 30 May 2014

QC 18646

If you have chosen to apply a valuation method to work out the margin, you must have had a valuation undertaken by the due date for lodging your activity statement for the tax period the sale applies to.

There may be exceptional circumstances that prevent you from obtaining a valuation by your activity statement due date. If you have made an oversight we may allow you a short period to obtain an approved valuation.

Find out more
PS LA 2005/16 (http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~PS~basic~exact:::AND~LA~basic~exact:::AND~2005%2F16~basic~exact&target=OA&style=java&sdocid=PSR/PS20 0516/NAT/ATO/00001&recStart=1&PiT=99991231235958&Archived=false &recnum=1&tot=6&pn=ALL:::ALL) *Further period to make an approved valuation for the purposes of working out the margin for the supply under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999.*

If using the valuation method, you can choose to work out the margin based on an approved valuation at any time up until your activity statement lodgment due date.

If your valuation is not valid

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-

the-margin-scheme/?page=17 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=17)

Last modified: 30 May 2014

QC 18646

If you find that the valuation method you used is not one listed in this guide, you can:

- fix the actual valuation you used so that it is valid, that is, replace it with an approved valuation
- use another approved valuation that was done by your activity statement due date
- work out the margin and GST payable on the sale of completed property using a value for rating or tax purposes made before the valuation date
- use the consideration method.

A value for rating or tax purposes is the value of the property that is worked out by:

- a state or territory government department
- a professional valuer on behalf of a state or territory government department for rating purposes.

> **If you find you have used a valuation method that is not valid (that is, not an approved valuation), we may allow you to work out the margin on the sale again. If you correct a valuation or use a different valuation, and you must pay more GST, we may apply administrative penalties and the general interest charge. However, if you have made a genuine mistake, we will not apply administrative penalties.**

Deciding when to use the margin scheme and the written agreement

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-

the-margin-scheme/?page=18 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=18)

Last modified: 30 May 2014

QC 18646

Both the buyer and seller must agree in writing to apply the margin scheme if the contract for sale was made on or after 29 June 2005. The agreement to use the margin scheme must be reached by the time the property is supplied, usually at settlement.

No written agreement between the seller and purchaser is needed if the sale was made either:

- before 29 June 2005
- on or after 29 June 2005 but you entered into a contract or granted rights or options over the property you are selling before 29 June 2005.

There is no set format for a written agreement, but there must be a written statement which makes it clear that you and the purchaser have agreed to use the margin scheme on the sale, and clearly identifies the property being sold. This statement may form part of the sale contract, or it may be a separate document.

If the purchaser agrees to allow the seller of the property the absolute discretion to apply the margin scheme, the seller must confirm in writing that the margin scheme has been applied on or before the settlement date.

Example 8: evidence of the seller's choice to apply the margin scheme

John lodges a subdivisional plan for Seaview Estate comprising of 200 lots that is approved by the local authority. John writes to his solicitor instructing that lots 1 to 50 in Seaview Estate will be sold using the margin scheme. This is so the solicitor can advise the buyers of lots 1 to 50 that the margin scheme will apply and so it can be reflected in the sale contracts. The purchasers of lots 1 to 50 all agree in writing to allow the sale to be made under the margin scheme.

John would need to provide some written evidence that the margin scheme applied to lots 1 to 50 before completion of the sale if John's contract contained a clause such as:

> The vendor and purchaser agree and acknowledge that the vendor shall be entitled absolute discretion to use the margin scheme in determining the GST that may be applicable to this transaction. This clause shall be deemed as being written consent to the application of the margin scheme.

The above clause is unlikely to meet the requirements of a written agreement as the purchaser is not aware whether the vendor has in fact applied the margin scheme to the sale.

If you did not have a written agreement by the time the sale was made you may ask for permission to extend the time to have the agreement in writing. To do this, write to us at:

Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

You must show that:

- you meet all the requirements to apply the margin scheme, other than the requirement for the supplier and purchaser to have made the agreement in writing on or before the marking of the supply, and
- you are not making the agreement to avoid your GST obligations.

We will write to you and tell you whether or not you may use the margin scheme on your sale.

Find out more
PS LA 2005/15 (http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND~PS~basic~exact:::AND~LA~basic~exact:::AND~2005%2F15~basic~exact&target=OA&style=java&sdocid=PSR/PS200515/NAT/ATO/00001&recStart=1&PiT=99991231235958&Archived=false

&recnum=1&tot=5&pn=ALL:::ALL) *The Commissioner's discretion to extend the time in which the agreement in writing must be made to apply the margin scheme under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999*.

This practice statement applies to sales of property made under contracts entered into on or after 29 June 2005.

Completing your activity statement

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=19 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=19)

Last modified: 30 May 2014

QC 18646

You may use either the calculation worksheet method or the accounts method to complete the relevant boxes on your activity statement for the reporting period.

The amounts you report on your activity statement will depend on the accounting basis you have chosen, or are required to use. You can account on a cash basis or a non-cash basis.

Find out more

GST – completing your activity statement (/Business/GST/In-detail/Managing-GST-in-your-business/Reporting,-paying-and-activity-statements/GST---completing-your-activity-statement/) – see chapter 5

Choosing an accounting method (/Business/GST/Accounting-for-GST-in-your-business/Choosing-an-accounting-method)

Account for GST when using the margin scheme

Sales

If you sell property and have chosen to use the margin scheme, you only report the amount of the 'margin' on your sale at **G1** (total sales). Do not report the full amount of payment you receive.

If the margin is nil (or a negative amount), do not report any amount at **G1** (total sales).

If you are using the accounts method, report the amount of GST on your margin at **1A** (GST on sales). If you are using the calculation worksheet method, use the worksheet to calculate the amount of GST to report at **1A** (GST on sales).

Purchases

If you buy property and the GST included in the price you paid was worked out using the margin scheme, you are not entitled to a GST credit for the purchase. Do not report the amount of your payment for the purchase at **G10** (capital purchases) or **G11** (non-capital purchases).

Do not report any GST credit for the purchase at **1B** (GST on purchases).

Record keeping

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=20 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=20)

Last modified: 30 May 2014

QC 18646

In addition to your normal GST record keeping obligations we recommend you keep:

- accounting records for the transaction
- evidence of the original purchase price of the property
- records showing how you have applied the margin scheme and identifying the particular property that you have sold using the margin scheme

records showing your agreement with the purchaser to use the margin scheme

if you used the valuation method, the valuations or other documents showing how you arrived at the value of the property.

Examples of these records include:

sale and purchase contracts and settlement statements

details of how you worked out the margin

your agreement in writing to use the margin scheme, see the clause included in Deciding when to use the margin scheme

the approved valuation.

You must keep all of these records that relate to your sale for five years after the sale.

Records for subdivided land

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=21 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=21)

Last modified: 30 May 2014

QC 18646

If you are subdividing land or building stratum title units on the land, you must keep records showing how you worked out the margin for each subdivided allotment or each stratum title unit.

For example you should keep records on how you apportioned:

a valuation of land you held at 1 July 2000 which has now been subdivided or developed into stratum units, or

the purchase price of land acquired after 1 July 2000 which has been subdivided

or developed into stratum units.

A valuation or the purchase price can be apportioned by using any fair and reasonable basis.

Issuing a tax invoice

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=22 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=22)

Last modified: 30 May 2014

QC 18646

You do not need to issue a tax invoice to the purchaser for sales made solely under the margin scheme. This is because the purchaser cannot claim a GST credit for a sale made under the margin scheme. You may however, issue a receipt for the price paid.

Record keeping for sales and contracts made before 29 June 2005

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=23 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=23)

Last modified: 30 May 2014

QC 18646

For these sales, sellers must have kept records that evidence their choice to use the margin scheme and when that choice was made.

The record of your choice to apply the margin scheme on sales before 29 June 2005 would often have been contained in the contract of sale. Other forms of evidence may include:

- correspondence
- a company or trust minute
- a file note.

The records must have identified the property by:

- a project lot number
- certain lots on a particular estate
- land contained in a specified contract.

We may also accept evidence of your choice to apply the margin scheme held by other parties, such as your professional advisers, valuers or financiers.

Sales and contracts of property you made before 29 June 2005

- http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=24 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=24)
- Last modified: 30 May 2014
- QC 18646

If you sold your property under the margin scheme before 29 June 2005, and used the valuation method to work out the margin, different valuation methods may apply. The different valuation methods are contained in the following Determinations:

- Margin Scheme Valuation Determination MSV 2000/1
- Margin Scheme Valuation Determination MSV 2000/2
- Margin Scheme Valuation Determination MSV 2005/1

Margin Scheme Valuation Determination MSV 2005/2

Deciding to use the margin scheme prior to 29 June 2005

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=25 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=25)

Last modified: 30 May 2014

QC 18646

Although you must have chosen to apply the margin scheme by the time the sale was made, you did not need a written agreement between the seller and purchaser if the sale was made either:

before 29 June 2005

on or after 29 June 2005 but you entered into a contract or granted rights or options over the property before 29 June 2005.

For these transactions the seller chose whether to apply the margin scheme. The seller must have chosen to apply the margin scheme on or before selling the property and could not choose to apply it after the sale. For example, if you sold property under a standard land contract then you must have chosen to apply the margin scheme at or before the settlement date.

Requests for more time

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=26 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=26)

Last modified: 30 May 2014

QC 18646

If you requested an extension of time to work out the GST payable on the sale of property as if the margin scheme applies, then you should have kept the following:

- any written request made to us for more time to choose the margin scheme
- our response.

If you did not apply the margin scheme by the time the sale was made, you may ask to account for GST on the sale as if the margin scheme applied. To do this, write to us at:

Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

You must show that:

- you did not choose to apply the margin scheme on or before the date you sold the real property because of a mistake
- you satisfy all other requirements under the margin scheme
- the purchaser cannot claim a GST credit or a decreasing adjustment for the purchase
- you and the purchaser did not agree on a price that included GST
- you are not making the agreement to avoid paying GST.

We will write to you and tell you whether or not you may use the margin scheme on your sale.



Find out more
PS LA 2005/2 (GA) (http://law.ato.gov.au/atolaw/view.htm?DocID=PSR/GA20052/NAT/ATO/00001) *GST and time of choice to apply the margin scheme*. This practice statement only applies to supplies that were made before 29 June 2005.

More information

http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=27 (http://www.ato.gov.au/Business/Building-and-construction/In-detail/GST/GST-and-the-margin-scheme/?page=27)

Last modified: 30 May 2014

QC 18646



Find out more

GST and property (/Business/Building-and-construction/In-detail/GST/GST-and-property/)

GST and the margin scheme - completing your activity statement (/Business/GST/In-detail/Your-industry/Property/GST-and-the-margin-scheme/)

Common GST errors – property (/General/Property/In-detail/GST/Common-GST-errors-and-property/)

GSTR 2006/7 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20067/NAT/ATO/00001) *Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000*

GSTR 2006/8 (http://law.ato.gov.au/atolaw/view.htm?DocID=GST/GSTR20068/NAT/ATO/00001) *Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000*

GSTR 2000/21 (http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR200021/NAT/ATO/00001) *Goods and services tax: the margin scheme for supplies of real property held prior to 1 July 2000*

PS LA 2005/2 (http://law.ato.gov.au/atolaw/view.htm?DocID=PSR/PS20052/NAT/ATO/00001&PiT=99991231235958) *(GA) GST and time of choice to apply the margin scheme*

PS LA 2005/15 (http://law.ato.gov.au/atolaw/view.htm?docid=PSR/PS200515/NAT/ATO/00001) *The Commissioner's discretion to extend the time in which the agreement in writing must be*

made to apply the margin scheme under Division 75 of the A New Tax System (Goods and Services Tax) Act 1999

How we can help (/Business/GST/How-we-can-help)

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).

PLATINUM
ACCELERATOR

MODULE
9

PURCHASE & SALES STRATEGY

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

PLATINUM
ACCELERATOR

Introduction

The process of buying and selling a property is often taken for granted. It is not until you are actually going through the process that you realise just how many aspects there are to consider and in fact how many decisions need to be made. Certainly buying and selling can be a stressful situation, as a lot has to happen in a relatively short period of time. Therefore, the more prepared you are in advance, the more comfortable and confident you will be in the process. In this module we work through the various components to consider when both buying and selling – from dealing with agents, making and receiving offers, the contract process, right through to settlement.

Negotiation is another huge component in the process of buying and selling property, and in fact in dealing with people in general. Your capacity to negotiate and to influence other people's decisions, opinions, and actions can be very powerful and should not be underestimated. For those people that may not consider themselves to be natural negotiators… you are in luck, because these are skills that can be learned. There are principles to negotiation and tips and tricks and these will be detailed in the Negotiation section of this module.

A different method of buying and selling property is through an Option Agreement. Options are an invaluable tool in your investment toolbox and a technique that will be

covered in detail at the end of this module. The different types of options will be outlined, the documentation involved will be gone through, the negotiation process involved in this type of agreement, and again the tips and tricks to give you confidence in using this tool in your investing journey.

PLATINUM
ACCELERATOR

Buying

When buying a property there are many aspects to consider. There is also often a lot at stake – typically being in the hundreds of thousands of dollars. For this reason, it is essential that you are familiar with the process, the questions to ask, the options to consider, and the decisions to be made, as detailed below.

Buying Methods

There are a number of methods that can be used when buying a property, depending on whether the property is on the market or off the market, as outlined below:

1) On Market Property

Property that is listed for sale is on the market - it is either listed for sale by a licensed real estate agent, or is being sold directly by the owners through a private sale situation.

- **Real Estate Agent Listing** – When a property is listed by an agent, the agent is being paid by the seller and so is working for the seller. Your job is to build relationships with local agents so that they come to understand that you are a serious buyer and that you are actively in the market and ready to buy. This includes calling them on a regular basis to show that you are genuine. Note in

your diary to contact them every week or two, so that if a new listing comes up, your name is the first that comes to their mind, and they call you first! This is all about building rapport. If they contact you about a property but it's not the right property for you – give them the courtesy of providing them feedback, and tell them why it wasn't right. Maybe it wasn't in the right area, not the right configuration, the right land size, the right zoning – whatever it is, let them know so that they are better informed about what it is that you actually want. If the numbers don't stack up and the asking price is too high for the strategy you are proposing, this is also great feedback to provide the agent, especially if it's a property being advertised with development potential. In fact this can be a great negotiation technique, because by explaining the numbers to the agent and even the owner if you can get access to them, you are first showing them that you are serious, but you are also educating the agent and owner why it may not be selling, and this can work in your favour. Certainly if the property has been on the market a long time, this can be a great strategy and provide you with the negotiating ammunition you need.

- **Non-local Real Estate Agent Listing** – Properties that are listed for sale by an agent that is not local to the area where the property is located are classed as non-local agent properties. The reason that this is relevant is because if they are not local to the area, they may not truly know the prices in the area, or the potential of the area. They may not know that the property is in fact a zoning or land size that could be developed, or they may not know that the market is actually moving quickly, or that major redevelopment is planned nearby, and hence they may price the property below its actual value. Certainly when you see a non-local agent listing, it's definitely worth further investigation for these reasons. Also, the agent may not be motivated to travel the distance to do open houses, or to do an inspection, and so sometimes they price the property for a quick sale. Certainly the size of the town influences whether an agent is local or not. For example, in a metro location an agent may be classed as non-local if they are a few suburbs away, whereas when it is a smaller location, the agent may need to be from a different town to be classed as a non-local. At the end of the day it's about you being an area expert and understanding the market that you are focussed on, so that you can identify an opportunity when it presents itself.

- **Buyer's Agent –** A buyer's agent is a real estate agent that is working for you, the buyer, to find a property that meets your specific criteria. You engage them directly and pay them for their services, generally as a percentage on settlement

– but often there is also an upfront fee portion too. For those people with less time, less experience, or who are not local to the area, a buyer's agent can be a great alternative, just as long as you have factored in their cost into the deal (and your feasibility!). A buyer's agent will typically negotiate on your behalf, and that can sometimes be an added benefit depending on your level of experience.

- **Marketers –** Marketers are a form of real estate agent, but rather than having a shop front like a typical real estate agent, they are generally more virtual and they are typically getting access to property at a discounted rate, adding a substantial commission, and then marketing it for sale on behalf of the developer. They often sell off-the-plan property that has not yet been developed, or house-and-land packages where the land is not yet through titles, but also they market the finished end product, depending on at what stage the developer wants it sold. Generally it's brand new property, rather than second-hand, that they sell. Marketers may be individual real estate agents or larger businesses, and they generally sell the property direct to the public. These are the companies that cold call people to sell them a property over the phone. Also, professionals like accountants and financial advisers may source properties for their clients from marketers. They will often provide a full service including finance for the purchase, legals and even property management. Know that you are potentially paying above market price if you are buying from a marketer.

- **Specialist Real Estate Agent –** For specialist real estate there are specialist agents. Commercial property is an example of this, where it may be sold by the local residential real estate agent, or it may be sold by a specialist commercial real estate agent. Even within commercial agents, there are specialists that only sell certain types of commercial property, like tourism property, e.g. caravan parks or motels, and others that only sell child care centres, or those that specialise in selling larger development sites. Often business real estate, where the business and the property are being sold together, are marketed by specialist agents. Rent to buy residential properties can also be marketed by specialist agents that understand that particular industry.

- **Private Owner Listing –** Properties listed for sale directly by the owner are called private sales. There are many designated websites dedicated to the sale of properties by owners, including noagentproperty.com.au; buymyplace.com.au; owner.com.au; to name a few. Other general websites like Gumtree, Trading Post and eBay have privately listed property advertised. The benefit of buying direct from the owner is that you are dealing directly with the decision maker, which in

some instances can make the negotiation easier. In other situations though a private listing can be a challenge, because the owner is emotionally attached to their property and often value it higher than market value.

- **Public Trustee Listings –** The Public Trustee sells properties on behalf of their clients. They are based in each State and generally list properties per region. They conduct auctions and have 'for sale' listed properties and are always worth researching because they are a lesser known source of properties.

2) Off- Market Property

Property that is not listed for sale is classed as off the market, but this does not mean that if approached, the owner may not be willing to consider selling. For this reason, off-market property is where real 'deals' are made because they are not in the public domain and not subject to the competition that can surround properties listed for sale on the open market. For owners that are open to the idea of selling, they may be more negotiable with terms. Because they were not necessarily planning to move straight away, they are often more open to longer settlement periods, and potentially due diligence clauses to give you the time to research the potential of the property. They may also be more negotiable on price because a real estate agent isn't involved and hence, commission is not payable. Obviously these are just general statements and each owner's circumstances are different and that's where your skill as a negotiator comes into play.

There is just one other comment regarding sale price that needs to be made. Do not assume that you are going to buy substantially below market value when negotiating an off-market property. This is because there is a good chance that the first phone call the owner will make once you walk out their door, is to a real estate agent to get a market appraisal on their property. Building trust is important when negotiating an off-market deal, so if you have told them the property was worth substantially less than the real market value – you may jeopardise the negotiation. In saying that, not everyone is driven by price, and so you need to understand the needs of the owner / seller when doing this type of negotiation.

Purchasing a property off-market is a much more active process than for properties on the market, because you or your team need to approach owners directly. This is not an approach that can generally be done from behind the computer, you need to get out and about and start having conversations.

Certainly looking for tell-tale signs of a property in disrepair, or poorly maintained, or with overgrown gardens may be a sign that the property is getting too much for the owner to maintain, or the investor may have lost interest, or may have the tenants from hell, or may be a long distance away and be unaware of its state. These are all potential reasons why people may be open to selling. An old real estate agent's sign fallen over or lying to one side on the property is another tell-tale sign to look out for, and may suggest that the property has been on the market a long time and the agent has lost interest in it. That's a great opportunity to then contact the owner directly.

Below are a number of methods for buying property off-market:

- **Letterbox Drop –** Writing a personal letter to a homeowner and either putting it directly into their letterbox or posting it to them is a method to flush out those owners that are willing to consider selling their property. This can either be done on a very selective basis, where you have already researched the properties and are targeting specific properties, or the alternative method is where you are letterbox dropping to all the houses in a street or in an area that you have identified as being of interest. For example, these may be streets in the right zoning for what you are looking for. This is clearly a much more scattergun approach and may result in properties that don't fit your other criteria. However, a lead is a lead and you just never know where that conversation may take you.

  Certainly the letter that you write should be written in such a way that it grabs the owner's attention and encourages them to contact you to find out more. It is best to be a handwritten letter in an envelope, and it should be on quality paper that is light blue or purple because that gets the owner's attention like an invitation to a party. These little tricks will give you a greater chance that they will open and read the letter.

- **Door Knocking** – When you approach an owner directly and start up a conversation, this is referred to as door knocking. Remember that it may also be a conversation at the letterbox while you are walking past, or you may see the owner in the garden and stop for a chat. The key to this approach is confidence, and the way to create confidence, if you are not naturally so, is to spend some time preparing. Prepare for how you might start and lead into the conversation, and how you might answer the likely questions they will have for you. Again, building rapport is key.

- **Referrals** – Talking to your family, friends, colleagues and your team about the type of property you are interested in, can yield surprising results, and do not

underestimate tradespeople – your plumber, electrician, painter and even the local hairdresser. They themselves have a wide network of clients and contacts and might just know that Mrs. Smith is considering selling but just hasn't yet put her property on the market. Or Mr. Jones has been talking about the area becoming too busy for him. These are all potential opportunities to follow-up. It may turn out that Mrs. Smith's property isn't quite right for your needs, but she might know that Mary down the street has a larger block and may be interested in selling some time soon. It's all about having conversations, which means getting out from behind the computer!

- **Real Estate / Buyer's Agent –** Using real estate agents and having them work specifically for you is another method. Agents have a network of owners that they know that may be interested in selling. For example, maybe the owners previously had their property on the market but it didn't sell, so they took it off the market. The agent knows that they may still be a willing seller, and could approach them on your behalf. Alternatively, the agent can door knock properties that specifically meet your criteria, as can a buyer's agent, again flushing out a potential sale. Agents with in-house property management services could also contact their database of investors to identify if anyone is willing to sell their investment property. Buying off-market is only limited by your imagination!

Sourcing Property Deals

Sourcing leads to properties of potential interest, is likely to involve a combination of the different strategies outlined above for on-market and off-market properties.

These include:

- Have alerts set on property websites to alert you when a new listing comes online, e.g. realestate.com, Domain, Investar etc. Scheduling these alerts to inform you as soon as the listing is made is very important to ensure you don't miss anything. Also, checking these on a regular basis is important, because a new listing may come through during the night and if you pick up on it quickly enough, and you have done your review of the deal, you can be the first on the phone in the morning and have inspected the property and put in an offer in before others are even getting to look at the email alert. This is how proactive you need to be in order to get the good deals – because they won't sit around for long.

- For those websites where alerts can't be set-up, schedule in your diary to manually check them on a regular basis.
- Create 'mates' in the market with local real estate agents that will bring you deals before they list them to the open market. Putting in the effort to cultivate these relationships is essential. Calling the agent every week to just touch base can be a great way to do this. Don't hesitate to take them out for coffee either, in order to explain to them exactly what it is you are looking for. Remember – relationships, relationships, relationships! Some agents are also very active on social media and will put information on new property on Facebook or twitter etc. before it's actually listed on the agency website. Follow these agents on social media.
- Engage a buyer's agent to source property specifically for you, both on and off the market, or work with a listing agent that will unearth deals just for you.
- Undertake door knocking and letterbox dropping activities yourself… or pay someone to do it for you.
- Leverage off your referral network and spread the word amongst them, including friends, family, tradespeople etc. Incentivise the process for them and make it known that you are prepared to pay a referral fee, say $2,000, for a lead that someone provides you that results in you purchasing the property.
- Network with likeminded people and make it known that you will pay a spotter's fee for a deal that someone else may identify and pass on to you. Lots of people come across deals that they are not in a position to act on, for whatever reason, and they may be willing to pass them on to you. Typically, you only pay the fee if you proceed to purchase the property, but again this can be a great way to attract deals your way. The I Love Real Estate Community, and the Success Accelerator Mastermind community are perfect examples of this, as are other property meet-up and property networking groups.
- Cultivate potential joint venture relationships if that is part of your strategy so that the JV partner/s brings you potential deals.

Sourcing deals is really only limited by your imagination and your willingness to get out there and make it happen.

Questions to Ask

Assuming that you have narrowed down your search to a property listed for sale by a real estate agent, there are a series of questions that you should ask the agent. The aim is to get as much information about the property and about the sellers from this and subsequent conversations, because the more information you have, the more able you are to tailor an offer to the seller's needs – assuming you get to the stage of making an offer.

This shouldn't be an interrogation of the agent, but instead you want to build rapport, because the more friendly you can become with the agent the more information you are likely to get from them. Let's face it, a real estate agent is generally a people person and someone who likes to talk, so the more comfortable you can make them feel and the more talkative you can get them to be, the more information you are likely to get. Information leakage, where the agent tells you more than what they really should about a seller and a property, certainly happens, and is something you want to be mindful of and encourage when the opportunity presents. Ask the agent open questions that can facilitate the conversation. The following list is not exhaustive but contains the key questions to ask:

- How long has the property been on the market?
- Was the property listed for sale previously by another agent?
- Why is the owner selling?
- How long has the seller owned the property?
- Is the owner negotiable on price?
- Is the owner negotiable on the terms of the contract?
- Have offers been submitted – what were they and what was the owner's response?
- If the property is tenanted – What rent is being paid, what's the duration of the lease, is it being sold with vacant procession, how long has the tenant lived there, who is the tenant (do they work, pets etc., etc.), who is the property manager, how long has the manager had it, how long has it been a rental property, what is its rental history?
- If the property is being sold with a Development Approval, request a copy of the DA, conditions, and approved plans. Ask for a copy of the owner's feasibility on the deal – because if they have got a DA, they hopefully also did a feasibility! Talk to the agent about the demand for the end product – recognising that the selling agent will be biased and will tell you what you

want to hear, because they want to sell you the property!! All of this research needs to be reviewed during your due diligence on the property - as detailed later in this module.

If you get resistance from the agent in answering these questions, then maybe you need to remind them that the more they can help you to understand the property and owner's position better, the more you can help them by buying the property – it's a win / win situation.

If you are just starting out and you are not comfortable making a phone call to an agent, the best idea is to spend time in advance writing out your questions, and preparing and writing some answers to questions that the agent may ask you. This is because the more prepared you can be, the more confident you will be too. The questions they may ask you are:

- Have you been looking long?
- Are you ready to buy?
- Have you got finance preapproved?
- Have you looked at other property in the area?
- What is your budget?
- Have you done a development project before?
- Do you live locally?
- When can you inspect the property?

If you are still not confident, then do a dummy run calling an agent in a completely different area about a property that you really have no interest in, or intention to follow through with. By talking with an agent that you are unlikely to talk to ever again, at least if you fumble your way through, it won't matter! In fact, make these calls over and over if that's what it takes to get you comfortable in the process.

Remember – it's over the phone… they don't actually know who you are! It's guaranteed that after you have done this, you will feel much more confident in making the call to the real agent about the real property you are interested in. In fact you will probably surprise yourself that it wasn't as hard as what you had expected!

A word of caution when contacting real estate agents is if you are serious about a property, do not send an email enquiry to the agent. You need to understand that real estate agents get so many emails that yours can easily get lost in the pile. Always pick up the phone and call them directly. If their mobile goes to message, leave one and send a text too, then follow up by phoning their office, and if you can't get through to them that way, then ask to talk to another agent in the office about the property. Sometimes you just have to hound them down to get a response – remember the squeaky wheel gets the attention. If there are two agents listed on a property and you don't get a response from the first one you call, then definitely contact the second agent. If you fail to get any joy from the two of them after a day, you could contact the principal of the agency, or a competitor agent in another agency, as they are likely to know the property if they are an expert in their area, and you just never know – they may know the property owner, or be able to conjunct with the current listing agent… but more on that later in the module.

Desktop Review

With any property that you are interested in, there is a lot of research that can be done from your desk top, prior to physically inspecting a property. This research is the start of your due diligence on the property. The more prepared you can be prior to the inspection, the more information you will be able to capture during the inspection. For example, if you were looking at a property for its subdivision potential, the initial research might include:

- View the property on Google Earth and street view to confirm such things as the existing house position on the land, the ease of access to the vacant area of land, any significant features on the land, the slope of the land, the characteristics of adjoining properties, the lot sizes in the surrounding area, evidence of activity in the area, e.g. subdivision, building works, duplex and multi-unit developments, location of the power lines and poles, infrastructure out the front of the property, the nature of the road corridor, proximity to public transport, infrastructure etc.
- Confirm the land size area and dimensions on RP Data or PDS Live, or My Valuer on Investar. Doing a scaled drawing from the aerial photos and the dimension information can allow you to do a rough calculation of the balance land available and dimensions, and hence allow you to consider the opportunities with the site.
- Assess the ownership history of the property on RP Data or PDS Live, or My Valuer on Investar - as this will give you insight into the owner and what their situation may be. Information of relevance includes owner details, e.g.

personal name or company / trust, if the owner's address is the same as the property and hence, if they are an owner occupier, if the property is tenanted, when the property was purchased, what was the purchase price, how long has the property been listed for sale, has only one agent listed it – or have they changed agents over the time, has it been listed for rent, at what price and through what agency. Depending on your State, you may be able to do a search based on the owner's name, which will bring up any other properties they own. This is very insightful because negotiating with someone who owns multiple properties can be different from negotiating with someone who owns only one property – and you are better off knowing this information up front. Also, review all photos of the property, because often older photos are included, and you can get a lot of information from seeing how the property has changed over time.

- Do a radial search on RP Data / PDS Live / My Valuer etc., to identify sold properties in the street, neighbouring streets, and the general area. Knowing what other properties have sold for, based on their house configuration, land size and sale date, is very informative.
- Review comparable sales for the end product that you propose to produce, e.g. renovated existing house on smaller subdivided block, subdivided vacant land, and also newly built house on subdivided land. Obviously this is the best-case scenario if you can compile comparable sales on the exact same end products, but sometimes we need to be less specific.
- Review current rental prices and availability for the existing product (e.g. un-renovated 3 bedroom house), and the product you are proposing to create, e.g. renovated 3 bedroom house on smaller subdivided lot size.
- Research the land zoning of the property using the council website town planning zoning maps, or the equivalent tool in your State. Even if your strategy does not involve zonings, for example a renovation deal – you should still research the site zoning as it may open up alternatives that you had not previously considered. The zoning may also influence the price of the property and this is important to understand and take into account.
- Research council overlays that may impact on the property such as flooding, overland flow, native vegetation, heritage, demolition control, streetscape significance, slope, slip prone, bushfire prone, road hierarchy etc., etc. This information can be invaluable to identify any constraints with the site that may impact on its potential.
- Conduct a 'Dial Before You Dig' search on the property to identify the location of services (power, water, sewer, storm water, phone, gas) – if this is relevant to your strategy.

Property Inspection

A word of caution – it is NOT recommended that you purchase a property without physically inspecting it first. Taking the agent's word for things, or relying on photos is potentially very dangerous. Things can be very different in reality - the neighbours may be the neighbours from hell, or the area may be less than desirable, and this can have a huge impact on the value of the property. Certainly, when there are often hundreds of thousands of dollars on the line in purchasing a property, this is not the time to penny-pinch. In fact if you are not prepared to spend the cost to inspect the property, you should not be in the market to buy. OK with that now said – let's get into the practicalities of inspecting.

As with each of the previous stages, once you are at the point of physically inspecting a property, the more prepared you can be for the inspection the more quality information you will come away with. Whether this information is gathered at the first inspection or over a couple of visits will depend on your urgency to make a decision on the deal and to submit a purchase offer.

The key to inspecting property is not to give too much away to the agent, the owners, and in fact anyone else at the property – keep your poker face on, so to speak. Even if it looks to be fantastic, don't talk the property up to the agent or in front of the owner, just keep your cool and keep a check on your excitement. Also, do not give your game plan away to the agent, e.g. your plan to develop the site for example. Sometimes this can be difficult because on the one hand you want to extract information out of the agent in terms of the market and potential to sell the end product, yet on the other hand you don't want to give the agent any new ideas. This is because they will then use your good ideas and tell the next person inspecting the property. Remember the agent's job is to get it sold, and they are likely to do whatever it takes to make that happen, so certainly keep your cards close to your chest. Obviously if the agent brought the deal to you because they knew you were wanting a deal with development potential, then they will know your general intention. You don't have to expand on this though, or tell them exactly how many units you think you could fit, or how many rooms you are looking to rent out, or how many blocks you think you can subdivide off!

In reality, you need to take the listing agent's feedback on the market, and on the potential of the end product with a grain of salt, because their primary motivation is to sell the property, and they are likely to talk things up. Instead, you should be directing those same questions to the other agents in the area who don't have a

vested interest in the property and who are likely to be much more honest in their response. Certainly once you have secured the property and taken it off the market, you can be very specific with other agents – to the point of telling them the address of your property and asking what that site would sell for if you did strategy xyz.

If you plan to undertake a renovation of the property, having your renovation checklist at the inspection and filling it out room by room is important. Also, noting the general condition of the property inside and out, even if you don't intend to renovate can be useful. You can easily forget things once you leave the property – things like whether it had fans in the bedrooms and if they need replacing, or whether they had built-in robes or not. You would be surprised at how easily you forget these details, particularly when you are looking at several properties at a time.

Taking your development due diligence checklist and your desktop review information to the inspection and looking at the property, the site, and the surroundings objectively is also vital. Things to consider are:

- Actually focussing on the frontage of the property and looking for any street signs, power poles, no parking areas, street trees etc.
- Standing along the boundary to see if there are any potential encroachment issues. Confirming the slope and lay of the land by looking at the land and using tell-tale signs like retaining walls, and the footings of built structures.
- Confirming the location of services and the position of the water meter, Telstra pit, sewer manhole/s, stormwater pipe outlets etc.
- Noting unexpected features onsite like concrete slabs, asbestos materials and the like.

Take your tape measure with you and confirm onsite the dimensions you estimated during the desktop review process, including the site frontage, access driveway width etc. This will not be as exact as a site survey but will be more accurate than the scaling you did from the aerial photo.

Last but not least, take lots of photographs. Again this helps hugely with capturing things that you just may not have noted at the time. You can't ever take too many

photos, and from different perspectives. It is a great resource to come back to if you can't easily get back to the site or into the property.

If the owner or tenant is at the property, try to engage in conversation with them. It's amazing sometimes what extra information you can gain from this. For example, the tenant may tell you the issues with the neighbour, or the maintenance problems with the property, or the owner may divulge information that gives you a better understanding of their intentions and their motivation to sell, and their timeframe to leave. Try to keep quiet and just listen, as there can be pearls of information that can come from these transactions.

Due Diligence

In the sections above, conducting due diligence on the property and on the deal has been touched on. This research is not to be underestimated, as it can absolutely make or break a deal. Some of the due diligence you will complete during your desktop review prior to inspecting, some will be done at the inspection/s, and the balance should be done during the conditional period once you have a contract on the property. What is essential is that your due diligence is complete by the time when you have to go unconditional on the purchase, because beyond that point there is no getting out of the deal easily.

The due diligence that should be conducted includes due diligence on the:

- Property – see the second half of Module 7.
- Area – see the second half of Module 7.
- Strategy/s that you are proposing to undertake – process, timeframe, team involved etc.
- Financing – see the first half of Module 8
- Ownership entity that you propose to use to purchase in - ensuring it is ready to go and signatories are available
- Purchase price – using comparable sales data, talking to agents and even valuers
- End product value, rental, demand – using comparable sales data, talking to agents and valuers
- Feasibility and all costs to do the deal – see Module 6
- Approvals being sold with the property such as development approval, building approval etc.

- Joint Venture parties if relevant – see second half of Module 8.

If the property is being sold at Auction, you would want to have all of this due diligence complete before bidding, given that an auction is typically an unconditional contract at the fall of the hammer.

When purchasing outside of auction, the point that you would make an offer and try to take the property off the market is dependent on the State the property is in. For example, in all States except NSW, the buyer can negotiate to have conditions in the contract, and those conditions first need to be fulfilled before the purchase is unconditional. Hence, the contract is subject to the successful fulfilment of the conditions, e.g. securing finance, acceptable building and pest inspection etc. In these States you may, therefore, choose to make an offer and put a contract on a property sooner rather than later. This will effectively buy yourself some extra time to complete your due diligence, in the confidence that you have the property tied up for a period of time, and no one else can buy it and take the deal from you over that period. Clearly this is advantageous, as it gives you extra time to complete your due diligence.

In NSW, the law is different, and making an offer and even entering a contract does not give you exclusivity to the property. It is only after the contract is 'exchanged' that you have it tied up. However, unlike the other States, at that point it is an unconditional contract. The timing of when you can complete your due diligence is therefore much more restrictive, and generally it needs to be completed before you exchange contracts. The issue with this is that while you are doing your due diligence, someone else may buy the property from beneath you. The good news is that there are potential ways around this, as outlined in more detail in the contract section next, however they are not regularly used in the market by the general public and so are less well understood by sellers and agents. The reason this is relevant at this point is because it does affect the timing of your due diligence with NSW properties.

Making an Offer

Making an offer to purchase a property is always a very exciting time. It can be a little stressful too though, as lots of decisions often need to be made in a short space of time. So once again, there are definitely benefits to being prepared leading into this stage.

1) Solicitor Involvement

A major part of being prepared is to have had discussions with your solicitor well in advance. Items that you should cover include:

- Understanding the contract process in your State
- Your intention with the property and your thoughts regarding conditional clauses
- The need to have clauses pre-drafted by your solicitor so that you have them at your ready to include in your offer, e.g. due diligence, early access, owner to sign applications etc. Do not underestimate the value in having these on hand ahead of schedule!
- The purchasing entity and the exact name that should be reflected in your offer to go on the contract.
- Confirming who can actually sign the contract and whether other instruments like a Power of Attorney needs to be put in place in advance.
- Joint venture arrangement.

It is guaranteed that your solicitor will be over the moon with you contacting them and being proactive about this stage, rather than you calling them at 5pm Friday afternoon – desperate for them to write you clauses to put in an offer on something that they previously knew nothing about!

2) Contract Terms

Constructing your offer and being very clear on what it is that you want in the deal is very important, and you should spend time up front thinking this over and writing it down. The decisions that you need to make in order to construct your offer ultimately become terms of the contract. When you negotiate the offer with the owner it is these terms that you are negotiating on. In the excitement of the negotiation process, and for some people in the stress of the negotiation, there is potential for you to agree to something you may regret in the future. That is why it is invaluable to have already thought about each term, what your position is, what you are prepared to negotiate on, and to what extent.

The contract terms include:

- **Purchase Price** – The total amount of money you are offering to pay for the property.
- **Deposit Amount** – The amount of money that you are prepared to pay to secure the property. There is no set figure, although some sellers still think

that 5% or 10% of the purchase price is standard. As a buyer, however, your aim is to try to put down the least amount of deposit as possible, e.g. $2,000, because it's held in Trust and no longer at your disposal. The more deposit you are prepared to pay though, the more serious your offer is generally perceived to be by the seller.

- **Timing of Deposit Payment** – Typically the deposit is paid when you make the purchase offer. Everything is negotiable, however, and the alternatives are to pay on counter signing the purchase contract, or paying a fraction on signing and the balance on unconditional. It is limited only by your imagination and capacity to negotiate.
- **Contract Period** – The period of time until property settlement occurs and the title is transferred to the new owner. This may be expressed as a certain number of days, e.g. 60 days, or as a specific date in the future. A 30 day contract period is typically the shortest, especially if a bank is involved, because it takes time for the bank to prepare for the ownership transfer. A long contract period is typically one that is 90 days or more. The seller's personal situation will dictate if a shorter or longer contract is more desirable to them. As a general rule though, the shorter the contract period the stronger the offer, especially when a property is on the market, because most people want their money sooner rather than later.
- **Finance Approval –** A standard clause in most contracts is finance approval. This protects the purchaser to ensure that finance is approved for the purchase before it goes unconditional. You need to specify the duration of time you require to get finance approval, e.g. 28 days. It takes time for the bank to engage a valuer and process your application, and so do not make the period too short, otherwise you are likely to have to request an extension. Talk to your mortgage broker in advance to determine the realistic time period for finance approval by your target bank. A trick that sometimes works is to specify 'business days', e.g. 28 business days, and hence, getting yourself more time than when based on calendar days. You also want to ensure that the finance approval is 'to the purchaser's satisfaction'. 'The purchaser's satisfaction' is very important, because the only bank that may agree to finance the purchase may do it based on terms that are not to your approval, e.g. very high interest rate, or principal and interest payments, or shorter than normal loan term. You want the discretion to decline this finance approval if need be, and hence be able to get out of the deal if necessary.
- **Building and Pest Approval –** Depending on your State, building and pest approval may also be a standard clause already written into the contract. If

it is not, you need to consider adding it if there are built structures on the site that you intend to keep. You will need to specify the duration of this clause and hence, the number of days that you have to get these inspections complete, e.g. 7 or 14 days. Once again the 'business days' trick can work here too, and you definitely want to ensure that the inspection results are to your satisfaction. For example, if the building inspection reveals that the roof is in poor condition and needs major repair, and this will be outside of your budget – you want the option to be able to terminate the contract on this basis – or go back and renegotiate.

- **Vacant Possession –** You need to decide if you require the property to be vacant at settlement – if so, you want vacant procession. This is very relevant when the property is currently tenanted, because the tenant is entitled to remain in the property for the duration of their lease and hence, you may not get access to the property post settlement. In this instance, the seller may need to negotiate with the tenant to break their lease. Alternatively, you may be buying the property because it has an existing tenant in place, in which case you do not want vacant procession and you want the tenant to stay on. If this is the case, the existence of a tenant should be noted on the contract, along with details of the rent amount, lease duration, and property manager (if applicable).
- **Personal Chattels –** Fixtures and fittings are all part of the purchase of a property, however, if you want to include in the purchase personal effects – then these need to be specified under the chattels section of the contract, e.g. furniture, pool equipment etc. The description of these items should be very specific to ensure that you don't get left with something similar but not the exact item. A great example of this is with a ride-on lawnmower. You should specify the make, model, and year of the mower, and even include photos if possible, otherwise you may get a rude surprise at settlement and find that the seller has indeed left you with a ride-on mower, but it is much older and lower quality than the one you had seen on inspection. The seller may also choose to include chattels in the contract because it's more convenient for them to leave them there, e.g. piano. If you do not want these items, or don't want the cost or hassle of disposing of them, then you need to remove them from the contract.
- **Special Conditions –** Conditions that are included specifically for this contract are classed as special conditions. These definitely should be written by your solicitor and preferably prior to you making the offer. You want to provide the real estate agent with the wording, not rely on them to write the condition for you. This is because they are not working for you and

may not have your best interest at heart. Also, they are not legally trained and hence, what they have written may not hold up under legal scrutiny. Special conditions are limited only by your imagination, however, be aware that the more conditions you include in a contract, generally the less desirable your offer. Some conditions are time-sensitive and you must include a timeframe for fulfilment, e.g. subject to satisfactory solicitor review; accountant review; due diligence; Body Corporate review for strata titled property, soil test, survey, pool inspection, development approval etc. Other special conditions are more of a general statement that all parties are agreeing to, e.g. access on three occasions to take measurements and get quotes, works to be completed by seller, works to be undertaken by buyer prior to settlement, site to be cleared of all debris including dumped rubbish and car bodies etc.

- **Due Diligence Condition -** The due diligence special condition is worthy of further explanation. This is a very useful clause because it is generally open-ended and states that the buyer can terminate the contract up to the period of time specified, if they are not satisfied with their investigations into the property. This means if you find out that the zoning is not right for your strategy, or the town planner isn't confident of a council approval, or if the renovation works are going to be too expensive or involved, or if you can't find a joint venture partner… or simply if you change your mind, you have an out! So this is a very flexible condition that can give you time to complete your due diligence on the deal, and be able to terminate for any reason. Be mindful, however, that some sellers and seller's solicitors may be less accepting of this condition because it is so open-ended. Obviously the shorter the due diligence period, the more palatable it is to the seller. For example, a 28 day due diligence clause that just happens to be aligned with a 28 day finance clause, is not adversely inconveniencing the seller because the due diligence is not any longer than the finance period. In comparison, a 90 day due diligence clause may be less appealing because of the longer period of uncertainty. Keep this in mind when making your offer and during the negotiation process.

As a general principle, the less conditions that you have in a contract, the stronger your offer is, and the more desirable it is to the seller. Hence, a cash unconditional offer is a much stronger offer than one that requires finance approval, or that has other conditions that need to be fulfilled before going unconditional.

If you are offering a substantially lower purchase price, the general rule is that you have fewer conditions and the conditional time periods are kept shorter. Hence, you negotiate on price, or terms, but generally not both. This is a very general statement, however, because in fact the seller may prefer a longer settlement. Also, the strength of the market has a bearing, because in a slower, weaker market where supply outstrips demand, and sellers are much more motivated to negotiate, you would certainly look to negotiate on both price and terms. In contrast, in a hot market where demand is very high, you may have to offer above asking price to even have your offer considered.

3) Presenting an Offer

When you initially present an offer to purchase, it is likely that you would verbally tell the real estate agent face-to-face, or over the phone. However, it is suggested that you follow this up in writing very soon thereafter, e.g. email, so that there is no misunderstanding. Also, this assists the agent to prepare the contract with the correct information.

The relevant information that you want to include in writing includes:

- Property address
- Your purchasing entity – exactly as it needs to be written on the contract
- Your contact details – phone, email, address
- Your solicitor's name and contact details
- Purchase price
- Contract period
- Deposit amount and when payable
- Finance condition and number of days
- Building and pest condition and number of days
- Special Conditions – exact wording of conditions

Depending on the nature of your offer, the agent may agree to discuss it with the seller, or they may try and dismiss it and suggest to you that it is too low, or that the conditions are too onerous. In that situation, you may need to take a firm stance with the agent and remind them that they are legally bound to present all written offers to the seller.

It is worth highlighting to the agent that you are looking at other properties, and that your offer is not open-ended and is not on the table indefinitely. You may in fact take this a step further and tell the agent that you are making offers on other properties at the same time, and therefore you need a response sooner rather than later. This tactic is because you do not want your offer to sit around for days on end without a response, because it gives time for other buyers to become interested, plus it gives time for the agent to drum up new buyers if they think the seller is now considering your lower price and terms. It is just amazing sometimes how a property may have sat on the market for months on end, and then the day that you make an offer, another one or two buyers seem to come out of the woodwork and make offers too!

Remember that the payment of the deposit amount may form part of your offer, depending on the payment terms you specified. If this is the case you need to make active arrangements to pay the deposit to formalise and strengthen your offer.

4) Shotgun Approach to Making Offers

There is strategy around the whole offer process, and for some people they will choose to make an offer on one property at a time. At the other end of the spectrum is where you make offers on many properties at a time, and you offer significantly below market price, in order to flush out those sellers that are highly motivated and thus negotiable. This approach is called the 'shotgun' or 'scattergun' approach and certainly suits some people's style and some strategies. For example, if you are looking to buy a regional cash cow property, putting in lots of lowball offers may be appropriate, because it just comes down to the purchase price and the yield, and the lower you can get the purchase price, the higher the yield will be. The more particular you are about the property, its characteristics, and the location, the less likely you are going to be to take this scattergun approach to making offers.

5) Multi Offer Situation

A multiple offer situation is where more than one person has put a formal offer on a property within a very short period of time of each other. This can certainly happen in a strong market where demand is very high, or where a unique property has just come on the market. If the seller has not yet signed a contract, they may choose to enter into a multiple offer situation. In this instance, the real estate agent typically advises all interested parties to present their best offer in writing in a sealed envelope. They may even advise that the buyers will not get an opportunity

to amend their offer or to counter offer, and hence the reason for submitting your best offer upfront. The owner then opens each of the envelopes and makes their decision on which offer they are prepared to go with.

If the agent didn't do it this way, it would turn into a 'Dutch auction', where buyers were effectively bidding against each other to secure the seller's acceptance. Definitely this is a great position for the seller to be in with multiple offers on the table, however, this is less desirable from our perspective as a buyer, because we do not have exclusivity to negotiate with the seller. This is the reality of making offers though, and so you need to understand what is involved.

6) Back up Contract

When a property is under contract with someone else, either because your offer was unsuccessful, or because you didn't become aware of the property until it was under contract – there is still potential hope. In this situation you can certainly advise the real estate agent that you want to put in a 'Back-up Contract'. This is a written contract with all your conditions complete, and it sits with the agent in anticipation of the first contract being unsuccessful and not proceeding to unconditional phase. There are many reasons why this may happen, for example, they may pull out in the cooling off period, they may not get finance, or they may not be happy with the building and pest inspection, and the list goes on, depending on what clauses they included in their contract. The point is, your contract is next in line if the first falters. This is much more advantageous from your perspective than not having a back-up contract in place, and the property just going back on the open market. Once again you have to compete against others to get your offer accepted, so for properties that you are serious about, a back-up contract may be the difference between you getting the deal or not.

Buying at Auction

When buying at auction you are making an unconditional offer. There is no cooling off period, and you are agreeing to the terms of the auction, which is typically 10% deposit payable on the fall of the hammer on the day, and either a 30 or 60 day settlement. This means that all of your due diligence needs to have been done in advance of the auction date, including building and pest inspection, finance review to ensure that the bank will finance the purchase, bank valuation, town planner assessment etc. Clearly there is much more pressure bidding at auction for this very reason. It is unconditional and hence, there is no tolerance for you getting your research wrong, because there is no easy way of getting out of settlement. The

only exception to this is forfeiting your deposit, which at auction is typically 10% of the purchase price, and this is a sizable amount of money to lose.

You can request to negotiate the terms of the auction, but this must be done in advance of the auction, and the seller must agree to the amendment. You will generally only be able to negotiate on the duration to settlement, e.g. 60 days instead of the standard 30 days, and on the deposit amount payable on the drop of the hammer. It is unlikely that you will be able to negotiate on conditions that would make the sale conditional. The uniqueness of an auction is that it is unconditional on the fall of the hammer!

Submitting an offer prior to auction is certainly another tactic worth considering. This is generally more successful the earlier you do it in the auction campaign. The reason some buyers will submit an offer prior to auction is because if the offer goes unconditional prior to the auction date, the seller is confident that they have an unconditional contract before cancelling the auction. For this same reason, making an offer in the week of the auction, is likely to be less successful.

If a property is passed in at auction and not sold under the hammer, it is the highest bidder that gets first opportunity to negotiate with the seller post auction. Offers at this point are back under standard contract terms, and hence, you can negotiate conditional clauses if required. If you are interested in the property, it is definitely worth staying back after the auction. Remember though that there may be multiple parties waiting in the wings that are hoping they can negotiate post auction too, because they were unable to negotiate under auction terms. Maybe they need a finance clause, or some other condition to be able to proceed. For this reason, many properties get sold within a couple weeks post auction.

There are tactics involved when budding at auction, but most come down to your personal preference, including:

- Where do you stand – next to the auctioneer, in front of the auctioneer, or at the back?
- When do you start bidding – early on or right at the very end?
- In what increments do you bid – small price increases or large increases?
- Do you have someone bid on your behalf – in person or over the phone?
- Do you engage with the agents assisting the auction, or do you go it alone?

Regardless of what your auction tactics are, the bottom line is that you are very clear from the outset what your price limit is, and that you do not go beyond it. Auctions are very emotional events and this is what the auctioneer and agent are relying on. They want two or more emotional bidders bidding against each other to drive up the price. It's very easy to get swept up in this emotion, so be prepared for this, know your limit, and have a plan in place as to how you will stick to it!

Buying Off-The-Plan

Buying off the plan is the process you enter into when purchasing a property that has not yet been created. It physically may not yet have been created, in that it has not yet been built, or for land, it may not yet have been physically subdivided. Alternatively, the property may exist, but it has not yet had titles issued, in which case a settlement cannot happen. Clearly the due diligence involved in an off-the-plan purchase is greater than a normal purchase, and it is significantly magnified when the property does not yet physically exist. This is because you don't have the finished product to inspect, and you are entering a purchase contract purely on the strength of the documentation included in the contract.

The key documents involved in an off-the-plan purchase contract that need to be reviewed include:

- **Standard purchase contract** – including all the terms detailed above in a contract, e.g. deposit amount, settlement timeframe, finance condition etc.
- **Disclosure Statement** – including plans of the property, e.g. building approved plans; build specification, e.g. finishes and fixtures; draft title plans; draft Body Corporate documents if relevant.

These documents are prepared by the seller and hence the terms and conditions are set out by the seller and are typically in their favour, e.g. deposit amount, settlement timeframe etc. These items are negotiable, however, so be confident to negotiate on the terms of the contract. Given the complexity of this style of purchase, it is imperative that your solicitor reviews the off-the-plan contract so that you understand exactly what you are signing and the implication of the terms.

Be mindful that there are unique characteristics with buying off-the-plan and these need to be taken into account. Some of these include:

- A 'sunset clause' is likely to exist in the contract, which allows the seller to not proceed with the sale under certain circumstances, e.g. development not commenced within a certain timeframe.
- Bank finance approval only generally remains valid for up to 3 months, therefore, if settlement is likely to be beyond this timeframe, there is no guarantee the bank will finance the purchase come settlement. A second valuation is likely once titles are issued. However, if the market has moved backwards in that time, the valuation may not come in at contract price, and you may have to tip in extra cash. Also, the rental market may move over time and this may affect the quality of the deal and the bank's financing. Obviously the market value and rental rate may also move in your favour over the duration of the contract, and you actually benefit from this positive movement. It's this positive expectation that motivates off-the-plan purchasers.
- Deposit for an off-the-plan purchase is typically 10% and is generally payable early within the contract period, e.g. in 30 days subject to finance approval. This deposit amount is significantly higher than a normal deposit amount, hence you need higher cash reserves upfront. Also, the amount is often not negotiable by the seller. This is because in many cases it's not the seller that is dictating this deposit amount, it's the seller's development finance bank. They require the seller to achieve a certain number of presales before they will begin funding the development, and they will specify the terms of a qualifying presale. A 10% deposit if typical, because that way the bank knows that they hold a sizable deposit – given that settlement may be a year or two in the future in some cases, and so a higher deposit is a larger incentive to ensure settlement occurs. For example, on a $400,000 purchase, $40,000 is payable as a 10% deposit – which is a large amount to forfeit if you don't proceed to settlement for whatever reason. What is negotiable, however, is whether you receive any interest on this money given that it will typically be held in trust by the seller's solicitor, and invested in an interest earning term deposit.

Submitting an offer on an off-the-plan property is a relatively simple process – generally involving you completing an Expression of Interest form. This is a form supplied by the seller's agent that details the standard terms of the contract. A nominal holding deposit of say $1,000 is often payable on submitting your Expression of Interest, and this then holds your chosen property while the seller's solicitor draws up the off-the-plan contract specific for you. Typically the holding

deposit is fully refundable in the event that you change your mind, or do not go unconditional on the purchase.

Negotiation on the Purchase

Negotiating on the purchase of a property is no different from any other negotiation, in that there is generally a trade-off between the parties involved, in order to arrive at a win/win position where all parties are prepared to proceed. The fundamentals of negotiation are outlined in much more detail later in this module. Below, however, are a couple of points specific to negotiating on your initial purchase offer:

- **Know your bottom line before starting negotiations** – This was touched on early in this section, but is not to be undervalued. In the excitement, and sometimes stress of a negotiation, it is easy to lose sight of what it was that you were trying to achieve at the outset, and what your bottom line was, so pre-plan for this by writing down your preferred outcome, your must-have conditions, and those that you are prepared to negotiate on and that you may need to have up your sleeve if they counter offer.
- **Negotiate on terms or price but generally not both** – This comment often holds true when you are negotiating hard for large discounts. For example, if your offer is well below asking price, you may be pushing your luck to also request a long settlement, particularly if the seller wants a quick settlement. Conversely, if you are negotiating for a long settlement, e.g. 6 months, the seller may be less willing to negotiate on price. Clearly, this all depends on the strength of the market and the motivation of the seller. If the market is very strong, hence it's a seller's market, and properties are going under contract quickly – then clearly this is a very different environment from where property is sitting on the market a very long time, i.e. when it's a buyer's market, and hence you may be able to be much more aggressive in your negotiation, and negotiate hard on both terms and price. Similarly if the seller is not in any rush to sell, and they are willing to wait, then they are likely to be less willing to negotiate than someone who is under financial pressure, or personal pressure, and who needs a quick sale. In this case, everything is negotiable.
- **Meet in the middle** - A very successful negotiation technique when both parties have already negotiated back and forth for a bit and are still not in agreement, is to suggest meeting in the middle. For example, if your last offer was $440,000 and their counter offer was $450,000, you may suggest meeting in the middle at $445,000. Similarly, if you want a 90 day

settlement and they counteroffered at 45 day settlement, maybe you offer to meet in the middle at say, 65 days. If you plan to use this technique, then you do want to pre-plan your counteroffers accordingly so that you start at a point that allows you still room to meet in the middle, and end up at a point that was within your desired range.

- **Timing is everything** – When negotiating an offer, time is a very interesting tool – it can be both your friend and your foe. If you are playing hardball in your negotiations, then maybe you would leave some time in between you responding to the seller's counteroffer in an attempt to play hard to get so to speak, and to come across less 'desperate' to do the deal. This obviously can work against you though if the market is strong, because a delay in your reply can allow another buyer in on the act. Depending on the nature of the deal, the strength of the market, and your level of motivation to get it off the market, your response time may differ. Finally, the stability of the seller also needs to be taken into account because with time there is the potential that their situation may change. They may become more motivated, or they may become less motivated, and in fact decide to take the property off the market for whatever reason. Realise you are 'playing with fire' if you are going to lag in your response time. Generally speaking, time is of the essence in negotiations, because you just never know what is around the corner.

Contract Process

Once agreement has been reached with your offer, either in writing or verbally, the next stage is to formally enter into a contract. If your negotiations have been verbal up to that point, then you need to get them on paper ASAP, before anyone changes their mind. If there is a real estate agent involved, they will prepare the contract. If it is a private sale then generally it's the seller's solicitor that draws it up. If it was an off-market property and you approached the owner, then it may be your solicitor that draws up the contract. Again, different States have different processes, so you need to be in contact with your solicitor ahead of time to ensure you understand the process in your State.

If your offer was presented on contract, then your negotiations were likely to be by way of crossing out items on the written contract, amending your offer, and initialling the changes. Every change must be initialled by the person that made it, and then once agreement is reached, the final changes need to be initialled by all (buyer and seller). It is for this reason that some contracts may have a number of purchase prices handwritten and then crossed out and initialled.

- **Signing Contract –** What is essential is that the contract is signed by all parties ASAP, because unless it is signed it is not a valid contract, and someone else could take the property from you. For this reason, time is of the essence and all parties should be working to this effect, including the real estate agent and solicitors. It is always a little concerning when an agent is happy for a buyer to sign the contract early next week, or a seller is to sign in the next couple of days. This is always a red flag, because things can change very quickly. A sign of a great real estate agent is one that will drive to the buyer or seller at 9pm to get a contract signed! That is the level of urgency that should be shown if you are serious about the property. If the agent or solicitor isn't working with that level of intensity, then maybe you need to be clear with them what your expectations are, and that this is an important property transaction for you.
- **Deposit Payment –** Once the contract is signed you need to pay the deposit amount to the real estate agent, in line with the contract, if it is not yet already paid. If there is no real estate agent involved, it generally gets paid to the solicitor that prepared the contract, and is held in trust for the duration of the contract.
- **Solicitor Review** – Prior to signing the contract, it is advisable to have your solicitor review it and provide you feedback so that you understand what you are about to sign.
- **Insurance** – In some States, once a purchase contract is signed, you then take on the liability of the property, and therefore building insurance should be put in place to cover damage from things like fire, storm etc. Queensland is a prime example of this. In addition to building insurance, a small level of contents insurance should also be put in place to cover non-fixtures like floor coverings, blinds, external air-conditioning units etc. Make the insurance effective immediately. With some insurers you can take out a 'cover note' that gives you 30 days to pay.
- **NSW Specifics** – As mentioned above in the due diligence section, purchasing a property in NSW is different from the rest of the country. In NSW the exchange of contracts is an unconditional process. This means that prior to this point, even though your offer may have been verbally agreed by the seller, and you may even have had written confirmation from the agent to this effect, it is in fact not exclusively your property, and the seller can change their mind and ultimately sell to someone else. This is called being 'gazumped' – where your offer is accepted but you don't end up being the final purchaser. This practice can be common in NSW, particularly in a strong market, or with a highly desirable property. The only traditional

way of avoiding it is to exchange contracts as soon as possible - which means the seller signs a copy of the purchase contract, and the buyer signs another copy, and the two contracts are then exchanged to be countersigned – hence the term 'exchanging contracts'. Clearly you need to be very confident that you are ready and able to purchase at the point of exchanging contracts, because on exchange, the contract is unconditional, hence, you will want to have had finance preapproved, done a building and pest inspection and conducted your due diligence. There are a couple of tricks of the trade used by property specific lawyers to try to bring in a level of flexibility when entering into a contract in NSW, as listed below. These are not regularly used in the market by the general public, and so are less well understood by sellers and agents. For this reason, having a good property Solicitor working for you is invaluable so that they can educate the seller and agent in this regard.

- **Extending the 'cooling off period' –** The 'cooling off period' is typically 5 days. However, this can be open to negotiation, and so you could request a longer cooling off period, e.g. 30 days, to give you time to complete your due diligence, i.e. confirm finance, valuation, building and pest etc. This does come at a cost however, because terminating a contract based on the cooling off clause means that you forfeit 0.25% of the purchase price. This comes out of the deposit that you paid and goes to the seller to compensate them for taking the property off the market for a period of time.
- **Enter into an option contract** - An option contract is a legal contract where you – the buyer – is given the right to purchase the property, but not the obligation. Hence, it effectively gives you control of the property, and therefore exclusivity to undertake your due diligence, while retaining the option not to proceed if you don't choose to. Options are a very valuable tool beyond the purpose being described here for NSW, hence they are covered in more detail later in this Module.

Conditional Period

Once you have successfully entered into a contract that has conditions to fulfil, and both parties have countersigned the contract, you are now in the conditional period of the contract. Below are a number of factors to consider during this period and actions to take:

- **Building and Pest Inspection** – If you do not already have a Building and Pest inspector, don't necessarily take the real estate agent's recommendation. They have a vested interest to work with inspectors that

are more easy-going, and may not really be working in your best interest. Ask to look at a sample report from inspectors before making your decision – the more photos the better! Also, ask if they are OK with you attending the inspection. It is very worthwhile for you to attend the inspection and talk to the inspector/s directly, because they are able to show you any issues, and you are able to glean much more information, e.g. asking them how serious the issue is, how long until it needs to be attended to, the potential cost to repair etc. Remember though, that things often sound worse in a report than they may actually be – hence the value of asking more questions. For example, you may be told the roof is in average condition and needs to be replaced. Through further questions you may actually find out that there are just pinholes in the roof sheeting, and they could be temporarily filled and the roof is likely to last another 5 years or so. This new information that you have gleaned from asking questions changes the whole urgency of the roof needing to be replaced. Certainly you would not necessarily alert the seller to this, and instead you may choose to use the 'roof replacement' issue in the Building Inspection Report as a reason to renegotiate on the contract price of the property. It is your decision whether you request that the seller attends to correcting major items in the building and pest report prior to settlement, or it may be that you negotiate a discount on the purchase price. Obviously there is no guarantee that the seller will agree to this. You need to decide your position and whether the issues raised are significant enough for you to terminate the contract if the seller will not agree to repair or compensate you. Whatever your decision, you need to advise your Solicitor as a matter of priority regarding the satisfaction or not of the Building and Pest Inspection, because they need to respond to the seller within the period specified in the contract for this condition, e.g. 7 days.

- **Finance Approval** – It is essential to provide your mortgage broker with a copy of the signed purchase contract so that they can formally get finance approval underway. Highlight to them the duration of the finance clause period so that they are clear on the timeframe they have. Also, provide a very clear description to your broker about your intentions with the property, e.g. buy, subdivide, build, sell – as this impacts on the choice of lender and the way the loan may be structured. If the property is tenanted, for each tenanted area, provide a copy of the lease to confirm the rental amount and terms. If it is vacant, obtain two or three rental appraisal letters from local property managers and provide the highest, or most favourable, to your broker to submit to the bank. If there has

been a lapse in time since you provided your broker with your pay slips, bank statements etc., provide your most recent copies.

- **Due Diligence Clauses** – Where you have due diligence clauses in your contract, now is the time to get this research completed so that you are in a position to make a decision on them by the date set out in the contract. Depending on what special conditions you put into the contract, this might include getting quotes for renovation works, getting a survey plan done, having a soil test completed, attending a council pre-lodgement meeting, confirming existing buildings are council approved, completing due diligence on the Body Corporate etc.
- **Continue General Due Diligence** – Your general due diligence on the property continues during the conditional period including continually updating your detailed feasibility analysis, ordering a house connection plan to know where the sewer and drains traverse the site, investigating site constraints etc.
- **Solicitor Searches** – Your solicitor will give you the option for them to undertake a series of legal searches on the property, e.g. Main Roads Department search to confirm if there are any resumption plans in place; Contaminated Site search, Heritage Register search etc. They will give you the option of having these searches completed before or after the contract goes unconditional. Definitely ensure you have these searches done during the conditional period, so that if there are any issues with the search results, you are able to negotiate on them before the contract is unconditional and it's too late. Yes, this means spending some money on these searches before you know that you are unconditional on the property, but this needs to be considered as a cost of doing business and undertaking due diligence, and in reality it's a relatively small cost to ensure you have options.
- **Title Insurance** – Your solicitor may also give you the option to take out Title Insurance. This is a policy that protects against claims for various unknown and (disclosed) known risks that threaten ownership and use (including structures) of a property until its resale. A typical policy protects against the following risks that commonly result in claims:
- Illegal building works / structures
- Incorrect signature of a document resulting in potential problems with the registration of the transfer
- Forgery, fraud, duress, incompetency, incapacity or impersonation prior to settlement

- Mortgage or title fraud after settlement, e.g. a third party takes out a mortgage over the purchased property without the purchaser knowing
- Defective registration of a document
- Lack of rights of access or use of services
- Breach of covenants
- Boundary issues such as an encroachment by or on to the insured property

This is definitely an invaluable tool to give you peace of mind in knowing that if you have missed anything in your due diligence on the property title, there is a fall back.

- **Notifying Solicitor** – Keeping in close contact with your solicitor during the conditional period is important. You need to notify your solicitor in advance of each clause date so that they are clear about your intentions. For example, with the finance clause, has this condition been fulfilled? Do you have finance approval, or are you prepared to waive this condition and proceed without approval? Do you intend to request a further time extension for finance, or negotiate in some other way, or terminate the contract based on this condition? In many States, time is of the essence with contracts and condition dates and hence they need to be closely adhered to.
- **Opportunity to Negotiate Contract Conditions** – If your due diligence has revealed certain unexpected issues with the property, you may consider renegotiating with the seller to either have them resolve the issue, or further discount the purchase price, or extend the settlement duration. For example, the Building and Pest Inspection may have raised issues, or your quotes may reveal that the renovation works will be too expensive given the condition of the property, or there may be encroachment on the boundary that needs resolving, or the costs to subdivide are too high to make the deal viable etc. You need to commence this negotiation within the time period allowed in the contract for that clause, e.g. within the 14 days of your building and pest inspection clause. Liaise closely with your solicitor to develop a game plan as to how you intend to respond to the seller. Your solicitor will then liaise directly with the seller's solicitor to start negotiations. If there is a real estate agent involved, as a matter of courtesy, it's suggested that you advise the agent in advance of the solicitor formally advising the seller. This keeps the agent in the loop, which they appreciate and allows them to notify the seller, and possibly start the negotiations and bring the seller around to your offer. Sometimes people respond better

when hearing it from the agent who they have been working with up to that point, rather than hearing it from their solicitor.

- **Extension Request** - Discuss with your solicitor in advance if you need to request an extension on the conditional period, e.g. if you need to extend the finance clause because your finance is not yet approved, or if you need to extend the building and pest inspection clause if you are not satisfied with the results and still making investigations, or if you need to extend the council DA approval clause (if you have one), because DA has not yet been issued. Your solicitor will notify the seller's solicitor and negotiate the extension request. Once again, it is recommended that you keep the real estate agent in the loop. Regarding the timing of this negotiation, it is recommended that you wait until the day that the condition is due to liaise with the seller's solicitor. This is so that it looks like you are doing everything possible to fulfil the condition in the period specified. Remember that it is at the discretion of the seller as to whether they agree to an extension or not, depending on their position and the strength of the market. For example, if the seller is looking for a reason to get out of the contract, this may be just that opportunity, so you need to be mindful of this. Likewise, if it is a strong market, the seller may believe they can now get a higher price, or maybe there is already a better back-up contract sitting there waiting in case yours doesn't go unconditional. When requesting a time extension, it is recommended to err on the side of caution and request for more time than you think you will actually need, so that you do not have to request another extension, i.e. if the finance clause is due today and you are told by the bank that they are only one day away from giving formal approval, it is recommended that you request a 7 day extension just to be safe. Remember that you can always fulfil the condition ahead of time if desired. Also, do not leave this negotiation until late in the day, e.g. 4pm, because if the seller can't be contacted in time for whatever reason, then you may be in a predicament.
- **Terminating Contract During Cooling Off Period** – If you decide that you do not want to proceed with the purchase for whatever reason, and it's still within the cooling off period in the contract, you may choose to utilise this condition. You need to be aware, however, that there may be a penalty cost to doing this. For example, in Queensland, the purchaser forfeits 0.25% of the contract price, which goes to the seller to compensate them for the loss of sale. Terminating the contract based on this condition does not require you to provide a reason or justification for the termination, just as long as it is within the allowed time period. Speak with your solicitor regarding the

intention to terminate, because there may be other ways to terminate that may not trigger a penalty fee.

- **Terminating Contract Post Cooling Off Period and Based on Contract Conditions** – Generally you can only pull out of a contract and terminate post the cooling off period, based on non-fulfilment of conditions in contract, e.g. finance declined, unsatisfactory building and pest / soil test / solicitor review etc. Be aware that you may need to show evidence that finance has been formally declined, or that the building / pest inspection is not satisfactory etc. Discuss this in advance with your solicitor so that you know what the process involves. If you do intend to terminate, this is formally done through your solicitor who notifies the seller's solicitor. Again as a matter of courtesy, call the real estate agent to give them the heads up so that they can liaise with the seller.

Unconditional Period

Once you have successfully fulfilled the conditions of the contract, or you have chosen to waive them, and your solicitor has notified the seller in writing, then the contract moves into the unconditional period. This now means that you are proceeding to settlement and cannot pull out of the contract. Below are a number of factors to consider during this period and actions to take:

- **Notify Mortgage Broker** – Notify your broker as soon as possible that the contract has gone unconditional, so that the bank can start preparing the mortgage documents.
- **Mortgage Documents** – On receipt of the mortgage documents, read and review them to ensure all details are correct and that you understand the conditions. Things to check include the purchasing entity details, the security property address to ensure that the bank is not cross securitising you, the loan term duration, the interest rate, the interest only period etc. Once you are satisfied that all details are correct, sign and return the documents to the bank as a matter of priority. If this means driving 100km to hand deliver the documents, then sometimes that is what is needed to ensure that settlement is not held up. Depending on the bank and the purchasing entity, the bank may also require you to seek independent legal advice prior to signing the loan documents. This may mean a different solicitor from the one assisting you with settlement, so ask this question and plan this in advance so that it doesn't cause delays.

- **Commence Strategy** – Use the unconditional period to your advantage and continue your due diligence and commence your strategy where possible. This may mean drafting plans, having specialist reports completed, right through to lodging Development Approval. Or it may be ordering renovation materials, or booking tradespeople, or even conducting site works if you negotiated early access to the property.
- **Engage Property Manager** - If the property is currently tenanted or will come available to rent post settlement, you need to be proactive to research and select a property manager. This may be the current property manager, or it may be someone else. Enter into the property management agreement as soon as possible – see Module 7 for details of the agreement.
- **Funds to Complete Purchase** - Ensure you have the funds to complete the purchase well in advance of settlement. For example, the bank may only be contributing 80% of the purchase price and you need to contribute the balance 20%. Liaise with your solicitor to know when they require the funds to complete, and in what form they can accept it. In most instances a bank cheque is what is required.
- **Review Draft Settlement Statement** – Within the week of settlement, your solicitor will prepare a draft Settlement Statement. This document details the figures to complete settlement and makes adjustments for the deposit already paid. It will also make adjustments for bills that the owner may have already paid or that are coming due post settlement, e.g. rates, water, body corporate fees (if applicable). You need to review these figures to ensure they meet your expectations, and also because they will confirm the exact amount that you need to provide for settlement and whether multiple bank cheques are required, and if so, who they are to be written out to, e.g. seller, seller's bank, seller's solicitor, council etc.
- **Stamp Duty Payment** – Your solicitor will advise the amount of Stamp Duty payable and you will need to pay this in advance of settlement. In some States, for an additional fee, you can delay Stamp Duty payment until settlement. This may assist your cash flow, so discuss with your solicitor ahead of time.
- **Extending Settlement –** If you are not ready in time for settlement for whatever reason, your solicitor will need to request an extension ahead of time, or vice versa, the seller may not be ready for settlement and a request for extension is lodged. It may be due to the bank not being ready to settle, or there may be a delay in the calculation of settlement figures, or transfer documents, or you paying settlement funds etc. There is no requirement for the seller to grant an extension, however, and if they don't, this could result

in you being in default of the contract, which is a serious position to be in. In most instances though, an extension is granted as long as it is for a relatively short time period. The seller is in full right to negotiate on this though, and may charge you money in order to compensate them for the extra hold costs that they will incur, plus legal costs etc. Once again, liaising closely with your solicitor is essential over this period.

Settlement

- **Inspect the Property Prior to Settlement** – It is essential that you inspect the property one or two days prior to settlement in order to ensure that everything is as expected. The property is presented as you expected, furniture is or is not there depending on what you negotiated, the tenants or owners have vacated if you were settling with vacant possession, or the tenants are still present if that is what you negotiated in the contract. If you cannot physically inspect yourself, you need to engage someone to do it on your behalf, but not necessarily the real estate agent, because they have a vested interest in having it settle ASAP in order for them to get paid.
- **Funds to Complete -** Provide your solicitor the funds to complete settlement as per their instructions. Once again, if you need to drive 100km to make this happen to ensure settlement is on time, then sometimes that's just what you have to do!
- **Settlement Complete** – Your solicitor should call you within a short time of settlement being complete.
- **Key Pick-up –** At settlement your solicitor should have been provided the keys to the property. You will need to arrange to pick them up yourself, or to have someone else pick them up for you. If it is the property manager picking the keys up for you, ensure that they make a copy for themselves to keep, and that they provide you with the original set.



PLATINUM
ACCELERATOR

Selling

The process of selling a property involves many considerations. Even if you are selling through a real estate agent, there is still much to do – from preparing the property, choosing and managing the agent, through to negotiating offers and settlement. These are all discussed in more detail below.

In reality, you should be thinking about your sales campaign before you even buy the property. By thinking about the 'selling story' and how you would promote the property for sale before you have even purchased it, forces you to actually look at the property from a completely different perspective. You are accounting for your own 'wants' list, but are also looking at how many boxes you can tick that would make the property appealing for others, e.g. near transport, infrastructure, services, jobs, lifestyle areas. That way, the property will appeal to a broader market come sale time, and that is what will generate demand and hence a more successful sales process. Conversely, a very niche or unique property, or one that has lots of constraints (which you may be happy to accommodate), may in fact impact on your capacity to sell in the future. For example, you may be happy if the street floods and every now and again you are flooded in, or maybe you are happy with the 1 bedroom dilapidated shack up on top of a very steep hill on a large area of

land a long way from anywhere, or maybe a property with multiple easements on it. Just be clear though, that many people will not be prepared to accept these characteristics, and hence these types of properties may be harder to sell when the time comes. The important thing is that you have thought about it from this perspective before you go ahead and purchase it especially if you are looking to sell in the short term,

When to Sell

No one has a crystal ball to know when the perfect time to sell a property is. It is also unrealistic to think that we can pick the peak of the market. There are, however, a number of factors to consider that can impact on when is the best time to sell, as outlined below:

The Property Cycle

Over a period of time property moves through cycles based on supply and demand fundamentals affected by demographic, economic and emotional factors. The cycles include:

- Slow down / slowing market – declining prices off the peak of the market,
- Slump / stagnant / falling market – flat prices leading to the bottom of the market,
- Recovery / rising market – slow increase in prices coming off the bottom of the market,
- Boom – sharply increasing prices approaching the peak of the market.

While the ideal time to sell is towards the peak of the market, in reality, the boom time may only occur in one to three years, out of say, ten to twelve years, and the peak may only last for a month or two over this period – and it's only obvious in hindsight reviewing the data. Therefore, for the vast majority of the time when you are looking to sell, the cycle will not be in this most ideal phase. You may not be in a position to wait for years to put your property on the market, and therefore, it's important just to understand which part of the property cycle the property is in, so that your expectations are in line with this. For example, it may be unrealistic to ask a premium price for your property and expect it to sell in record time in a falling / stagnant market.

Leading Indicators

There are a number of indicators that can give you a heads up on where the cycle for an area is heading. The price trend itself is one indicator. Obviously if the price trend is on the increase – then demand would appear to be outstripping supply and hence, properties are selling for more. Conversely, if the trend is in decline, then properties are selling for less and your expectations need to be consistent with this. Another indicator is Days on The Market (DOM). When DOM is trending upwards and properties are staying on the market for longer, hence demand is weakening, prices tend to be in decline. On the flip side, if DOM is declining and properties are starting to sell quickly and hence demand is outstripping supply, this is a great indicator that prices are about to increase if they have not yet already begun to do so. In fact, there can be several months of lag between falling DOM and price increases and so keeping abreast of the trend is important when looking to sell.

Seasonality

In many locations, the season or the time of year can affect buyer demand and hence, the best time to sell to optimise your chances of a sale. For example, in southern States, winter tends to be the least favourable season to sell because it's cold and often wet and not so conducive to people being out and about looking to buy. Conversely, spring is often the most ideal. In northern Australia though, the wet season may be the least ideal period to sell. You need to discuss the timing of year with local real estate agents in your location to understand the impact of seasons. You may not be in a position to wait for the ideal season to sell your property, and that is just the reality for you, but you do need to know where you are with regard to timing and possibly temper your expectations accordingly, depending on how quick a sale you require.

Christmas Period

There are pros and cons with selling property over the Christmas period. People are more relaxed on holidays and have more time to look or search the internet for property, plus they may be more inclined to buy on impulse. Conversely, many people have buyer fatigue after the lead up to Christmas, plus having been looking for property since spring they may be getting frustrated and this may work for or against you. Also, many real estate agents close over Christmas and so access may be an issue. Banks and finance brokers may be less accessible, further complicating the process for buyers. Once again, these are questions that you need to ask the local agents so as to understand the magnitude of this effect in the locality of the property you are trying to sell.

Competition

Doing your research and accounting for potential competition in the market is important. While there may not be many properties currently for sale, you need to look at what is coming through the market and its timing. For example, if from your research you know that there will be an influx of new properties in the future due to large developments occurring, or major infrastructure projects happening, then that will affect the timing of your sale and in fact you may choose to sell sooner rather than later to try to avoid the competition. An example of this is the Gold Coast Commonwealth Games and the construction of a significant amount of accommodation for the athletes. If you own a property in the vicinity of the games area and are considering selling, then you should be closely researching the sale timing and whether it would be better to sell sooner rather than later to avoid the competition and potential over supply of property in the area post games, even though rental will be at a premium over the duration of the games.

Tax Implications

Depending on the length of time that you have owned the property, you should discuss the timing of the sale with your accountant to ensure that you do not miss out on any tax advantages. For example, if you own the property in a trust structure and sell after owning the property for more than 12 months you would be eligible for the 50% Capital Gains Tax exemption. Hence, timing the sale to take advantage of this would be smart business, assuming that the tax implications are sizable. Remember though, to confirm with the accountant that the 12 months is contract date to contract date, not settlement dates – because this makes a big difference. Also if you built the property from scratch, and then sell after 5 years, then there is potentially no GST payable on the sale! You would not want to sell after 4 ¾ years just because you were not aware of this ruling, and your accountant would be able to advise you of this.

Opportunity Cost Analysis

The decision to sell a property and the timing of this should also be assessed based on Opportunity Cost Analysis. This takes into account the cash flow from the property (assuming it's a rental), the capital growth forecast for the location, the amount of equity tied up in the property and the potential to access this equity through refinancing. Both the cash flow and equity position need to be looked at in the context of your income and available equity position, because for one person a property that is $1000 per year negative cash flow may be insignificant relative to their income and capacity to save, and may have no impact on their serviceability. For another person though, this $1000 may make or break their

capacity to do another deal. Similarly, a property that quarantines $40,000 may be the difference in being able to do another deal if they are very tight on available equity, but for the next person this may be insignificant in the whole scheme of things. The capacity to further develop the property also needs to be taken into consideration and you should be making the decision to sell in full light of the potential of the property. Even if it's not for you to capitalise on this development potential yourself, it's important to emphasise this in the marketing material when selling the property.

Presenting Property for Sale

Having decided to sell a property, you then need to present the property to its maximum potential in order to get a premium price for it, and / or sell the property as quickly as possible. There are a number of techniques used to present the property at its best from a physical inspection perspective, like staging through to the actual online presentation.

Property Staging

Property staging is the process of presenting a property to its full potential. While it may appear to be a trendy thing to do and a more recent industry in the market, in reality, staging covers a broad spectrum of activities, many of which have been around for a very long time. The simplest form of staging is to just give the property a very good clean inside and out – you will be amazed at the difference clean windows can make! Even consider bringing in a professional cleaner to really give it the once over. Conducting basic repairs and maintenance would also fall into this category, as would tidying up the yard – remember that first impressions count and a little bit of gardening and mulching can make a big difference. The next level would be to declutter the space to make it less busy and to make it feel more spacious and even more light and airy. Yes this may mean moving some bulky furniture out, or clearing the spare room and renting a storage shed for a period. Removing personal effects from the property is also very important because you want the prospective buyer to be able to imaging themselves in the property, and not be distracted or in fact be made to feel uncomfortable because of your family photos everywhere. The next level of staging would be to style your current furnishings and introduce some decorating or styling items like cushions, throws, bed linen, artwork, plants, new towels etc. The ultimate form of staging is to remove all effects and start with a blank canvas and bring in all new furniture, décor and styling pieces down to the books on the coffee table and even a dinner setting on the dining table. Depending on your budget, time availability, experience and decorating flare – you may choose to stage a property yourself, or

pay a professional stager. You can also choose to hire the furniture and furnishings, or you can buy them and reuse them from project to project, storing in between. Do your research on the cost of staging, what your property requires, and what the market expects – but do not underestimate the impact staging can have when selling a property.

Professional Photography

The quality of the photographs taken of a property to use in the sales marketing campaign can make or break the selling result. Even if your real estate agent says they are a great photographer, or they have a whizz-bang camera, and says that you don't need pro photos – do not rely on their happy snaps. Always get professional photographs, even for a very basic property. You want yours to stand out and if everyone else has just gone with the local agents photos, then yours will jump out simply because they are professional. A professional photographer accounts for the composition of the photo, the lighting, the angle etc. Talk to the photographer regarding daylight versus dusk photos. Stand across the road and look at the property objectively and take note of what you might see through the windows, whether some lights are on or off, whether some blinds are up or down, whether a plant in the front yard has brown fronds – remember first impressions count. Also don't underestimate the impact that plant greenery can have in a photo – both with inside and outside photos – even consider buying some plants and palms that you can move around from room to room when photographing. Even a palm outside a blank window can really lift a photo and distract the eye in a positive way. You should then select the photos that are used in the marketing campaign and which is your 'money' shot for the feature photo used in your marketing. Remember that you do not have to include every professional photo you got back from the photographer, just select those that portray the property in the best light. For example, if the dining room photo makes the space look a bit small and cramped – DO NOT INCLUDE IT!! If the photo doesn't show the best features of the property, don't use it. Another consideration is whether there is value in getting an elevated photo or 'pole' photo of the property. This is where they raise the camera to a height where they can photograph the property and the surrounding area, hence showing its proximity to water, or the shopping precinct, or CBD etc.

Floor and Site Plans

Having floor plans and a site plan produced for the property can assist in presenting and marketing, as it gives the buyer much more insight into the layout and flow of the property. Many of the professional photographers are able to

produce these plans and at an economic price. You do not need to go to the extent of having a draftsperson draw them up because they don't need to be 100% to scale.

Video

The next level of presentation for a property is to have a video produced for online marketing. Once again research the market and decide whether a video is required to compete with other comparable properties on the market, or justified to make your property stand out.

Selling with a Tenant in Place

When a property is being sold with a tenant in place, this can impact on the freedom you have to maximise the presentation of the property. In reality, this is the tenant's home and they have to live there – so you need to be mindful of what you can realistically expect from them. In saying that though, you can always offer them incentives to keep the property tidy, or to go out when the open home is on. Maybe give them weekly movie tickets so they can go to the movies during the open inspection time, or offer a discount on their rent or a weekend away for them to keep the place tidy during the marketing period. Alternatively, some tenants may be very happy for you to temporarily remove their furniture and stage the property for a period – just as long as you are prepared for some potential wear and tear given that they will be using the furniture in between. Obviously, you need to assess the type of tenant and their willingness to work with you in this regard.

Selling Method

When selling a property there are a number of different sale methods to choose from depending on whether you are selling privately or through a real estate agent, as outlined below:

1) Private Sale

Choosing to privately list your property for sale means that you will be taking on all of the roles of marketing the property, including taking enquiries, conducting inspections, negotiating offers, and coordinating the contract aspects of the sale. Depending on the enquiry level on the property, this may be a significant amount of work, or conversely, the first interested party may buy it. Either way, you need the time to dedicate to the process, and have the confidence to pull it off.

People generally choose to sell privately either because they want to save money on the commission payable to an agent, or they have become disenchanted with real estate agents and figure they could do a better job. While the money reason may be valid, it may be false economy, because in the business of property, there are many opportunities to save money by doing things yourself - from the renovation, to owner builder, to property management, to conveyancing and the list goes on. What is the most limited commodity though is time, and by taking on all these tasks yourself, time will potentially become a problem, and you in fact may become the weakest link in your own process because you are trying to do too much. The alternative is to utilise your time effectively and leverage it by outsourcing with you managing your team rather than being a one-man-band! Really look at your motives if you are considering being a private seller and ensure that it is the best use of your time. If the issue is that you do not have confidence in real estate agents, then this needs to be addressed by doing your due diligence upfront, asking the right questions, selecting the right agent, and managing them accordingly as detailed below in this module.

If you still decide you want to sell privately, there are many websites dedicated to the sale of properties by owners, including noagentproperty.com.au; buymyplace.com.au; owner.com.au; forsalebyowner.com etc. Other general websites like Gumtree, Trading Post and eBay also have privately listed property advertised. The benefit of privately selling is that you are dealing directly with the purchaser and hence decision making, which in some instances can make the negotiation easier because you can identify their needs and work with that. Certainly the skills of negotiation detailed further in this module come to the forefront in a private sale situation.

2) Real Estate Agent Sale

When selling through a real estate agent, there are a number of decisions to be made, and the primary one is deciding on the type of listing you are entering into, for example exclusive, sole agent, or open listing. Each has its advantages and disadvantages as detailed below:

- **Exclusive Listing –** This is where you are giving the one agent exclusivity to the listing meaning they are the only agent marketing the property. Even you the owner can't sell the property, or if you do, you will still be required to pay the agent commission. Most agents prefer this type of listing because it means that if they put the effort into the property, then they will reap the rewards from the sale. Essentially they are not competing with other agents and know they will get the full commission from the sale. If

you have full confidence in the agent, then an exclusive listing is generally the way to go, because an agent tends to be more focussed on their exclusive listings and puts the most effort into them.

- **Open Listing –** This is the opposite of an exclusive listing in that an open listing is where you can have multiple agents working to sell your property. It means that you can sign up multiple agents each on an open listing basis. While this might seem advantageous from our perspective as a seller because you have multiple people trying to sell it, in reality, however, agents tend to give less attention to their open listings because they know there are other agents marketing them and so there is the possibility that they put significant time into pushing the sale, only for another agent to sell it out from under them. This is why agents tend to focus on their exclusive listings as a priority, and only if they have a buyer that isn't interested in their exclusive stock will they then push their open listing stock. In the end it can turn out that while you may have numerous agents with the listing, in fact no one is really pushing it because they each figure that someone else is. An alternative to this situation is where you have a joint listing where two agents are working together on it – maybe they are from different parts of town, or have different clientele. They each know the other has it listed but being only the two of them, they are more motivated to push the property than if there were half a dozen agents.
- **Sole Listing –** This is very similar to an exclusive listing in that there is only one agent involved. However, it also gives you, the owner, the right to sell the property. If you do sell it, no commission is payable to the agent. You would consider this type of listing if you have already started to market the property to your own network, or you plan to. Maybe they are family, friends and acquaintances – either way you are putting in efforts to get the property sold through your own endeavours.

3) For Sale, Tender, Expression of Interest, Auction Campaign

Another major decision that needs to be made is whether you sell the property based on a for sale campaign, a tender campaign or auction.

- **For Sale –** A property listed 'For Sale' simply means that offers will be considered from day one. There is no set end date to the sale campaign, and typically a list price or a price range has been set. This is the standard mode of selling a property. All terms of the sale are negotiable and the buyer typically submits their offer, which may include conditions that first need to be satisfied before the property goes unconditional.

- **Tender or Expression of Interest** – A property marketed 'For Tender' or 'Expression of Interest' is typically advertised with a set end date by which all submissions need to be lodged with the agent based on the buyer's best price and contract terms. The property will not be advertised with a price and generally will not be sold prior to the cut-off date. All submissions are reviewed by the seller post the due date and they will choose to negotiate with the preferred buyer. This method is more common for larger sites, development sites, or larger commercial property. An 'Information of Memorandum' (IM) would typically be compiled by the agent to promote the features and opportunities of the site. This method is less common for a standard residential property being sold.
- **Auction –** A property being sold based on an 'Auction' campaign would have exclusivity with the listing agent. A date is set in the future for the auction, typically a month in advance, which means a very targeted marketing campaign is entered into for that period to give maximum exposure to the property. There is no list price and that is what is determined on the day of the auction. The seller sets the auction terms, which are typically 10% deposit on the fall of the auction hammer, and generally a short settlement period of 30 or 60 days. If the seller is willing though, they can negotiate on these terms. For example, registered bidders could negotiate prior to auction for a longer settlement period. A sale under auction terms though, is unconditional. This last point is very important because it means that a property sold at auction is unconditional, which is great for the seller. From the buyer's perspective however, it means that they need to do all of their due diligence ahead of the auction. This means they may need to get a building and pest inspection done, legal searches, finance preapproval, and even a bank valuation potentially already completed by auction day. For this reason, many people are not in a position to buy under auction terms, and you need to be aware that you may be reducing your pool of buyers by going to auction. The ultimate situation with an auction is where you have multiple parties bidding against each other and pushing the price higher. Certainly, if they are emotional buyers, this can result in the property selling for a premium. If there is only one bidder though, or no bidders, then obviously the auction result can be quite different and the property may get passed in. It is not a lost cause at this point though, because many properties are sold within a relatively short period of time post auction. The advantage of an auction is that it does give a focal point in time for buyers to work towards, and thus creates a level of urgency in the process, which does not generally exist when the property is simply listed for sale. As a seller you can have it both ways

though and market the property under an auction campaign, but be very clear to the agent that you will consider offers prior to auction. This will cost you more though in marketing, because with an auction the marketing budget is usually spent over a short period of time to give the property maximum exposure leading up the auction date. Also, there will be a fee for the auctioneer because often this is a specialist auctioneer, not the listing agent. A final note on auctions is to research the market and understand if auctions are common or not in that market. For example in Melbourne, auctions are very common and a very standard way of selling property. In contrast, Brisbane is less fixated on auctions, and while lots of properties do get sold at auction, more are sold under standard contract terms.

4) Selling Off-the-Plan

When selling off-the-plan you are actually selling something that does not yet exist. It may be a vacant block of land that has not yet been fully subdivided, or it may be a unit or apartment that has not yet been developed, or it might even be a standard house that has not yet been built. In all cases, the buyer is purchasing based on the details shown on the plans and in the supporting documents, hence the reference to 'off-the-plan'. A presale is another term for selling off-the-plan. From a seller's perspective, selling off-the-plan can be a great opportunity because it allows you to lock in sales before you have had to commit 100% of resources to the project. Hence, it's a strategy to de-risk the project, because if you can lock in sales before construction for example, then you have the confidence to progress with the deal. For this reason, banks lending on commercial projects of say 4 dwelling or 4 blocks of land or larger, may require presales in place prior to giving unconditional finance. Selling off-the-plan is also a great strategy to be able to start marketing a property for sale and lock in contracts prior to titles being issued, because of the ability to utilise 'subject to title registration' conditions. There are many aspects to selling off-the-plan and it could almost be a module all on its own, however, below are detailed some of the key considerations:

- **Marketing Agent –** Properties being sold off-the-plan are often sold through specialist marketing agents rather than the local real estate agent. That's not to say that the local agent may not be able to, it's just that many will choose not to because it is a specialist field. See the Marketing section under Buying Methods earlier in this module. An important note to make though, is that marketers typically charge significantly higher commission than a standard real estate agent and anywhere from 3 to 5% plus.
- **Disclosure Statement and Contract** – In order to sell a property off-the-plan, a significant amount of documentation is involved in the form of a

Disclosure Statement, in addition to the contract, which itself is very specific to the deal. The Disclosure Statement details particulars of the contract. It includes the full plan set of the property being sold if it's not yet built including, for example, the site plan, floor plan, elevations, landscape plan, plus the fixtures and finishes of the build right down to the paint colour on the walls inside and out. It includes the draft survey plan, and if the property is being strata titled it includes the draft Community Management Statement, annual budget, Schedule of Contributions, right down to a copy of the Body Corporate Manager's Administration Agreement document. These documents should be prepared by a solicitor prior to marketing the property for sale, and do not estimate the time required to compile this information, particularly when the property is being strata titled and a Body Corporate is involved. The contract will accompany the disclosure document and will include all the relevant terms of the contract that were negotiated between the buyer and seller, including purchase price, deposit amount etc. Special conditions will be prepared by the seller's solicitor though to accommodate the off-the-plan nature of the sale, including the 'subject to title clause'. It is also likely to include a Sunset Clause that details a set date in the future by which the developer has to deliver the project to completion. If the developer fails to meet this timeframe, either party – the seller or the buyer – has the right to terminate the sale contract. An example of this may be if the developer was unable to secure finance and was not able to proceed with the project, then they would be able to use this clause to terminate the contract. The buyer's deposit would be fully refunded at that point. Clearly the seller's solicitor is integral in the preparation of the sale contract, rather than in the normal situation where the real estate agent prepares the contract. This certainly adds to the cost of this strategy and needs to be factored into the feasibility.

- **Expression of Interest –** When selling off-the-plan, a purchaser would typically lodge their interest to purchase via an Expression of Interest form. The form details the buyer's information and purchasing entity, the property they want to purchase, and the terms they are offering including purchase price, deposit, special conditions etc. The details of the Expression of Interest are used by the solicitor to prepare the sale contract. A holding deposit is paid with the Expression of Interest and effectively puts the property on hold while the contract is being prepared and signed.
- **Marketing Material** – When selling off-the-plan, extra effort goes into preparing the marketing material, because in effect you are selling a property off a brochure given that it doesn't yet exist. The brochure is typically called an Information Memorandum (IM). Artist impressions of the

project are essential so that the buyer can get a feel for the look of the property. Quality written information is critical as it can make or break a sale and should include specific information about the property, the area, the facilities, the lifestyle characteristics, even down to the types of buyers. Understanding who your target audience is and whether it's owner occupiers, investors, or both, is also very important as it will influence the marketing material. For example, for investors you would include rental appraisal/s, cash flow analysis, tenant profiles etc.

- **Developer Sales –** Depending on the State regulations, there may be an opportunity for you the developer to sell a number of your own development properties in any given year, e.g. six in Queensland in any 12 month period. Once again this is managed through the solicitor and needs to be discussed in advance.

Selecting a Real Estate Agent

Selecting the right real estate agent is certainly not a 5 minute exercise. It requires research and due diligence just like buying a property, or engaging any member of your team. The wrong decision and the wrong agent can cause delays and loss of money, not to mention serious frustration and stress on your end… so choose carefully as per the details below. As a cautionary note, do not choose an agent because they are your best friend, or a friend of a friend, or they are just starting their business and you feel you should support them – this is business and needs to be treated as such.

Researching Agents

There are a number of ways to research real estate agents and it is a combination of them all that will inform a good decision. Determining who is the top selling agency and then individual agent in the location of the property is a great start. It's important that the agent is local to the area of the property or at least specialising in that area. That's because they themselves will be an area expert and will understand the local market intimately and be able to advise you accordingly. Also, they should have an existing database of clients and prospective buyers interested in that area. They will also have purchasers looking at their other listings in the area and a good agent will leverage off those enquiries and move them onto your property if it's suitable. Remember that there are specialist agents too, depending on the product you are selling, e.g. tourism commercial, rural property specialist, acreage, and waterfront specialist agents. There are websites that will provide you recommendations of the top selling agents in your area. Certainly go through this process, but be mindful that the ratings are typically based on client feedback and

some agents are much more proactive in getting their clients to provide feedback. That in itself isn't a bad thing – at least they are being pro-active. As with all data though, consider the quality of the data and what bias may exist. Also look through the sold listings on real estate websites like realestate.com and note the agent/s with the most sales. Again this data may be biased because the agents choose to put the sold listing up and some are very proactive in promoting themselves while others are not. It's possible for a really good agent to not necessarily be reflected as such in the internet research because they are too busy selling properties rather than promoting themselves. This is why we need to take a multi-pronged approach to our research and not just rely on one source. Review the recent sold listings over say the last 6 months on data sources like RP Data or PDS Live / PriceFinder, or Investar's My Valuer. Certainly if there are one or two key agents selling most properties in the area then they should be on your shortlist to interview. Plus there is always word of mouth recommendations from others, be it the local hairdresser, information centre, or owner of the local hardware. Business owners know who is who in their local area and it's worth asking around. Remember that the agent that you bought the property from may not be the best agent to sell with!! Once you have done the above research, hopefully there will be three or four agents that stick out and whose names keep popping up, or if the location is relatively small, then maybe it will be only a couple agents. At this point, you should shortlist the top three agents and then review a number of their listings for sale. Read the internet marketing material to get a feel for their ads. If they are uninspiring and just regurgitate the same information that the property is three bedrooms, two bathroom, open plan living, has built ins and fans plus double local up garage, that's not a great sign and doesn't instil a lot of confidence. Even though they may say they don't write their own ads – the fact that they are prepared to use this type of copy is a worry and shows a lack of creativity. It's not that we are relying on the agent to write the written copy, as you will see later in this module, but we do want someone with a bit of flare. Yes, in this instance we do want someone that could sell ice to an eskimo, but not in an arrogant, pushy, used car salesman type manner, rather in a confident, respectful, genuine, make it happen, type of way.

Interviewing Agents

For the two or three shortlisted agents, the next stage it to interview them. If you are local this definitely should be a face-to-face meeting and preferably at the property. It's beneficial to be at the property because the agent can come prepared with information and can inspect the property at the same time and provide their view on marketing it. If you are not local to the property then an over the phone interview will do. In saying that though, a video conference call or Skype call would

be even better, because then you can observe their facial expressions and body language, which can be very insightful. For example, if they seem distracted, preoccupied, aloof, and somewhat uninterested, then that's not a great start. Below is a list of questions to ask the agent during the meeting:

- **How many properties do you have on exclusive listing and open listing?** We are asking this because we don't want the agent selling / marketing too many properties, otherwise they won't be able to focus on yours. Also, if they have lots of properties then they are not reliant on selling yours to put food on the table.
- **What is their percent success rate with selling?** E.g. 90% versus 20%.
- **What's their average sale timeframe, e.g. Days on the Market (DOM) and how does that compare to the area average?** Obviously the quicker the better and less than the average is better too.
- **What's their average discounting rate versus the market average?** Remember that discounting is the percent difference between list price and sold price, e.g. 1% discounting is where the property sells for 1% less than its list price. Obviously 1% is much better than 10% discounting.
- **Will they negotiate on their sales commission?** An agent that easily buckles and will negotiate on their own commission does not necessarily give us a lot of confidence. The reason for this is that if they are so readily negotiable on their own rate, does that mean they will negotiate quickly on the sale price when a buyer asks them? This is not a good sign of a strong negotiator. Even if they would negotiate on their commission – it's not recommended that you follow through with this because with lower commission they will be less motivated to work on your sale versus the next sale where they are getting full commission. A way around this is to wait until you get an offer, and in the negotiation process, test if the agent will negotiate on their commission to get the deal over the line?
- **Do they do open homes or private inspections during the week?** You may be surprised to know that some agents will only do open homes and not private inspections. They say it's because they want buyers to be in the property when there are others there, in order to create urgency and a feeling of demand. Being cynical though – this strategy is more for the agent's benefit because they control their week and because they can get cross marketing with other properties that they are selling. Instead the agent needs to have the attitude of doing whatever it takes to get a sale, and that includes meeting the market and allowing people to inspect on demand to fit in with their schedule too. Remember that not everyone can inspect on weekends.

- **Is the agent the one at the open homes, or it is their assistant?** You would be surprised how many agents, particularly in the more metro areas, have assistants, and they are the ones at the open for inspections. Yes the agent will be 'working' but maybe they have multiple opens and spread their resources. Obviously if we are choosing the sales agent based on their selling skills, then we want them there at the opens.
- **Do they also market to the real estate agency's rental database of owners and tenants?** For example existing tenants may be looking to buy, and existing investors may be looking to expand their portfolio in the area. You want an agent that leaves no stone unturned!
- **Is your property in the average price range of what they sell?** This is an important question because if your property is the most expensive on their books then that's less desirable because you will not benefit from cross marketing to your property from their other ads for other comparable properties. If your property is a comparable price, then enquiries on other properties can be redirected to your property too, if appropriate. Also, we want the agent to have an existing database of potential purchasers looking in the price range of our property.
- **Do they market on social media like Facebook and twitter?** Obviously the broader their reach to the market the better.
- **How would they market the property, e.g. newspaper advertising, internet advertising, window advertising, signboard etc.?** Ensure the agent can justify with statistics why they are making these recommendations, especially if it includes expensive newspaper ads, because they can be over $1000 + per ad in some locations. You don't want to be the one paying for the agent to just promote themselves and create greater exposure for themselves by doing the ads, when in reality the statistics in that area may not support sales leads coming from newspaper advertising.
- **Do they recommend selling by auction?** If so do they advocate an onsite auction or an in-room auction that is conducted in an office or community space somewhere else. Be wary of an agent promoting an in-room auction conducted offsite because they tend to be much more sterile and unemotional and can use only photos to promote the property, which are never as good as the real thing in most cases.
- **How long will it take for them to prepare the marketing material and get the property on the market?** Time is money!
- **What are their fees and charges and will they pay for advertising?**

- **What do they charge for a realestate.com listing?** This cost can vary significantly between agents depending on the volume of advertising that the agency does. Negotiate on this and highlight the price charged by other agents.
- **Will they conjunct with other agents?** Conjuncting means that if another agent brings a buyer to the table that purchases the property, the principal agent will share the commission with the other agent. Obviously this is very beneficial from the seller's perspective, but not all agents will do it.
- **In their opinion, who is the type of buyer for this property?** You want to gauge if their assessment is consistent with your research.
- **What features of the property would they highlight?** You want an agent that can identify the features, e.g. the ducted air-conditioning controlled from downstairs is a benefit if there is a baby or child sleeping upstairs. The separate pathway and entry ensures privacy to the unit. If the agent doesn't come up with much and you have to highlight to them all the features, that's not a great start.
- **What price would they consider listing the property for?** While you want a premium price, do not fall into the trap of just going with the agent that projects the highest price, especially when it's above your comparable sales research. This is because the agent may be just trying to buy your listing and tell you what they think you want to hear. Their strategy is to condition you as a seller, which means once they have your listing and there is not initial interest, they then report that the market has softened since they first inspected and they will want you to reduce the asking price to the level where it should have been from the outset.
- **Selling Agent Agreement –** Once you have selected your preferred selling agent based on your research, you will then enter into a Selling Agent Agreement (see Module 7 for details about this type of agreement). It is recommended that you only sign-up the agent for a limited duration, e.g. 45 days – rather than the normal 90 days that the agent would probably have pre-filled out on the agreement. You want to do this because if the agent isn't performing to your satisfaction, you want to be able to terminate the agreement as soon as possible, and not have to wait 3 months! While the agent may try to resist this shorter period, you can easily explain to them that it will have no bearing as long as they are doing a great job, because at that point obviously you will want to extend the contract if required. It only becomes an issue if they don't do what they say they would do. An agent that backs themselves shouldn't have an issue with this. You can explain to them that you have had a bad experience in the past with an

agent who once they got the listing, was inactive, a poor negotiator, and poor communicator. This way you are effectively putting the agent on notice as to your expectations.

- **Educating the Agent –** Take the time to think about and list any potential issues buyers may have with the property and list possible responses and ways to counter the issue. Equip the agent with this information so that they are prepared to be able to address buyer's issues and concerns upfront. You want the agent to address things front on, not be vague and dismissive, because that can make or break a sale. Putting a buyer at ease regarding concerns is very important. You are therefore much better to be prepared in this regard and prepare the agent, rather than stick your head in the sand and ignore it. Think about how you can turn anything potentially negative into a positive. For example, if the property is in a flood zone you should highlight to the agent that in fact the water has only ever got to the back fence and never onto the property and that the road access has never been cut off. That way the agent can relay this info and alleviate any buyer's concerns on the spot. Or maybe there is a large area of vacant land next door and buyers are concerned that they will lose their privacy if building works begin. Maybe you could counter that by highlighting that there is a buffer corridor between this property and the next, plus if development does happen then it could significantly increase the value of this property because they would all be brand new houses and at a much higher price point etc. Remember that you know your property and the area the best, and so you are the best equipped to prepare these responses. You also have the most at stake, and yes, some people might say that this is the real estate agent's job, but at the end of the day, you want the sale and so you need to be prepared to do whatever it takes to make that happen.
- **Agent Feedback and Communication** – Be very clear with the agent from the outset as to what your expectations are regarding communication. You should expect to get an update from the agent at least weekly, including statistics on the number of enquiries, number of inspections, outcome of inspections, and feedback on the property both from the buyer's perspective and the agent's. Take the feedback on board and look for ways to remedy or address them.

Pricing Property for Sale

Pricing a property competitively in the market is critical, because if it's set too high and buyer interest is low, the listing can become stale. Certainly, the longer it is on the market the less appealing it tends to become, because people have already

seen it and just gloss over it. People may think there must be something wrong with it because it hasn't yet sold. Detailed below are some of the factors to consider regarding pricing a property. Remember that there may have been a time gap from when you did your initial pricing research, and so revisit this as per below:

- **Research Comparable Sales** – You need to benchmark your property against everything else that has sold in the area recently – say in the last 3 to 6 months. Research sold properties on realestate.com, and from RP Data, or PriceFinder, or My Valuer on Investar (remember that the data from these last 3 sources may be up to 3 months behind the current market). Summarise in a table format each sold property, price, features, include photos and compare it with your property, e.g. land size, house size and features, views, location to infrastructure / cafes / jobs / transport / private school / school zone / lifestyle areas / main road / quiet street etc. Be objective when comparing your property with others.
- **Research For Sale Properties –** Repeat the process above to benchmark your property against other comparable properties currently listed on the market for sale. Even call the agents to get their feedback on how the property is going, and the level of enquiries and interest.
- **Research the Strength of the Current Market** - You need to understand the current market conditions, because in a strong moving market you may choose a different list price and advertising strategy, e.g. you may choose to go offers over $X , rather than specifying a specific price. Research the current Days on the Market (DOM), the DOM trend, the discounting rate and trend, and the enquiry level experienced by the local agents.
- **Setting a Price –** Once you have obtained the agent's feedback on price and compared it with your research, you both (you and the agent) then need to agree on a price point. From there you then need to decide if you will advertise the actual list price or a price range or make it 'offers over $X', or 'make an offer' and hence, no price indication. The method that you choose is up to you, but keep in mind that some buyers get very annoyed when no price is provided, e.g. they don't know if it's in the $400k range or the $500k range and there is a very big difference! You will find that many agents don't like listing a price, but rather want a prospective buyer to call them to enquire. You have to ask the question though whether this is just a tactic that works for the agent, because by encouraging someone to call, they can then try to move them onto another property if this one isn't right for them. You need to be very mindful of whose interests the agent has at the forefront – yours or theirs? Also, remember that if you provide a price

range, buyers will always start at the low end – it's just human nature. If you are serious about selling and you know what price you are targeting, why not just advertise it with a price and get on with it!

Marketing

Effective marketing of a property is essential in the selling process. In fact, it is so important that when you are looking to purchase a property, you should actually be thinking about how you can market if for sale – even though you may not be intending to sell in the short term. That way you are thinking about the end game from the outset and it will assist you to make better decisions at the outset. What you are wanting is a property that ticks as many of the boxes as possible – either as an investment property or owner occupied property. Some of these 'boxes' to be ticked include if it's close to transport, education, jobs, lifestyle areas like café's, or parks, or maybe if it's in a quiet street etc. A property that fits those criteria will be very marketable because you can highlight all those features in the marketing material, and that's what sells property. You need to provide a product that people want to buy. A number of the different aspects to marketing have been touched on above but are outlined in more detail below:

Writing Copy

Written copy is the wording that is used in all of the marketing material, including the brochure, internet ad, signboard etc. The whole idea of the copy is to 'Sell the Sizzle'. You want the words to really capture people's attention and interest. The words should not be the usual boring three bedrooms with ensuite and open plan living type ad. That is just describing what it is. It's describing the features, whereas we want to describe the lifestyle created. Let's face it, the symbols used at the top of most ads already tell the buyer the number of bedrooms, bathrooms and garages! You need to use the words much more creatively. The idea is to evoke emotion and focus on what it 'feels like' to live in the property – be emotive so that the buyer can imagine themselves experiencing what you have described in writing. Use descriptions like: 'Imagine coming home and relaxing on the expansive rear veranda with a glass of wine in hand', or, 'Enjoy playing footy with the kids in the huge fully fenced backyard.' This is where it is important to know who your target market is – who are you actually trying to sell to, because you need to target your written copy accordingly. If your target isn't families – then don't mention the kids in the rear yard, for example. Also remember that photos will accompany the words and so in your written copy don't just describe what you can already see in the photos. If the property has value-adding potential, ensure that is also emphasised, e.g. subdivision, granny flat, rent by room potential. The

written copy is something that you yourself should write and provide to the agent – do not rely on the agent to write it. That's because no one else knows the property as well as you do, no one else has researched the market like you, and knows the competition as well as you, plus no one else has as big a vested interest in the property selling as you. Now it's understandable if you are feeling uncomfortable at this point and that's natural, but this is a learned skill and something that will not take long to master. The problem with the agent's written copy is that most agents are pumping these out every day and while you think they should be expert at it, in reality for many, their creative juices have dried up. Also, agents are time poor and won't give it the attention that it deserves and that you will give it, so just have a go yourself. Regardless of how the written copy comes about – you must look at it through the eyes of a buyer and be confident that it 'sells the sizzle' and is emotive rather than descriptive!

Photo Selection

From the professional photography shot you should be given a copy of the photos electronically in small to large format. First you will need to select the pick photo, it's the one you would call the 'hero shot', or the 'money shot'. It's the one that captures the essence of the property the best, and presents it in the best light. It may be an inside or an outside photo but it wants to be one that once again emphasises the lifestyle features of the property – so it may be the living / dining photo, or the lounge / alfresco photo, or the pool photo etc. Once the feature photo is selected you then want to choose the next best photos and order them accordingly. The order of the photos is very important in your marketing material because you need to capture the buyer's attention but you also need to hold their attention, so you need the best photos up front. You don't want the laundry or the garage photos within the first half dozen unless there is a Ferrari in the garage! Remember, buyers are flicking through lots of listings on the internet, and so if yours doesn't stand out and keep their interest, they will just move on to the next. Once again, you should be the one selecting the photo order and specifying this in your marketing material. This is because left to their own devices, sometimes the admin person in the real estate agency will just put the photos up in any order, particularly for the internet ad – and the laundry may end up as the second photo! Just another tip – remember that you do not need to include every photo that the photographer took. Just pick the best and those that show off the property to its full potential.

Brochure

Many agents like to have a brochure or flyer produced that they can give at the open for inspections and that they can post out or letterbox drop in the neighbourhood. There is limited space on the brochure and so choose your photos and words very carefully to ensure they are giving you the biggest bang for your buck! Also make sure that you double-check the proof before authorising it to be printed. It's too late to pick up an error once 150 are printed.

Internet Ad

As detailed above, you should compile the written copy and do the photo selection and photo order yourself. You will also have to choose the type of internet ad, as they range from premium through to standard, and the pricing differs significantly.

Signboard

Out the front of the property you will have a signboard. At the most basic level it will be the real estate agent's standard sign. At the other end of the spectrum is a large photo signboard that is purpose designed for your property. It should include your best photos and key text. Ensure that the photos show what you can't see from the street. There is no use having a huge photo of the front of the house when you can simply cast your eye across and see the real thing. Even if it's your 'money shot' – do not do it. Yes, this seems so obvious, but you would be amazed at how many photo signboards there are where this mistake has been made. Start taking notice as you drive around.

Floor and Site Plan

A floor plan shows the layout and configuration of the rooms and a site plan shows the position of the property on the land. Both can be very useful to include in the internet and brochure marketing material. These plans do not need to be drafted to scale and often professional photographers have the capacity to create these plans, so ask the question.

Video

Depending on the value of the property being sold, you may consider getting video footage of the property to include in the internet ad and website. Videos are becoming less expensive, so talk with the agent to assess if it is of value. Also assess if competing properties use a video to market. Ensure it is done professionally though, because an amateur job can be a major turn-off to buyers.

Website

As with the video, a website may or may not be a required marketing tool, depending on the nature of your property, the market, and the competition. The more expensive or unique the property, the more likely a purpose designed website may be beneficial. For properties being sold off-the-plan and for larger projects, a website is recommended, as it allows you to present so much more information on the property, the location, and the opportunity.

Information Memorandum (IM)

An Information Memorandum is like a detailed brochure and is commonly used in marketing to sell property off-the-plan, large developments, sites being sold with a DA in place, sites with development potential, and commercial property (see the marketing section under selling off-the-plan for the general contents of the IM).

Open For Inspections

It is a good idea to include open for inspections into the marketing plan so that people can touch and feel the property. Presentation, presentation, presentation is key. Think about fresh flowers, nice smelling oil, through to removing the family pets for the open period. You want people inspecting to feel at home and comfortable in the space. Consider placing emotive triggers in certain areas too, for example an old-fashioned red push car in the kid's bedroom and Pooh bear on the bed. This will catch the kid's attention when inspecting the property, then when the parents ask the kids which property they liked, you have a better chance of them saying, "The one with the red push car" or "The one with the Pooh bear". There are no guarantees with any of this, and we are just trying to sway the odds in our favour, plus trying to stand out from the crowd!! If you have recently built or renovated the property, it can be a great idea to strategically place laminated descriptive notes around the property to explain the features, e.g. spotted gum tongue and groove timber floors, ducted air-conditioning throughout with controls in each room and downstairs – so you can adjust the kid's rooms remotely without having to go upstairs. These notes ensure that you are not relying on the agent to share this information, plus it maintains consistence in information. Another great idea is having a gift-wrapped present sitting on the kitchen bench with a card addressed to the 'new home owner'. This is a subtle way to catch buyer's attention, stand out from the competition, and to show them that you are a serious seller.

Slow to Sell

If a property is not selling, you need to ask the question why. The answer can be one of three things or maybe all three – the price, the property, the selling agent. You need to look objectively at each to remedy the situation:

The Price

This one is pretty straightforward. If you are overpriced relative to the competition then a sale will take much longer or it may not sell at all, so go back and review the market, and the competition and adjust your price accordingly.

The Property

Review the feedback from the agent and whether you can do anything more to the property or anything more to alleviate buyer's issues. For example, if the vacant land is sloping, buyers may be turned off because of the unknown impact on the build cost. In that instance you could get some actual build costs and indicative plans to provide the agent to give some certainty around this and provide a potential solution to the issue. Maybe you could obtain quotes to retain the site. Maybe the issue is around the poor state of the kitchen, and a way to tackle this is by offering to give the buyer a $5k voucher to a cabinetmaker to upgrade the kitchen. Educate the agent to market this to buyers as an actual benefit, because it allows the buyer to design the kitchen to their own needs and tastes regarding finishes etc. If buyers baulk at this because of the extra hassle, you could offer to install the kitchen during the conditional period so that it is in for settlement. Again it's all about being solution focussed and thinking outside the box.

The Agent

Is the agent doing everything they can to generate enquiries, and to convert them to inspections and ultimately a sale? A great idea to help answer this is to pose as a potential buyer and check the agent's response to a phone enquiry. Either call them anonymously yourself, or have someone else call them for you and gauge their response. Do they answer the call? If you have to leave a message do they call back? Are they helpful? Do they answer your questions or avoid them? Are they proactive and follow you up? You could also have someone attend an open house inspection, or arrange a private viewing to see how the agent performs. If you are not happy with what you experienced in one or more of these scenarios, then yes, you could put it down to the agent having a bad day, but in reality you need to address this head on because they may be losing you sales. You also should be revisiting the marketing material and ensure it is not missing the mark for some

reason. If it is, then change it. Consider changing the marketing material, the order of the photos, the written copy to freshen up the campaign and come from a different perspective. Maybe you need to think a bit more outside the box and explore what more you could do. For example, when selling vacant land, maybe you need to get an artist impression done of the type of house you could build on the site to assist people visualise the end product. Or maybe you could partner up with a builder and market it as a house and land package, or even better, have the builder market the land to his database of clients. Maybe you could market it directly to builders as a speculative build site – a 'specky'.

Negotiation

The art of negotiating is the same whether you are a buyer or seller, hence the detail outlined above under Buyer Negotiation is equally as valid, as is the whole negotiation section of this module. There are however, a couple of specific points to make with regard to negotiation from a seller's perspective:

Timing

Typically the best offer on a property is made within the first month or so. If you knockback offers during this period, ensure that you will not have seller's remorse. It happens time after time where solid offers are knocked back early in the sales campaign and in hindsight that was the best offer made. While you would think that you could just go back to the interested buyer down the track and renegotiate, that is not often the case, because buyers often move on quickly if they think they have missed out and hence, they may no longer be in the market. Try to remain objective and keep the greed factor at check, because it's easy to fall into the trap of believing that a better offer is still to come.

Negotiation Tools

When negotiating as the seller, it is only limited by your creativity. Some negotiating incentives or strategies you may consider having up your sleeve could include:

- You pay the buyer's Stamp Duty;
- You pay for additional works on the property, e.g. install air-conditioning, fencing etc.;
- You pay the buyer's legals.

Remember that when it comes to the negotiation, you might discuss with the agent about them coming to the table too and reducing their commission to cut a deal. The technique of meeting in the middle between the buyer's and seller's price is still very valid and so be mindful of this when counter offering. A word of caution – try to avoid negotiating verbally. Have the buyer put their offer in writing and make each amendment and counter offer in writing. This is because otherwise you can spend time getting agreement to something verbally that the buyer then changes their mind on once it gets to putting it on contract.

Sunset Clause

As a seller, the 'sunset clause' is something that you want to have in your negotiation tool kit and deserves special mention. This clause is relevant when a buyer makes an offer that may not be ideal, but it's the best or only one on the table. For example, maybe the buyer is making their offer subject to the sale of their home or an investment property. You would then counter with the sunset clause, which allows you to accept their offer and lock them in, but gives you the power to keep marketing the property. If another buyer comes along with an offer that is more favourable to you, the sunset clause will have a timeframe, e.g. 72 hours, by which time the first buyer either has to choose to go unconditional on the purchase (regardless if they have sold their property or not), or choose to withdraw. The second contract would already be drawn up and subject to the first contract being withdrawn, so that way you are protected. Your solicitor will need to control the contract process to ensure that it is all done legally and that you are not left exposed.

Contract and Conditional Phase

When entering into any contract, time remains very much of the essence, and you should instruct the agent to get the buyer's signature on contract ASAP. If it is an agent sale, they will typically draw up the contract, where as if it is a private sale, it will be your solicitor that will prepare the contract. As the seller, once you have entered into a contract, both parties have countersigned, and it is in the conditional phase, there is not really a lot for you to do, as it's the buyer that needs to complete their due diligence in order to go unconditional on the contract.

Things that you should do though include:

- **Valuer inspection –** If the contract is subject to finance or valuation, a valuer will contact you to gain access to the property. As the seller, I suggest that you meet the valuer at the property. Take them a copy of the sale

contract and rental appraisal / rental statement if applicable. You will be amazed at how many times a valuer is sent to value a property and they aren't sent a copy of the sales contract and relevant information on the property. Given that you have a sale riding on a good valuation, it's worth the effort to ensure the valuer is as educated as possible about the property. If you have plans of the property, also give a copy to the valuer, because it will save them having to draw a mud map while on site, and they will really thank you for it. Also provide a list of the features and description of the property. This can be a stock standard list, rather than your emotive marketing copy. If the property is recently renovated include the works done. Do not underestimate the value of this information too. There are a number of recent experiences where the valuer, when left to their own devices, has valued a property as three bedrooms when really it was four. The valuation figure reflected this error and actually jeopardised the sale, because it's a major hassle to try and argue against the valuer and get the bank to reorder the valuation or request its review. It is in your interest to ensure the valuer is on the same page as you from the outset, which is the benefit of you being onsite to meet them. If you cannot physically be there, consider providing the information to the real estate agent, and have them attend. Also include in your information, your comparable sales research so that they know you are educated and understand the value of the property you are selling. If possible, leave the staging furniture in until after the property has been valued and ideally until it has gone unconditional, because even a valuer will see the property differently if it's staged and presented well rather than empty or messy.

- **Building and Pest Inspection** – If a building and pest inspection is being done on the property it is suggested that you attend. This is so that you can answer any potential questions, but also so that you can gauge the inspector's response. If any recent renovation or building works have been completed, furnish the inspector with a copy of the building approval and or any inspection certificates relating to the works. If you know there may be issues with the property, it is often best to be pro-active and have them assessed upfront so that you can provide the inspector with this information. For example, if you have obvious cracking in a structural wall, it may be worth having an engineer report to confirm the status of it. If you don't provide supporting info, the inspector is likely to flag it in their report and the buyer may become alarmed by it. At least by being proactive you are more likely to be able to navigate the buyer through the process. Alternatively, you can do nothing in advance and wait to see what the

building inspector says about it and how the buyer reacts and manage it from there.

- **Other Contract Conditions –** Be prepared to provide supporting info if required or requested in relation to other conditions of the contract, e.g. Development Approval (DA) information if you are selling with a DA, or plans and Building Approval (BA) information if being sold with BA, or body corporate information if there is a body corporate involved, or financials if there is a business component etc.

Unconditional Phase

Once all conditions set by the buyer have been met or waived, and the contract goes unconditional, that is the time to alert your team and get the ball rolling in preparation for settlement, including:

- If you have a mortgage on the property being sold, you need to notify the bank once it's unconditional so that they can get prepared to release the mortgage come settlement. It's suggested that you provide the bank with your solicitor's contacts so the solicitor and bank can liaise directly. Your solicitor will need to obtain the loan payout figure from the bank as settlement approaches.
- Provide your solicitor with a copy of the most recent council rates and water bill for the property, and the body corporate bill and statement (if applicable), so that they can calculate the settlement figures and make the appropriate adjustments. Also provide them direction on which bank account/s to deposit the balance funds from settlement.
- If you have a property manager, notify them in writing that you are selling the property and if required, provide them the sufficient notice required to terminate your management agreement with them, e.g. 30 days. If the tenant is to remain in place, you may want to give the property manager the buyer's contact details to liaise with regarding ongoing management. Check with the buyer first if they want their details passed on.

Settlement

The final stage of selling is to prepare for and undertake settlement, including:

- Prepare the property for settlement, i.e. vacate if it's being sold as vacant possession. While there is no legal requirement to leave the property sparkling clean, it is courteous to at least give it a clean over for the new owners. Also, locate any remotes that stay with the property, e.g. air-

conditioning, and any warranty documents or instruction manuals that may be of benefit to leave for the new owner, e.g. dishwasher, pool pump etc.

- For any chattels or other items that are noted in the contract to stay at settlement, ensure they are present and as specified in the contract.
- Provide all keys for the property and garage door remotes to the solicitor to be able to handover at settlement.
- Assuming you have an electricity account for the property, request a final read done on the meter and have the account closed a day after settlement.
- That at least gives the buyer a night's grace to change over the account into their name.
- Notify your solicitor in advance if you are going to be away leading up to settlement, because it is essential that they can contact you over this period.
- Once the solicitor has the draft Settlement Statement prepared, request a copy and review it carefully to ensure that correct adjustments have been made, including deposit, rates, water, body corporate (if applicable) etc.
- Once you have had confirmation from your solicitor that settlement is complete, then contact the insurance company to have your insurance on the property cancelled.

PLATINUM
ACCELERATOR

Negotiation

Most of us will find ourselves negotiating in one form or another on a regular basis. However, few people really master the art of negotiation. We, at I Love Real Estate, believe that mastering negotiation means also mastering communication. There is a distinction between negotiation and communication, and the definitions for each, according to the Oxford Dictionary are as follows:

> **Negotiation** - discussion aimed at reaching an end,
> **Communication** - the evoking, imparting or exchanging of a shared common meaning to another person either by speaking, writing or using some other medium.

It is interesting to look at the history of communication.

- Speech was developed about 200,000 years ago
- Symbols were developed about 30,000 years ago, whereas
- Writing was developed 7,000 years ago.

Communication can be broken down into these three areas – oral communication, written communication and non-verbal communication. To be an effective

communicator, and therefore negotiator, it is important to hone your skills in these three types of communication.

It is the evolution of brain function that differentiates humans from animals, and among other things allows humans to master a very effective form of communication – speech.

There has been quite a lot of research done over the years into effective communication. Results show that:

- What you hear
- The tone of your voice
- Your vocal clarity
- Your verbal expressiveness – represents 40% of your message
- What you see or feel
- Your facial expression
- Your appearance (dress and grooming)
- Your posture
- Your eye contact
- Your touch, and
- Your gestures – represents 50% of your message

And your words represent the other 10% of the message.

When it comes to communication and negotiation, you have to be mindful of your complete package, not just what you're actually going to say.

Research also shows the importance of understanding how much of the communication or exchange the other person actually retains. Results from this research show that:

People generally retain:

- 10% of what they read
- 20% of what they hear
- 30% of what they see
- 50% of what they see and hear

- 70% of what they say, and
- 90% of what they say and do

This is why in medical school, the philosophy for teaching medical students how to perform a procedure is;

1. learn by watching and be guided by the teacher / doctor / surgeon
2. perform the procedure under the guidance of the teacher / doctor / surgeon, and
3. teach someone else how to perform the procedure. This three-step process has been proven to be the most effective way of really learning.

Let's look at the following principles of positive cooperative communication:

1. **Soften your tone** in order to avoid sounding 'pushy'.
2. **Rephrase your words** to avoid sounding opinionated and superior. For example, instead of saying, 'You'll have to…' , you could say 'Could you…' or 'Would you be able to …'
3. Always be **solution focussed**. Instead of saying, 'This block can't be subdivided', look at things differently and ask, 'How can I build two houses on this block?' I had this very example recently on one of my properties. I wanted to subdivide the property into multiple lots, but the council town planner said the property could not be subdivided. However, by asking the right question, i.e. 'How can I build multiple dwellings on the property?' I achieved a better answer. I can actually build eight houses on the property, and no, it can't be subdivided, but I can still achieve my higher objective of having multiple income streams from the property.
4. **Turn Cannots into Cans**. Instead of saying, 'I can't do that until next week,' say, 'I'll be able to do that next week'. See how the whole connotation and emotion around the sentence changes simply by dropping the 'can't'.
5. **Take responsibility.** Blame is one of the most debilitating responses. When you blame someone or a situation you are actually putting yourself down. This comes back to principle 4 – 'be solution focussed'. Instead of jumping to, 'It's not my fault,' immediately turn to, 'What can I do to fix that?' or even better, 'Here's what I can do to fix that'. Responsibility is much higher on the evolutionary hierarchy than blame. It is what distinguishes leaders from followers and success from mediocrity.
6. **Say what you want, not what you don't want.** This works on your subconscious as much as your conscious brain. Instead of saying, 'Don't drive too fast,' say instead, 'Drive carefully'. When talking to your town planner, it is better to say, 'I

want the most cost-effective and time efficient application,' than, 'I don't want a long drawn out costly application process.' Additionally, always ask directly for what you want. This may seem obvious, but so many people beat around the bush for fear of appearing stupid or not wanting to offend the other person. Remember if you don't ask, you already have a 'no'.

7. **Focus on the future, not the past.** This principle interrelates with the other principles. Instead of blaming, and focussing on the cannots, or looking at the problem instead of the solution, you need to focus on your future desired outcome. Instead of saying, 'We've been over this before, I don't want…' say instead, 'Okay, from now on I want…'
8. **Share information rather than argue or accuse**. This is something that comes with maturity (I said 'maturity' not 'age'). You can be mature and still quite young. The more confident and secure you are, the less you will feel the need to convince others that you are right. You know you're right regardless of the opinion of others. Those that feel the need to make someone else agree can be confrontational, and this is not congruent to a mutually agreeable outcome. Communication, and definitely negotiation, is about mutual agreement not a win / lose victory war.
9. **Learn the art of effective listening**. In order to be a good communicator and negotiator you must first learn to be a good listener. There is a very good quote by Mark Twain that sums it up perfectly:

   " If we were supposed to talk more than listen, we would have been born with two mouths and one ear."

Negotiating is like being in a play. You have four roles to play. You are the detective, the lawyer, the judge and the accountant. Let me explain…

As the **detective**, you need to investigate your opponent, the situation and the property and find out as much as you can about all three.

As the **lawyer**, you need to be able to present the other side's case better than they can! Once you can do that, then you have prepared your case, because you, like any good lawyer, will be in a position to predict the other side's objections before they open their mouths.

As the **judge**, you enter the bargaining phase. What do good judges do? They listen to all information presented before making a decision. A good judge will know that occasionally the negotiator will become emotional and distort the facts. By wearing your judge's hat (wig), you can emotionally keep your distance.

As the **accountant**, you cast your eye to the detail. Accountants check everything carefully, being alert to inconsistencies. This will be in the agreement phase. The temptation in the agreement phase is to heave a sigh of relief and think, 'Thank goodness the haggling is over,' and relax. Yet this is exactly what you shouldn't do. This is where the facts, figures and contracts all need to be checked very carefully. It is in this phase that a lot of add-ons get put into agreements. Remember ears tend to have lousy memories, so it is best to follow up everything in writing.

Key Steps to an Ideal Negotiation Process

Whilst working on your language skills is important to the overall outcome of a negotiation, there is actually a process to successful negotiation that has been tried and tested and proven to be the most effective and successful negotiation process.

1. Gather Information

The more you know about anything, the better the decisions you make. Consequently, before entering into any form of negotiation it is vitally important to find out as much about the situation as possible. Life is really one big negotiation, however, in the context of real estate we are usually negotiating as either a buyer or seller, negotiating with tradespeople, negotiating with agents, negotiating with council etc., and your motto really should be 'forewarned is forearmed'.

Find out as much information about the buyer or the seller or the other party's motivation as you can before you start negotiating. If you understand what their motivation is, it becomes much easier to structure an argument and the deal such that it is appealing to their needs while still satisfying your own.

It is always a good idea to ask third level questions. By that we mean ask questions that on the surface may seem irrelevant to the negotiation, however they help form a complete picture of the other party's motivation. During this process it is also advisable to keep in mind any cultural differences or idiosyncrasies that may affect the negotiation. An example of this might be Chinese lucky numbers and trying to avoid the letter four whilst incorporating the letter eight.

These days it is an absolute must to Google your opponent. There is so much online these days about everybody and a lot can be gained by joining the 'Google Dots'.

For instance. in a buyer / seller situation, it helps to understand the psyche of the other party even to whether they have kids, whether they travel a lot, what age they are, what their hobbies are etc. A lot of this can be gained from social media like Facebook. This can add a layer of understanding about associations and allegiances the other party may have. It helps when building a relationship with the other party, to establish rapport and understanding prior to the tactical process of negotiation.

For example, if after looking at Facebook you find your seller is a grandparent and that he/she is looking at moving interstate, this may help you structure a longer settlement so they have time to find another house closer to the kids and grandkids. Or if through social media, you find the seller spends quite a bit of time caravanning around Australia, this could mean they don't need the money from the sale of the property straight away and maybe they would like to be paid a regular monthly income while travelling, thus giving you an opportunity to subdivide, renovate, or gain development approval on the property prior to purchase. The old adage 'knowledge is power' is certainly the case when it comes to negotiation.

Find out information about the property and what other properties the buyer or seller may own. This can also be useful information. Subscription-based programs such as Real Estate Investar, RP Data and Pricefinder / APM (which is included in Investar) will provide details on how much a seller paid for a property, how long ago, when it was originally listed for sale or rent, whether the property has been previously reduced in price and even what other properties that person owns. Information is massive and can be crucial to you structuring the deal, price, terms, etc.

2. Create a Plan

Now that you have gathered the required information about your opponent, you need to structure the plan for the negotiation. This involves:

- Thinking through and writing what the other party needs out of the negotiation and what you need from the negotiation.
- Making a list of the motivating factors of the other party.
- Writing a list of triggers you believe are the most important factors for your opponent and for yourself.

- Making a list of potential objections or barriers the other party may have and determine a plan of attack to counter these objections.
- Sketching up a plan of how you are going to present the deal. This deal could be a plan to a tradesperson or concept to a town planner or council or a joint venture proposition.
- Knowing your bottom line pull out figure – part of being a good negotiator is also knowing when to walk away. By preparing beforehand you know exactly what that point is, whether it be price or conditions.
- Identifying the party you are negotiating with from a character perspective. Are they someone who needs to be coached and cajoled? Are they a driver and just want to cut to the chase? Are they someone who is going to make a calculated and considered decision or are they someone who acts on emotion? These factors are important when planning the approach you need to take in the negotiation.
- The best negotiators are chameleons – they can adapt and change the situation depending on who they are dealing with.
- Working through possible outcomes. You will have your realistic outcome, an acceptable outcome and the worst-case scenario outcome. Come up with creative options to deal with potential objections or barriers put up by the other party.
- Addressing your reasons for doing this deal. Ask yourself why you are doing the deal, and make sure your emotions are not running away with you.

3. Relationship Building

This is where the benefit of your third level questioning really comes into its own. More deals are done as a result of strong relationships than are ever done on just price. Understand the differences and similarities between yourself and the other party and try to create rapport. This can be done verbally as well as nonverbally. Nonverbal communication can actually be much stronger than the communication (this will be covered later in the chapter). From a verbal communication perspective at least try and be interested in the things that are important to the other party, even if you have to brush up on some knowledge on a topic you know nothing about. A great example of this, is when Ian was creating a relationship with a real estate agent in the area where he wanted to purchase a property. He asked the agent what she did on the weekend. She replied she had been in a camp drafting competition. Being the city boy that he is, Ian had no idea what camp drafting was. After a quick YouTube and Google search, the next time he spoke to her he had enough general knowledge on the subject to ask some intelligent questions and further strengthen their rapport / relationship.

4. Presentation Phase

The most important thing to remember in the presentation phase is to use simple clear diction. Don't ramble on, don't mumble and don't use big words. You are not there trying to impress an elocution class. You are there to get the job done. Here is an example of what we are talking about:

Remember when Newton sat under the apple tree and got hit on the head by a falling apple and discovered the law of gravity? Well he didn't sit there and say –

"Yes, well here I am sitting under a 26-year-old tree with red apples about 8 cm in diameter, one of which has fallen very quickly, impacted on my scalp, and caused an immediate sensation of pain…"

He was probably more likely to have said –

"Which red-neck threw that blasted Apple?"

Concise and 'to the point' communication is much more effective, and being clear and concise comes with preparation. The more preparation you have done and the more you have planned out your constructive approach, the easier it is for you to negotiate efficiently.

5. Bargaining Phase

This phase is often the most difficult to prepare for. In your preparation work you have listed out the potential outcomes, what the other party may or may not say and what your response would be if they said this or that. However, you can never truly prepare for this part of the negotiation. You have to be flexible. You have to think on your feet.

It is in this phase that your reading of the nonverbal communication is important. This part of the negotiation is more like a game of poker where different tactics work better than others depending on your opponent. Here are some tactics to consider:

Emotional outburst

I'm not a big fan of this, as it doesn't suit my personality. However, I have seen it used very effectively by someone with the right persona. It is normally an indication that the person having the emotional outburst wants to exert power for a short intense period of time. Of course once the other party is aware of the ruse, it loses all impetus. Of course, if the emotional outburst is genuine and from

anger, then often things are said which should never have been uttered, but cannot be taken back.

Arguing a Specific Point

This is often used to clarify a specific part of the negotiation. If you are the one using this tactic, you do it to gain ground on a point so that subsequent topics become less of an obstacle. For example, let's say you are negotiating for a long settlement. Once this point has been agreed upon it is easy for you to ask for things during this long settlement period such as early access or consent to lodge a development application with council.

If you are on the receiving end of this tactic, then you do not want to agree on any minor point until such time as you have the full picture presented to you.

Pretending Ignorance

This tactic has been used for centuries by politicians. From a negotiation standpoint, it is normally used to draw out or extract more information from the other party in the early stages of negotiation. If this tactic is being used against you, the best response is for you to only answer the question at hand without volunteering a lot of other information. The key here is to answer the question, and only the question, then 'shut up'. This normally comes from being confident. Typically someone who is nervous or lacking self-confidence is the one that will rabbit on and become very chatty and in doing so give away far more information than they should.

Environment

Strategically, being in your own environment is your home court advantage. If you are ever in a corporate negotiation and you are in your opponent's offices and they leave you in a small room for 15 or 20 minutes prior to the meeting, you had better make sure your senses are very alert, because what they are actually doing is they are preparing you for sacrifice. It's a bit like a football match where the home team always has the advantage.

'You go first'

Who goes first can be a bit of a dilemma. It is often why unprepared negotiators spend a lot of time doing small talk. Each one is avoiding the elephant in the room

or the deal at hand. As a general rule if you are well prepared it is better to go first. This will typically cut down unnecessary time wasting.

The Red Herring

The red herring is a point that you would make a really big deal out of, and make out that it is the most important part of the deal, yet in reality it is of little or no importance. It is the sacrificial lamb.

Here is an example: Let's say you are bargaining to buy a property and you make a big deal out of the fact you must have a 90 day settlement, and through negotiation you get the seller to come down significantly in price in exchange for giving up a 90 day settlement. The seller feels like they have had a win because you gave up something, which on the surface appeared to be very important to you, yet in reality the 90 day settlement was just the red herring.

The Ultimatum

The ultimatum is really a bullying tactic, again not one I particularly like. The downside of using the ultimatum is the other side may very well call your bluff and you have to be prepared to walk away. The ultimatum really only works when you have a desperate opponent on the other side and since I don't like taking advantage of anyone, this is not a tactic that should be given any weight.

Timing

Timing is crucial to successful negotiation. Understanding how much time the other party has or needs is very important to how the negotiation transpires. If you have a very motivated seller or buyer then speed of settlement and fewer conditions are the things that need to be stressed in the negotiation and the other parts of the deal can be more flexible, such as price.

I remember hearing about a negotiator who went to Japan to negotiate a merger for our company. This was when I was back in my days as a young accountant. The negotiator had a week to conduct his business. The Japanese were very good hosts, and on his arrival in Tokyo they politely took the airline ticket to confirm his return flight. Well of course now they had control over time. You guessed it. They filled his week with niceties such as dinners and sightseeing and kept putting off the actual negotiation of the company. Because they knew the time of his return flight, the real negotiation did not take place until they were on their way back to the airport. This is a classic rookie error.

The Nibble

This is a classic tactic used usually towards the end of the negotiation. It is normally a small thing that is thrown in, in order to get a bigger point of negotiation across the line. For instance, as a seller you may say, "If you meet my price I'll throw in the furniture package." This will normally cost you a lot less than the reduction in price they were seeking. Or as a buyer you may say, "Okay I'll meet your price but I want the furniture as well", or the tractor or lawnmower or the boat or whatever.

The Higher Authority

This is a cunning tactic. It is usually used to buy time. "I can't make a decision now because I have to ask my wife, my lawyer or whoever." You buy time to deliberate exactly what's on the table and ensure you do not have to make a rushed decision. Real estate agents hate this. It gives the buyer or the seller time to back out of the deal, which of course means they don't get their commission.

Silence

Some negotiators call this 'the gap'. He who speaks first usually loses. Again this tactic takes confidence because it is a show of strength, and it usually follows a significant offer or point. The waiting can be agonising - but you need to hold your ground.

If you find that you are doing more than 50% of the talking, watch out that the other person isn't using your loose lips to find out how far they can push you. If you ask a question and fail to get an answer from the other side, don't jump in and answer for them, as you will end up giving away more than you bargained for. Filling the silence by answering your own question lets the other side know very quickly where you stand and how vulnerable you are. Ask a question, then keep quiet.

Do a 'Memorandum of Understanding

When an agreement has been reached on various points in a deal, it is really important to capture the agreement in writing. I like to do this by taking out pen and paper, writing the words memorandum of understanding on the top of the page and then listing in dot point everything that has been agreed so far. You will find that the other party will start adding their two cent's worth into the document. This is good news, because when the memorandum of understanding is complete you have a clear written document that describes what has been

agreed upon and the other party will have acknowledged and in most cases contributed to the document. Preferably you then write the words at the bottom of the page, "This is intended to be a binding contract" and then you both sign.

Unfortunately the days of the handshake are well and truly gone. You need to have things in writing. While this document may not necessarily stand up in court, it certainly goes a long way from a commitment and psychological perspective to finalising the deal.

This document also forms a good basis for the lawyers to draw up the actual contract. Some people like to record a conversation that summarises the agreement. I find this can be quite confronting for the other party and they are not as free with the information as you would like them to be if they are being recorded.

As an absolute must, if the Memorandum of Understanding is not completed during a face-to-face negotiation then you should always follow up the negotiation with an email confirming what has been agreed on. The email should contain something to the effect, "Please advise by return email if any of the points above mentioned are not your understanding of our conversation."

Good Cop / Bad Cop

This tactic really shouldn't need much explanation if you have watched television over the last 20 years. If you are working as a team, the tactics still can be quite effective, but don't make it too obvious, because this tactic is so well-known, you need to be quite subtle for it be an effective tactic.

Research shows that the styles of negotiation have changed over the years.

From 1970 to 1985	Negotiation was all about a power play
From 1985 to 2000	Negotiation was more of a side-by-side problem-solving exercise
From 2000 onwards	Negotiation has become more of a learning conversation exercise

Body Language

Studies have indicated that approximately 50% of our communication is from nonverbal cues. Therefore, it is necessary to consider this aspect of communication and in fact negotiation as well. You could be saying everything the correct way, listening and

responding by the textbook, but if your body language is wrong then you still may not get the desired result. The biggest part of being an effective body language communicator is be authentic and energetically aligning with the other person. Unfortunately, this style of learning comes from the university of life experience rather than textbooks.

Remember body language is not an exact science. No single body language sign is a reliable indicator. It is the interpretation of several consistent signals that would indicate a particular meaning or intention.

The way we react to people's eyes – movement, focus, expression, etc. – and their subsequent reactions to us, contribute to this interpretation and understanding both consciously and subconsciously. Much can be communicated using no words at all; a look, a raised eyebrow, a smirk, a wink, all have very powerful meanings.

Understanding body language will give you significant advantage in a negotiation situation. You see understanding body language is not just reading the signals in other people it is also **understanding your own body language which enables better self-awareness and self-control.**

Posture and positioning is also important. For example;

- If you are trying to convey equality – sit or stand at right angles to the person and where possible sit or stand on the same level.
- Open hand gestures give a feeling of trust. Keep all movements relaxed and flowing not jerky and quick, which could indicate nervousness and ultimately, that you have something to hide
- Keep your attention exclusively on the other person – having a scattered attention could show disrespect and lack of interest in what the other person is saying
- Generally leaning slightly forward the other person shows interest; leaning back shows rejection or disapproval.
- Maintain good eye contact while listening to encourage the speaker to keep divulging information; increasing eye contact can apply more pressure and reducing eye contact can lower pressure
- Always respond directly to what the other person has said – even repeating part or all of their statement shows or confirms your attention to their needs in the negotiation.

- Always respect people's personal space zones - this can also be a cultural thing, as people of Asian descent tend to stand much closer than those of European descent.

6. Closing Phase

Once all the bargaining tricky bits have been sorted out, it is now time to close the deal. The best way to do this is by summarising everything that has been agreed to so far. As indicated earlier, we believe this is best done in writing, however, don't delay the close to a later time just so that you can confirm everything in writing. As said earlier, I prefer to handwrite a Memorandum of Understanding on the spot. By handwriting and summarising all of the points to the deal, you reinforce agreement on each of the points to the deal. Even the slowness of handwriting adds to the concrete nature of the agreement. It gives the other side an opportunity to add to the mutual agreement.

When the Memorandum of Understanding is all written out and both parties agree to its content, write the words on the bottom "This is intended to be a binding document," and both parties should sign.

7. Summarising and Debriefing Phase

Whenever you have completed the task it's always a good idea to conduct a post-mortem. A post-mortem, or review of your performance and how the deal went down is your opportunity to learn from your mistakes so that you don't repeat them again and recognise the things you did well so you can include them in your regular negotiation patterns.

Ask yourself some questions such as, "What can I learn from that particular negotiation? What would I do differently if I had the opportunity to negotiate that deal again? What other things could I do or could I have done to get a better result?"

As usual, having these questions and answers actually written down and filed away either digitally or manually in a file, gives you the opportunity to go back and review at a future date. This is just good business sense.

The more negotiations you do the better you can become, so don't beat yourself up if you stuff up a few times to start with. It's just **practice, practice, practice**.

PLATINUM
ACCELERATOR

Options

The option strategy is probably something you relate to the share market. However, writing options in the real estate market can be a very lucrative process if you know what to look for and have the knowledge and foresight to see the potential in a property.

Market trends do affect the profitability of options and the ease with which they can be traded. For instance, when the financial markets are tight and borrowing money to develop is harder, selling an option deal to a builder or developer is more difficult. However, in this type of climate, it is often easier to negotiate the option contract on the property, as buyers are normally fewer and further between.

So, in hard times, it is easier to get an option but harder to sell.

Okay – so what is an option?

It is basically **the right, but not the obligation, to buy (or sell) a property at an agreed price at a future point in time.**

For some people, options are this big scary thing, but in reality, an option is just a stack of papers that gives you the right to certain things. Having said this, it's still a great tool. The option agreement is simply a legal document that the buyer and seller both sign and it is then attached to a contract. The option agreement is your right to do something but possibly not the obligation to.

An option is merely a document that a seller and buyer (or potential buyer) sign – it's an agreement to transact. Let's take a step back and explain the different types of options.

Call Option

A Call Option is commonly called a Buyer's Option. It gives the buyer the right but not the obligation within an agreed timeframe to CALL on the seller to proceed with the purchase contract.

Call Options are quite common and are the main type of option you will be negotiating.

Put and Call Option

A Put and Call Option is basically a combination of the two. When signing a Put and Call Option, both the buyer and seller are effectively signing an unconditional contract and both buyer and seller must settle on the property.

Generally, you need to give the seller something in exchange for taking his property off the market while you renovate and gain council approvals and whatever else you need to do to the property. The trade-off is usually money. You pay a premium price for the property, but don't have to settle for an extended period of time (or if at all).

An option contract is not as well understood as a purchase contract and the thought of entering into an option contract will scare people if they don't know what they are, or have never seen them or heard of them before. There are also some markets that are better for using option contracts than others.

Let's go through how applicable an option contract is in different markets.

Residential

Using option contracts in the residential market is actually the hardest to do successfully. This is mainly due to the lack of knowledge on the part of mum and dad sellers.

You may want to secure a number of houses side by side so you can build a block of units (or get a DA for a block of units) or a childcare centre etc.

You don't want to proceed with any of the opportunities unless you can get all the current owners to agree to sell. This situation is perfect for using an option agreement. An option gives you the ability to proceed and buy the properties or sell options to a builder or developer if you get them all, but if one seller won't sell, then the whole deal is off, and you can simply choose not to exercise your option and walk away.

The best way to get mum and dad sellers to agree to an option is to personally sit down with them and explain what the document means and in doing so, it is best not to use legal terms. For the most part, you probably shouldn't use the words 'option agreement' if you feel they are not familiar with it.

Residential or Commercial for DA

An option is the document you would use if you wanted to buy a property only if you could get a satisfactory development approval on the property. The option agreement gives you control over the property while you apply for the necessary approvals.

As previously stated, you normally pay a premium price in order to control the property whilst you apply to the council for the necessary approvals. The Power of Attorney clauses in your option agreement, allow you to fill out the paper work for the council approvals and sign on the seller's behalf to gain the necessary approvals.

Commercial

As mentioned in the previous point, commercial property can be optioned for the purpose of DA, but there's another reason you may want to option a commercial property, particularly a vacant commercial property. Unlike residential property, the value of commercial property is directly proportionate to its rental yield, whereas a residential property's value is based on comparable sales of similar properties in similar condition, in a similar area. For a commercial property, the higher the rent, the longer the lease, the bigger more secure the tenant, the greater the value of your property.

Commercial properties are valued on a 'cap rate' (a capitalisation rate). In major cities closer to CBD's, the cap rate might be 6-8% whereas, in more regional areas, the cap rate might be more like 10-13%.

Cap rate is really another word for percentage yield. Let me give you an example:

If you had a commercial property returning $100,000 a year income, at an 8% cap rate, the value of your property would be $1,250,000.

$100,000 8% = $1,250,000.

However, if the same property was in a more regional area where the cap rate is 13%, the value of your property would be $769,230.

$100,000 13% = $769,230.

Remember, with commercial property, the tenants pay the outgoings in most leases. Therefore, the income you are getting is net income with little or no expenses (other than interest) to come out of it.

Let's take that thought process further. A vacant property will be considerably undesirable for most investors, but the right person (someone with an outgoing, motivated, entrepreneurial personality who is prepared to be proactive in finding a tenant), could put an option on the property to purchase it in 1–2 years' time at a fixed price.

Think of it from the seller's perspective – he has;

- A vacant property
- He can't get a tenant
- He could be paying interest or a loan and he could be hurting.

Someone comes to him with an offer like, "I'll agree to buy your property at $x and we can sign an option agreement here today to that effect, but I need a 2 year timeframe. However, in the meantime, I am prepared to lease the property from you, so I can fix the property up and make it more suitable for me". In the lease agreement that you sign, you need to have sub-lease provisions so you could then rent to someone else. You could even tell the seller, that whilst you don't want to rent it yourself, you will find someone else to rent it from him during the 2 year period.

Now imagine you get into the property, clean it up, renovate, paint, landscape, put up signage, possibly break the building down into smaller rentable components, and market the property like crazy to businesses for rent.

I have a friend who does exactly this. He is an ex-commercial agent who gets a tenant into the vacant property in good, long term, well-worded leases, and as soon as the property is fully tenanted, he will exercise his option, and possibly even get full financing from the bank. This is because there is such a marked difference between his option price and the new value of the property, due to the full occupancy and his having completed the renovation on the property.

Whilst this strategy is not for everybody, for the right person with the right personality, and who is keen on commercial properties, it is a fabulous high cash flow, high growth strategy with potentially very little or even zero risk.

Generally, it is easier to negotiate an option contract with another businessperson than it is to try and explain the process to a mum and dad seller.

Options are ideal for:

- potential subdivision properties
- potential strata-titled properties
- potential rezoning properties
- potential unit development properties
- properties in potential high growth areas
- properties that could potentially be zoned for specific use, e.g. child care centres, pubs, taverns etc.

So let's look at it from the other side. Why would a seller agree?

There are many ways that you might actually negotiate an option agreement, because an option agreement is as flexible as you can possibly imagine it, but here's a couple of ways you might negotiate an option agreement with the seller and why a seller might sign one. What you're asking them to do is give you more time, because you might not want to transact on that property for another year or two years, so you have to give them something to buy that time. So what do you give them? You may not even proceed with it! They've got to get something out of it. This is what you might do.

Option one might be –

Let's say we've got a property for $800,000. That's what it's worth today. Let's say you intend to get a DA on it and it would then be worth more because of the DA. That's the plan of attack.

You might go to the seller and say, "Look, I want a contract on the property, and we both agree that it's an $800,000 property." But the reality is that the seller might not need all that money right now. For instance, he might only need part of that money to pay for his daughter's wedding or something. You say, "Okay, since you don't need all the money now, I'm going to give you, say, $20,000 right now." (Or it might be $50,000 or it might be more.) "And that is your money. I'm going to release that to you immediately. You can take that money. You can keep it. You can spend it on whatever you want to spend it on. It is your money. But in exchange for that, I want two years in which to settle." Maybe you only need one year, or whatever you need to negotiate.

What you have done is bought a year or two in time and in that time you are able to get the DA .

You say, "When we settle on this property in two years' time, I'm then going to give you $780,000 because the money that I'm paying you now will go towards the purchase at the end." Then you say, "If I walk away from the contract, then you've got the $20,000 to keep. That money is yours and you've still got the property." That's just one way of negotiating it and it's probably a little bit weaker, I think, than this next one.

Option Two Might Be –

You say to the seller, "You've got this property at $800,000 and we both agree that that's the fair price of the property today. I'm going to pay you $900,000 for the property, but in exchange for paying you more, I want a year (or two years) to settle on the property. Now, right here today, I'm going to give you one dollar just to make this legal."

"I'll give you one dollar today, and when we settle on this property in a year's time, I'm going to pay you $900,000. It's a lot more than the value of the property today and if I walk away, there is no harm done. You still have the property. You're still living there. You're still doing whatever. I am willing to pay more to get that time and everything in between." You may still have to give them some money upfront as well – this depends on how well you negotiate.

There are a few tricks in here. The first thing is that the dollar for starters would be called an option fee and the $20,000 would be a security deposit in advance so as to reduce Stamp Duty. This is explained in more detail in the next section. It is a little bit different in Victoria because there, you have to do it as a joint venture agreement among other things.

Let's say you go and get your DA and with the DA, the property is now worth $1.2 million. Of course, this DA acquisition would have cost you some money too.

With this in place in a year or a year and half's time, you can probably go to a financier and say, "Look, this was a long-term agreement. It was over 12 months. It's worth $1.2 million today. You could potentially fund this property to buy it at 80% of $1.2 million – potentially… not always, but potentially – it depends on the market and how free money is it at the time.

The second thing is that you might get the DA approval and then go, "I actually can't complete the deal. I'm going to sell it to a builder for $1.2 million because that's what the property is worth with a DA on it."

We should look at the Stamp Duty implications here through this process. Let's say you sell it to a builder. Upfront, regardless of which option you take, you will be paying Stamp Duty on one dollar, and paying for the development approval and everything else on the property. You increase the value of the property up to $1.2 million. You sell it to a builder. The builder buys it for $1.2 million. He pays Stamp Duty on $1.2 million as normal. That's what he's going to have to pay anyway, but when he cuts the cheque, his cheque will say $780,000 or $900,000 depending on which option agreement you negotiated with the previous owner and the balance would come to you. Yay!

I'll give you a real example. I had a client in Brisbane called Mario. To give you some background, Mario had just come out of his fourth divorce, and didn't have a cracker to his name. He negotiated on this commercial property that was for sale for $1.4 million through an option agreement. He had no hope of being able to pay for it at that point in time, but it was a vacant commercial property. In the option agreement, he put in all of these clauses that enabled him to fix it up, as well as giving him the ability to gain DA approval from the council. He was then also able to tenant the property and what he agreed with the owner of the property was that any rent he received during the option period would be split 50/50. Because he was buying it vacant, the current owner was happy because he was not receiving any rent at all.

The first thing he did was clean up the front of it. It was a long thin property so he put a bit of a shed up and he rented the front of the property to a car yard. Immediately he was receiving commercial rent on that, which gave him an income stream. It sounds good so far, doesn't it?

He then went through the process and got a subdivision approval. Actually, once he got the tenant in place, he brought in a joint venture partner into the option agreement and the joint venture partner paid for the subdivision. Then together, they got a building approval and licensing approval for the back part of the block and as soon as those approvals came through, the value of the property with the approvals and the subdivision in place increased up to something like about $4 million.

At this point, because he had a joint venture partner, he owned 50% of it – $2million worth. They purchased the property under the conditions of the option agreement. He had money now. He had an income stream. He had money coming in. They then went ahead and built on the back and started operating a business on the back of the property. With the license and with the business operation, the renovations, as well as everything else, the whole thing was revalued at close to $9.6 million. Do you know what the business was? A brothel. Seriously, it was a brothel.

I only told you that story because an option agreement secured the deal.

Now, let's have a look at some of the special clauses that need to go into those option agreements.

Some of the common special clauses are:

- Subject to development approval.
- Subject to due diligence, when you just might want to find out whether you can actually use the property for what you want to use it for, or have it approved for.
- Builders' terms. In some instances, you can wrap up a property and agree to build a house on there but you don't pay for it until such time as you've actually on-sold the package to a third party. This is pertinent to builders and particularly the case for new estates. Developers want buildings up as quickly as possible so they'll do deals where provided you put a building on the block within a certain timeframe you don't have to pay for the land until you've actually on-sold that property.
- Timeframes. You've got to make sure the date of expiration for the exercising of the option is long enough. Give yourself plenty of time. If you think getting a DA

approval is going to take you, say, a year, or a year and a half, or make it two years to give yourself plenty of time in case things go wrong, because the last thing you want to do is go and spend money on the property, get it to a certain stage and then go, "I've got my option. It's going to expire in a month's time and I haven't got my approvals through and I haven't been able to sell it." In this case you've either got to buy the property or try to negotiate an extension of the option. If you've increased the value of the property in that space of time the likelihood of being able to negotiate an extension on the option is very slim.

- Access. There needs to be a clause to cover access to the property.
- Insurance. Designate who is responsible for insurance on the property.
- Rates. Stipulate who pays the rates on the property.
- Rental Income. With any income that's coming in, does it go to the previous owners, or does it go to you? Or like Mario, is it split because you get the tenant?

Underlying all this, the documents actually are very technical documents. There's a lot of mechanics with how it should work. There are a lot of tricky points with it, so you do need to have it tailored to your specific circumstance to make sure again your rights and interests are protected. The exercise of the option is also a very, very technical process because don't forget that you've improved the value of the property, and seeing this, over time the seller may have seller's remorse. You want to make sure that whatever you lock in on day one is absolute and you don't care how they feel in day 10.

Option Clauses

An option contract is normally accompanied by a written sales contract. This sales contract is conditional upon the exercising of the option contract. As part of the Ultimate series, there is a comprehensive webinar on purchase contracts and options contracts so it's worth going to the Ultimate members' website and re-listening to this webinar.

I do not recommend ever using standard documents. You should always have a lawyer specifically draw up agreements and contracts for each deal.

Having said that – let's go through some of the standard option contract clauses.

The first part of the option agreement is usually just setting out who the parties to the contract are.

The second part is all the definitions and interpretations and what they mean – this can sometimes take up several pages.

Due Diligence Clause

This is one of the most important clauses in the option contract/agreement. The wording of this clause will determine whether you can get out of the option and subsequent sale contract if you choose, and whether any penalties could be levied. The wording of this clause is so important, that it is the main reason that under no circumstances should you ever use a standard contract. Always have a lawyer specifically draft one for each deal. This way, if anything should go wrong, you will be covered by his professional indemnity insurance and the Law Society.

Development Application

This option contract / agreement is subject to a DA being granted. However, this clause would be varied depending on your intentions for the property.

Obligations Pending Exercise

This clause basically means that the seller must sell to you if you choose to exercise your option.

Grant of Call Option

This clause deals with the payment of the option fee and may be extended to cover deposits paid in advance.

Nominee

This clause enables you to determine at a later date who the ultimate purchaser will be. It also means that you are able to transfer the option ownership to a third party.

Exercise of Call Option and Call Option Contract

This section sets out the exact procedure you must follow to exercise your option and progress the contract. These procedures must be followed to the letter of the law and in the timeframe set out in the option agreement. If there is any variation then either party could cancel the option, which could mean significant losses.

Call Option Fee

These all deal with the mechanics of how the option is to be treated.

Power of Attorney

This clause basically gives you the ability to lodge any necessary applications and documentation with the Council in order for you to gain any development approval you may require.

Caveat

This clause gives you the right to lodge a caveat on the property at any time and prevent the seller from selling the property to anyone else.

Default

This deals with the procedures and penalties if default should occur.

Costs of the Agreement

This clause sets out who will pay for the legal fees associated with drawing up the agreement.

Notices

This clause deals with how notices are given and received and the necessary timeframes.

Proper Law, Jurisdiction

This clause sets out which site and jurisdiction laws apply.

General Provisions

This clause deals with who signs, and how the agreement will be executed and followed through.

Timing

This is a clause that makes a general statement that all parties to the contract must do things in a timely fashion.

Signing Pages

The balance of the document is signing pages, annexures and schedules to the contract.

Timeframes and Extensions

When dealing with third parties like financial institutions and councils that you have absolutely no control over, you need to be very mindful that you allow yourself enough time to get the necessary approvals through council or through the financing departments of institutions. I think the best policy is to double whatever timeframe you think it will take, then if it comes sooner… happy days.

Whenever you are doing any project (and scheduling an option deal is no different), it is a good idea to do a time schedule flowchart.

A working digital version of a time schedule flowchart is on your Ultimate Real Estate Feasibility Program. If you haven't got your copy of this (and this is free to all Ultimate students), go to the website, listen to the training webinar, email in to the website at the end of this training webinar, and get your copy. Remember, when you install your copy, you have to register before it activates.

The Ultimate Real Estate Program feasibility study timeframe flowchart also gives you the flexibility to be able to monitor actual to budgeted timeframes. Whilst the timeframe flowchart is your best efforts as to how long a project will take, if you had it 100% accurate first up, it would be very surprising. Therefore, make sure when you are preparing your option contract, that you have allowed ample time to complete all the tasks you have listed.

Gaining an extension to an option contract once it has been entered into, is not always easy. It is totally at the discretion of the seller to agree. If you have spent you own time, money and effort increasing the value of the seller's property, he may not be very willing to grant you an extension. A better policy is to give yourself plenty of time upfront and exercise early if you can, but not be obligated to exercise your option on a partially completed project.

Option Fees, Deposits in Advance, Stamp Duty and Tax

Isn't it strange how you don't know what you don't know, until you know what you didn't know? The same applies to options. When you really understand their implementation and implications, they become just another tool in your armoury.

One of the clauses in an option contract covers how much you are paying as an option fee to secure the property. However, there is an added advantage for both parties, because you pay Stamp Duty on the value of your option fee. With all due respect to the State Stamp Duty office, no-one likes paying Stamp Duty. What you want is for the option fee to be as low as possible (preferably $1). Of course your seller is going to want more than $1 to compensate them for taking the property off the market for the term of the option, because this effective compensation payment is usually released to them immediately.

On the flip side, if that payment is called an option fee, it will be income tax assessable in the year they receive it – so they don't want that either. There is a sneaky way around this that benefits both parties.

What you would do is -

- Pay an option fee of $1 on which you would pay Stamp Duty and the seller would declare as income.
- You then pay to the seller a deposit in advance, which again is released to them immediately. This deposit in advance will form part of the settlement proceeds when the option is ultimately exercised.

This way, there is no Stamp Duty to be paid at your end on this amount, and the seller does not have to declare it as income, but will have to declare it as part of the capital gain when settlement eventually occurs in the future. This is a much better solution all round.

Selling an Option to a Third Party

Let's assume you already have an option on a property and you have gone about increasing the value of that property by renovating, rezoning, gaining a DA or whatever, and you are now in a position to sell your option to someone else. This is where you exercise your Nominee Clause. What this means is that the option is transferrable. So, effectively you transfer your option to the new buyer for a fee (which is the sale price of your option). He or she then exercises the contract with the original owner.

The new purchaser would pay Stamp Duty on the execution of the contract with the original owner, and Stamp Duty on the sale price of the option contract from you.

You, on the other hand, will pay Income Tax on the sale proceeds of the option. Any deposits in advance or option fees, are usually released to the seller immediately and

forfeited if you or a third party does exercise the option and does not proceed to settlement.

Demographics and Research for Options

Successfully selecting a property suitable for a manufactured growth strategy and using an option to secure it, is a process that relies on a systematic research and due diligence process common to all manufactured growth strategies.

There are certain criteria to look for when targeting a property suitable for manufactured growth and therefore potentially suitable for taking out an option on.

Some of the fundamentals are as follows:

- **Population.** Is the population in your target area increasing or decreasing or flat lining? Obviously an increasing population gives rise to increasing demand and therefore adds upward pressure on prices. Thus, having an option at a fixed price that defers settlement to a date as far into the future as possible means you ride any upward pricing over that time. When determining what type or style of manufactured growth you should be implementing during the option period, ask yourself a few basic questions. Where is the population movement coming from? How long are they likely to stay? What style of housing do they demand? How quickly do you expect the market to move in response to these population movements?

- **Government Spending.** Governments normally spend money on an area in response to expected demand. Look for which level of government is spending the money – is it Local, State, or Federal? Which type of government spending generally has an impact on the site and nature of the expected growth? Look for the tell-tale signs such as:
    - Regentrification of CBD and suburbs
    - Infrastructure developments such as roads, ring roads, bridges, public transport etc.
    - Departmental expenditure such as Centrelink departments, tax offices, State rail, public services and military.
    - Medical facilities – look at what sized hospitals, aged care facilities etc., are being put in and what is the future timeframe of any expansions.
    - Education facilities – schools and universities are always good indications of future growth and expansion of an area. These types of facilities take

time to build and normally give you a good gauge as to when the population growth can be expected.

- **Industry spending.** Just like government spending, industry expenditure creates jobs and brings people into an area, thus increasing population and demand for housing. It places an upward pressure on pricing. Look for evidence of projects being granted approval and construction being started, and estimate the timeframe for implementation. The media is normally a help here as they tend to monitor the announcements of publicly listed companies on the ASX who have to make public to their shareholders when such expansion is taking place or likely to take place.
    - Mining – Mining is still a big growth area in Australia at present. The expansion of this industry as a whole is having a huge impact on regional towns as well as coastal ports and manufacturing areas. It is an industry to watch closely and to capitalise on.
    - Manufacturing – This is not as strong an industry as mining as our cost structure (predominantly labour) is too high. However, we do have a fledgling industry here and it does have some impact on growth areas.
    - Tourism – This industry has always been a strength industry for Australia, but since the Global Financial Crisis it has certainly copped a battering which is why we see areas such as the Gold Coast, and to a lesser extent Cairns, both of which are predominantly reliant on tourism, going through an absolute bloodbath at present.

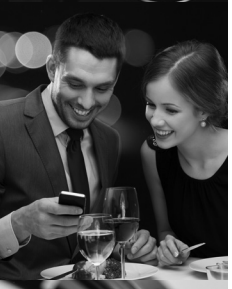
It is all about jobs and timing. One quick analysis you can do, that will give you an indication of depth and volume of a market, is to look at days on the market, clearance rates, and variance between replacement and old.

Without wasting much time, you will quickly see if an area is hot or not, and whether it is worthy of further investigation or not.

BIG HINT

Go onto the State Development Board website, and in some States the State infrastructure website, and buy a laminated State Infrastructure map. It will cost you around $27.50 in most States and it is the best $27.50 you will have ever spent. They are updated periodically, and list all State and Federal funding projects stating how much will be spent, how it will be spent, and over what timeframe the money will be spent. It includes additional websites for further information. The maps also show most industry

projects and infrastructure, both planned and under way. Again it will list websites having more information.







PLATINUM
ACCELERATOR

MODULE
9

MODULE 9 APPENDIX

- **BODY LANGUAGE TABLES**

I LOVE REAL ESTATE

© Copyright Dymphna Boholt

Eyes - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Left and right are for the person giving the signals and making the movements.			
Looking right (generally)	eyes	creating, fabricating, guessing, lying, storytelling	Creating here is basically making things up and saying them. Depending on context this can indicate lying, but in other circumstances, for example, storytelling to a child, this would be perfectly normal. Looking right and down indicates accessing feelings, which again can be a perfectly genuine response or not, depending on the context, and to an extent the person.
Looking left (generally)	eyes	recalling, remembering, retrieving 'facts'	Recalling and then stating 'facts' from memory in appropriate context often equates to telling the truth. Whether the 'facts' (memories) are correct is another matter. Left downward looking indicates silent self-conversation or self-talk, typically in trying to arrive at a view or decision.
Looking right and up	eyes	visual imagining, fabrication, lying	Related to imagination and creative (right-side) parts of the brain, this upwards right eye-movement can be a warning sign of fabrication if a person is supposed to be recalling and stating facts.
Looking right sideways	eyes	imagining sounds	Sideways eye movements are believed to indicate imagining (right) or recalling (left) sounds, which can include for example a person imagining or fabricating what another person has said or could say.
Looking right and down	eyes	accessing feelings	This is a creative signal but not a fabrication - it can signal that the person is self-questioning their feelings about something. Context particularly- and other signals - are important for interpreting more specific meaning about this signal.
Looking left and up	eyes	recalling images truthfulness	Related to accessing memory in the brain, rather than creating or imagining. A reassuring sign if signalled when the person is recalling and stating facts.

Looking left sideways	eyes	recalling or remembering sounds	Looking sideways suggests sounds; looking left suggests recalling or remembering - not fabricating or imagining. This therefore could indicate recalling what has been said by another person.
Looking left down	eyes	self-talking, rationalizing	Thinking things through by self-talk - concerning an outward view, rather than the inward feelings view indicated by downward right looking.
Direct eye contact (when speaking)	eyes	honesty - or faked honesty	Direct eye contact is generally regarded as a sign of truthfulness, however practised liars know this and will fake the signal.
Direct eye contact (when listening)	eyes	attentiveness, interest, attraction	Eyes which stay focused on the speakers eyes, tend to indicate focused interested attention too, which is normally a sign of attraction to the person and/or the subject.
Widening eyes	eyes	interest, appeal, invitation	Widening the eyes generally signals interest in something or someone, and often invites positive response. Widened eyes with raised eyebrows can otherwise be due to shock, but aside from this, widening eyes represents an opening and welcoming expression. In women especially widened eyes tend to increase attractiveness, which is believed by some body language experts to relate to the eye/face proportions of babies, and the associated signals of attraction and prompting urges to protect and offer love and care, etc.
Rubbing eye or eyes	eyes	disbelief, upset, or tiredness	Rubbing eyes or one eye can indicate disbelief, as if checking the vision, or upset, in which the action relates to crying, or tiredness, which can be due boredom, not necessarily a need for sleep. If the signal is accompanied by a long pronounced blink, this tends to support the tiredness interpretation.
Eye shrug	eyes	frustration	An upward roll of the eyes signals frustration or exasperation, as if looking to the heavens for help.

Pupils dilated (enlarged)	eyes	attraction, desire	The pupil is the black centre of the eye which opens or closes to let in more or less light. Darkness causes pupils to dilate. So too, for some reason does seeing something appealing or attractive. The cause of the attraction depends on the situation. In the case of sexual attraction the effect can be mutual - dilated pupils tend to be more appealing sexually that contracted ones, perhaps because of an instinctive association with darkness, night-time, bedtime, etc., although the origins of this effect are unproven. Resist the temptation to imagine that everyone you see with dilated pupils is sexually attracted to you.
Blinking frequently	eyes	excitement, pressure	Normal human blink rate is considered to be between six and twenty times a minute, depending on the expert. Significantly more than this is a sign of excitement or pressure. Blink rate can increase to up to a hundred times a minute. Blink rate is not a reliable sign of lying.
Blinking infrequently	eyes	various	Infrequent blink rate can mean different things and so offers no single clue unless combined with other signals. An infrequent blink rate is probably due to boredom if the eyes are not focused, or can be the opposite - concentration - if accompanied with a strongly focused gaze. Infrequent blink rate can also be accompanied by signals of hostility or negativity, and is therefore not the most revealing of body language signals.
Eyebrow raising (eyebrow 'flash')	eyes	greeting, recognition, acknowledgement	Quickly raising and lowering the eyebrows is called an 'eyebrow flash'. It is a common signal of greeting and acknowledgement, and is perhaps genetically influenced since it is prevalent in monkeys (body language study does not sit entirely happily alongside creationism). Fear and surprise are also signalled by the eyebrow flash, in which case the eyebrows normally remain raised for longer, until the initial shock subsides.

Winking	eyes	friendly acknowledgement, complicity (e.g., sharing a secret or joke)	Much fuss was made in May 2007 when George W Bush winked at the Queen. The fuss was made because a wink is quite an intimate signal, directed exclusively from one person to another, and is associated with male flirting. It is strange that a non-contact wink can carry more personal implications than a physical handshake, and in many situations more than a kiss on the cheek. A wink is given additional spice if accompanied by a click of the tongue. Not many people can carry it off. Additionally - and this was partly the sense in which Bush used it - a wink can signal a shared joke or secret.
Mouth - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Pasted smile	mouth	faked smile	A pasted smile is one which appears quickly, is fixed for longer than a natural smile, and seems not to extend to the eyes. This typically indicates suppressed displeasure or forced agreement of some sort.
Tight-lipped smile	mouth	secrecy or withheld feelings	Stretched across face in a straight line, teeth concealed. The smiler has a secret they are not going to share, possibly due to dislike or distrust. Can also be a rejection signal.
Twisted smile	mouth	mixed feelings or sarcasm	Shows opposite emotions on each side of the face.
Dropped-jaw smile	mouth	faked smile	More of a practised fake smile than an instinctive one. The jaw is dropped lower than in a natural smile, the act of which creates a smile.
Smile - head tilted, looking up	mouth	playfulness, teasing, coy	Head tilted sideways and downwards so as to part hide the face, from which the smile is directed via the eyes at the intended target.
Bottom lip jutting out	mouth	upset	Like rubbing eyes can be an adult version of crying, so jutting or pushing the bottom lip forward is a part of the crying face and impulse. Bear in mind that people cry for reasons of genuine upset, or to avert attack and seek sympathy or kind treatment.

Laughter	mouth	relaxation	Laughter deserves a section in its own right because its such an interesting area. In terms of body language genuine laughter is a sign of relaxation and feeling at ease. Natural laughter can extend to all the upper body or whole body. The physiology of laughter is significant. Endorphins are released. Pain and stress reduces. Also vulnerabilities show and can become more visible because people's guard drops when laughing.
Forced laughter	mouth	nervousness, cooperation	Unnatural laughter is often a signal of nervousness or stress, as an effort to dispel tension or change the atmosphere. Artificial laughter is a signal of cooperation and a wish to maintain empathy.
Biting lip	mouth	tension	One of many signals suggesting tension or stress, which can be due to high concentration, but more likely to be anxiousness.
Teeth grinding	mouth	tension, suppression	Inwardly-directed 'displacement' (see body language glossary) sign, due to suppression of natural reaction due to fear or other suppressant.
Chewing gum	mouth	tension, suppression	As above - an inwardly-directed 'displacement' sign, due to suppression of natural reaction. Otherwise however can simply be to freshen breath, or as a smoking replacement.
Smoking	mouth	self-comforting	Smoking obviously becomes habitual and addictive, but aside from this people put things into their mouths because it's comforting like thumb-sucking is to a child, in turn rooted in baby experiences of feeding and especially breastfeeding.
Thumb-sucking	mouth	self-comforting	A self-comforting impulse in babies and children, substituting breast-feeding, which can persist as a habit into adulthood.
Chewing pen or pencil	mouth	self-comforting	Like smoking and infant thumbsucking. The pen is the teat. Remember that next time you chew the end of your pen...

Pursing lips	mouth	thoughtfulness, or upset	As if holding the words in the mouth until they are ready to be released. Can also indicate anxiousness or impatience at not being able to speak. Or quite differently can indicate upset, as if suppressing crying.
Tongue poke	mouth / tongue	disapproval, rejection	The tongue extends briefly and slightly at the centre of the mouth as if tasting something nasty. The gesture may be extremely subtle. An extreme version may be accompanied by a wrinkling of the nose, and a squint of the eyes.
Hand clamped over mouth	mouth / hands	suppression, holding back, shock	Often an unconscious gesture of self-regulation - stopping speech for reasons of shock, embarrassment, or for more tactical reasons. The gesture is reminiscent of the 'speak no evil' wise monkey. The action can be observed very clearly in young children when they witness something 'unspeakably' naughty or shocking. Extreme versions of the same effect would involve both hands.
Nail biting	mouth / hands	frustration, suppression	Nail-biting is an inwardly-redirected aggression borne of fear, or some other suppression of behaviour. Later nail-biting becomes reinforced as a comforting habit, again typically prompted by frustration or fear. Stress in this context is an outcome. Stress doesn't cause nail-biting; nail-biting is the outward demonstration of stress. The cause of the stress can be various things (stressors). See the stress article for more detail about stress.
Head - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Head nodding	head	agreement	Head nodding can occur when invited for a response, or voluntarily while listening. Nodding is confusingly and rather daftly also referred to as 'head shaking up and down'. Head nodding when talking face-to-face one-to-one is easy to see, but do you always detect tiny head nods when addressing or observing a group?

Slow head nodding	head	attentive listening	This can be a faked signal. As with all body language signals you must look for clusters of signals rather than relying on one alone. Look at the focus of eyes to check the validity of slow head nodding.
Fast head nodding	head	hurry up, impatience	Vigorous head nodding signifies that the listener feels the speaker has made their point or taken sufficient time. Fast head nodding is rather like the 'wind-up' hand gesture given off-camera or off-stage by a producer to a performer, indicating 'time's up - get off'.
Head held up	head	neutrality, alertness	High head position signifies attentive listening, usually with an open or undecided mind, or lack of bias.
Head held high	head	superiority, fearlessness, arrogance	Especially if exhibited with jutting chin.
Head tilted to one side	head	non-threatening, submissive, thoughtfulness	A signal of interest, and/or vulnerability, which in turn suggests a level of trust. Head tilting is thought by some to relate to 'sizing up' something, since tilting the head changes the perspective offered by the eyes, and a different view is seen of the other person or subject. Exposing the neck is also a sign of trust.
Head forward, upright	head / body	interest, positive reaction	Head forward in the direction of a person or other subject indicates interest. The rule also applies to a forward leaning upper body, commonly sitting, but also standing, where the movement can be a distinct and significant advancement into a closer personal space zone of the other person. Head forward and upright is different to head tilted downward.
Head tilted downward	head	criticism, admonishment	Head tilted downwards towards a person is commonly a signal of criticism or reprimand or disapproval, usually from a position of authority.
Head shaking	head	disagreement	Sideways shaking of the head generally indicates disagreement, but can also signal feelings of disbelief, frustration or exasperation. Obvious of course, but often ignored or missed where the movement is small, especially in groups seemingly reacting in silent acceptance.

Pronounced head shaking	head	strong disagreement	The strength of movement of the head usually relates to strength of feeling, and often to the force by which the head-shaker seeks to send this message to the receiver. This is an immensely powerful signal and is used intentionally by some people to dominate others.
Head down (in response to a speaker or proposition)	head	negative, disinterested	Head down is generally a signal of rejection (of someone's ideas etc), unless the head is down for a purpose like reading supporting notes, etc. Head down when responding to criticism is a signal of failure, vulnerability (hence seeking protection), or feeling ashamed.
Head down (while performing an activity)	head	defeat, tiredness	Lowering the head is a sign of loss, defeat, shame, etc. Hence the expressions such as 'don't let your head drop', and 'don't let your head go down', especially in sports and competitive activities. Head down also tends to cause shoulders and upper back to to slump, increasing the signs of weakness at that moment.
Chin up	head	pride, defiance, confidence	Very similar to the 'head held high' signal. Holding the chin up naturally alters the angle of the head backwards, exposing the neck, which is a signal of strength, resilience, pride, resistance, etc. A pronounced raised chin does other interesting things to the body too - it tends to lift the sternum (breast-bone), which draws in air, puffing out the chest, and it widens the shoulders. These combined effects make the person stand bigger. An exposed neck is also a sign of confidence. 'Chin up' is for these reasons a long-standing expression used to encourage someone to be brave.

Active listening	head / face	attention, interest, attraction	When people are listening actively and responsively this shows in their facial expression and their head movements. The head and face are seen to respond fittingly and appropriately to what is being said by the speaker. Nodding is relevant to what is being said. Smiles and other expressions are relevant too. The head may tilt sideways. Mirroring of expressions may occur. Silences are used to absorb meaning. The eyes remain sharply focused on the eyes of the speaker, although at times might lower to look at the mouth, especially in male-female engagements.
Arms - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Crossed arms (folded arms)	arms	defensiveness, reluctance	Crossed arms represent a protective or separating barrier. This can be due to various causes, ranging from severe animosity or concern to mild boredom or being too tired to be interested and attentive. Crossed arms is a commonly exhibited signal by subordinates feeling threatened by bosses and figures of authority. N.B. People also cross arms when they are feeling cold, so be careful not to misread this signal.
Crossed arms with clenched fists	arms	hostile defensiveness	Clenched fists reinforce stubbornness, aggression or the lack of empathy indicated by crossed arms.
Gripping own upper arms	arms	insecurity	Gripping upper arms while folded is effectively self-hugging. Self-hugging is an attempt to reassure unhappy or unsafe feelings.
One arm across body clasping other arm by side (female)	arms	nervousness	Women use this gesture. Men tend not to. It's a 'barrier' protective signal, and also self-hugging.
Arms held behind body with hands clasped	arms	confidence, authority	As demonstrated by members of the royal family, armed forces officers, teachers, policemen, etc.
Handbag held in front of body (female)	arms	nervousness	Another 'barrier' protective signal.
Holding papers across chest (mainly male)	arms	nervousness	Another 'barrier' protective signal, especially when arm is across chest.
Adjusting cuff, watchstrap, tie, etc., using an arm across the body	arms	nervousness	Another 'barrier' protective signal.

Arms/hands covering genital region (male)	arms / hands	nervousness	Another 'barrier' protective signal.
Holding a drink in front of body with both hands	arms / hands	nervousness	Another 'barrier' protective signal.
Seated, holding drink on one side with hand from other side	arms / hands	nervousness	One arm rests on the table across the body, holding a drink (or pen, etc). Another 'barrier' protective signal.
Touching or scratching shoulder using arm across body	arms / shoulder	nervousness	Another 'barrier' protective signal.
Hands - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Palm(s) up or open	hands	submissive, truthful, honesty, appealing	Said to evolve from when open upward palms showed no weapon was held. A common gesture with various meanings around a main theme of openness. Can also mean "I don't have the answer," or an appeal. In some situations this can indicate confidence (such as to enable openness), or trust/trustworthiness. An easily faked gesture to convey innocence. Outward open forearms or whole arms are more extreme versions of the signal.
Palm(s) up, fingers pointing up	hands	defensive, instruction to stop	Relaxed hands are more likely to be defensive as if offered up in protection; rigid fingers indicates a more authoritative instruction or request to stop whatever behaviour is promoting the reaction.
Palm(s) down	hands	authority, strength, dominance	Where the lower arm moves across the body with palm down this is generally defiance or firm disagreement.
Palm up and moving up and down as if weighing	hands	striving for or seeking an answer	The hand is empty, but figuratively holds a problem or idea as if weighing it. The signal is one of 'weighing' possibilities.
Hand(s) on heart (left side of chest)	hands	seeking to be believed	Although easy to fake, the underlying meaning is one of wanting to be believed, whether being truthful or not. Hand on heart can be proactive, as when a salesman tries to convince a buyer, or reactive, as when claiming innocence or shock. Whatever, the sender of this signal typically feels the need to emphasise their position as if mortally threatened, which is rarely the case.

Finger pointing (at a person)	hands	aggression, threat, emphasis	Pointing at a person is very confrontational and dictatorial. Commonly adults do this to young people. Adult to adult it is generally unacceptable and tends to indicate a lack of social awareness or self-control aside from arrogance on the part of the finger pointer. The finger is thought to represent a gun, or pointed weapon. Strongly associated with anger, directed at another person. An exception to the generally aggressive meaning of finger pointing is the finger point and wink, below.
Finger point and wink	hands/ eyes	acknowledgement or confirmation	The subtle use of a winked eye with a pointed finger changes the finger point into a different signal, that of acknowledging something, often a contribution or remark made by someone, in which case the finger and wink are directed at the person concerned, and can be a signal of positive appreciation, as if to say, "You got it," or "You understand it, well done".
Finger pointing (in the air)	hands	emphasis	Pointing in the air is generally used to add emphasis, by a person feeling in authority or power.
Finger wagging (side to side)	hands	warning, refusal	Rather like the waving of a pistol as a threat. Stop it/do as you are told, or else..
Finger wagging (up and down)	hands	admonishment, emphasis	The action is like pressing a button on a keypad several times. Like when a computer or elevator won't work, as if pressing the button lots of times will make any difference..
Hand chop	hands	emphasis - especially the last word on a matter	The hand is used like a guillotine, as if to kill the discussion.
Clenched fist(s)	hands	resistance, aggression, determination	One or two clenched fists can indicate different feelings - defensive, offensive, positive or negative, depending on context and other signals. Logically a clenched fist prepares the hand (and mind and body) for battle of one sort or another, but in isolation the signal is impossible to interpret more precisely than a basic feeling of resolve.

Finger tips and thumbs touching each other on opposite hands ('steepling')	hands	thoughtfulness, looking for or explaining connections or engagement	Very brainy folk use this gesture since it reflects complex and/or elevated thinking. In this gesture only the fingertips touch - each finger with the corresponding digit of the other hand, pointing upwards like the rafters of a tall church roof. Fingers are spread and may be rigidly straight or relaxed and curved. Alternating the positions (pushing fingers together then relaxing again - like a spider doing press-ups on a mirror) enables the fascinating effect (nothing to do with body language), which after enough repetition can produce a sensation of having a greased sheet of glass between the fingers. Try it - it's very strange. Very brainy people probably don't do this because they have more important things to think about. It's their loss.
Steepled fingers pointing forward	hands	thoughtfulness and barrier	The upwards-pointing version tends to indicate high-minded or connective/complex thinking, however when this hand shape is directed forward it also acts as a defensive or distancing barrier between the thinker and other(s) present.
Palms down moving up and down, fingers spread	hands	seeking or asking for calm, loss of control of a group or situation	Seen often in rowdy meetings the gesture is typically a few inches above the table top, but is also seen standing up. The action is one of suppressing or holding down a rising pressure. Teachers use this gesture when trying to quieten a class.
Cracking knuckles	hands	comforting habit, attention-seeking	Usually male. Machismo or habit. Meaning depends on context. No-one knows still exactly how the noise is made, but the notion that the practice leads to arthritis is now generally thought to be nonsense.
Interwoven clenched fingers	hands	frustration, negativity, anxiousness	Usually hands would be on a table or held across stomach or on lap.

Index finger and thumb touching at tips	hands	satisfaction, 'OK'	This is generally seen to be the 'OK' signal, similar to the 'thumbs up'. The signal may be to oneself quietly, or more pronounced directed to others. There is also the sense of this suggesting something being 'just right' as if the finger and thumb are making a fine adjustment with a pinch of spice or a tiny turn of a control knob. The circle formed by the joined finger and thumb resembles the O from OK. The remaining three fingers are spread.
Thumb(s) up	hands	positive approval, agreement, all well	In the Western world this signal is so commonly used and recognized it has become a language term in its own right: 'thumbs up' means approved. It's a very positive signal. Two hands is a bigger statement of the same meaning.
Thumbs down	hands	disapproval, failure	Logically the opposite of thumbs up. Rightly or wrongly the thumbs up and down signals are associated with the gladiatorial contests of the ancient Roman arenas in which the presiding dignitary would signal the fate of the losing contestants.
Thumb(s) clenched inside fist(s)	hands	self-comforting, frustration, insecurity	As with other signals involving holding or stroking a part of one's own body this tends to indicate self-comforting. Also thumbs are potent and flexible tools, so disabling them logically reduces a person's readiness for action.
Hand held horizontally and rocked from side to side	hands	undecided, in the balance	Signalling that a decision or outcome, normally finely balanced and difficult to predict or control, could go one way or another.
Rubbing hands together	hands	anticipation, relish	A signal - often a conscious gesture - of positive expectation, and often related to material or financial reward, or an enjoyable activity and outcome.
Hand(s) clamped over mouth	hands / mouth	suppression, shock	See mouth/hand clamp entry in mouth section, which is a subject in its own right.
Touching nose, while speaking	hands / nose	lying or exaggeration	This is said to hide the reddening of the nose caused by increased blood flow. Can also indicate mild embellishment or fabrication. The children's story about Pinocchio (the wooden puppet boy whose nose grew when he told lies) reflects long-standing associations between the nose and telling lies.

Scratching nose, while speaking	hands / nose	lying or exaggeration	Nose-scratching while speaking is a warning sign, unless the person genuinely has an itchy nose. Often exhibited when recounting an event or incident.
Pinching or rubbing nose, while listening	hands / nose	thoughtfulness, suppressing comment	In many cases this is an unconscious signalling of holding back or delaying a response or opinion. Pinching the nose physically obstructs breathing and speech, especially if the mouth is covered at the same time. Rather like the more obvious hand-clamp over the mouth, people displaying this gesture probably have something to say but are choosing not to say it yet.
Picking nose	hands / nose	day-dreaming, inattentive, socially disconnected, stress	Nose picking is actually extremely common among adults but does not aid career development or social acceptance and is therefore normally a private affair. When observed, nose-picking can signify various states of mind, none particularly positive.
Pinching bridge of nose	hands / nose	negative evaluation	Usually accompanied with a long single blink.
Hands clamped on ears	hands / ears	rejection of or resistance to something	Not surprisingly gestures involving hands covering the ears signify a reluctance to listen and/or to agree with what is being said or to the situation as a whole. The gesture is occasionally seen by a person doing the talking, in which case it tends to indicate that other views and opinions are not wanted or will be ignored.
Ear tugging	hands / ears	indecision, self-comforting	People fiddle with their own bodies in various ways when seeking comfort, but ear-pulling or tugging given suitable supporting signs can instead indicate indecision and related pondering.
Hands clasping head	hands / head	calamity	Hands clasping head is like a protective helmet against some disaster or problem.
Hand stroking chin	hands / chin	thoughtfulness	The stroking of a beard is a similar signal, although rare among women.

Hand supporting chin or side of face	hands / chin, face	evaluation, tiredness or boredom	Usually the forearm is vertical from the supporting elbow on a table. People who display this signal are commonly assessing or evaluating next actions, options, or reactions to something or someone. If the resting is heavier and more prolonged, and the gaze is unfocused or averted, then tiredness or boredom is a more likely cause. A lighter resting contact is more likely to be evaluation, as is lightly resting the chin on the knuckles.
Chin resting on thumb, index finger pointing up against face	hands / chin	evaluation	This is a more reliable signal of evaluation than the above full-hand support. Normally the supporting elbow will be on a table or surface. The middle finger commonly rests horizontally between chin and lower lip.
Neck scratching	hands / neck	doubt, disbelief	Perhaps evolved from a feeling of distrust and instinct to protect the vulnerable neck area. Who knows - whatever, the signal is generally due to doubting or distrusting what is being said.
Hand clasping wrist	hands / wrist	frustration	Clasping a wrist, which may be behind the back or in open view, can be a signal of frustration, as if holding oneself back.
Running hands through hair	hair / hair	flirting, or vexation, exasperation	Take your pick - running hands through the hair is commonly associated with flirting, and sometimes it is, although given different supporting signals, running hands through the hair can indicate exasperation or upset.
Hand(s) on hip(s)	hands / arms	confidence, readiness, availability	The person is emphasizing their presence and readiness for action. Observable in various situations, notably sport, and less pronounced poses in social and work situations. In social and flirting context it is said that the hands are drawing attention to the genital area.
Hands in pockets	hands / arms	disinterest, boredom	The obvious signal is one of inaction, and not being ready for action. Those who stand with hands in pockets - in situations where there is an expectation for people to be enthusiastic and ready for action - demonstrate apathy and lack of interest for the situation.

Removing spectacles	hands / spectacles	alerting wish to speak	For people who wear reading-only spectacles, this is an example of an announcement or alerting gesture, where a person readies themselves to speak and attracts attention to the fact. Other alerting signals include raising the hand, taking a breath, moving upwards and forwards in their seat, etc.
Playing an imaginary violin	hands / arms	mock sympathy or sadness	The 'air violin' has been around a lot longer than the 'air guitar', and is based on the traditional use of violin music as a theme or background for sad scenes in movies and in music generally. The 'air violin' is not typically included in body language guides; it's here as an amusing gesture which demonstrates our conscious practice and recognition of certain signals.
Thumb and fingers formed into a tube and rocked side to side or up and down (mainly male)	hands	offensive - mockery, dissatisfaction, expression of inferior quality	A conscious signal, usually one-handed. Insulting gesture if directed at a person, typically male to male, since it mimics masturbation, like calling a person a 'tosser' or a 'wanker' (UK) or a jerk-off (US). This is obviously rude and not used in respectable company such as the queen or a group of clergymen. The gesture is also used as a response to something regarded as poor quality, which might be a performance or piece of work or a comment on a product of some sort. The allusion is to masturbation being a poor substitute for sex with a woman, and that those who masturbate are not 'real men'. Unsurprisingly the gesture is mainly male, directed at other males, especially in tribal-like gatherings. Rare female use of this gesture directed at males can be very effective due to its humiliating value. For obvious reasons the gesture is unlikely to be used by females or males directed at females.
Two-fingered V-sign, palm inward (mainly male)	hands / fingers	offensive - derision, contempt	A consciously offensive and aggressive gesture, also called 'flicking the Vs', widely but probably incorrectly thought to derive from the 1415 Battle of Agincourt in the Hundred Years War when the tactically pivotal Welsh longbowmen supposedly derided the beaten French soldiers' and their threats to cut off the bowmen's fingers.

Two-fingered V-sign, palm outward	hands fingers	victory, peace	British 2nd World War leader Winston Churchill popularised the victory usage, although apparently, significantly if so, first used the palm inwards version until he was told what it meant to the working classes.
Handshakes - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Handshake - palm down	handshake	dominance	Usually a firm handshake, the 'upper hand' tends to impose and/or create a dominant impression.
Handshake - palm up	handshake	submission, accommodating	Usually not a strong handshake, the lower hand has submitted to the upper hand dominance. How all this ultimately translates into the subsequent relationship and outcomes can depend on more significant factors than the handshake.
Handshake - both hands	handshake	seeking to convey trustworthiness and honesty, seeking to control	Whether genuine or not, this handshake is unduly physical and (often) uncomfortably domineering.
Handshake - equal and vertical	handshake	non-threatening, relaxed	Most handshakes are like this, when neither person seeks to control or to yield.
Pumping handshake	handshake	enthusiasm	A vigorous pumping handshake tends to indicate energy and enthusiasm of the shaker towards the other person, the meeting, situation or project, etc). There is a sense of attempting to transfer energy and enthusiasm, literally, from the vigorous handshaker to the shaken person, hence the behaviour is popular in motivational folk and evangelists, etc.

Weak handshake	handshake	various	Avoid the common view that a weak handshake is the sign of a weak or submissive person. It is not. Weak handshakes can be due to various aspects of personality, mood, etc. People who use their hands in their profession, for example, musicians, artists, surgeons, etc., can have quite gentle sensitive handshakes. Strong but passive people can have gentle handshakes. Old people can have weak handshakes. A weak handshake might be due to arthritis. Young people unaccustomed to handshaking can have weak handshakes. It's potentially a very misleading signal.
Firm handshake	handshake	outward confidence	Avoid the common view that a firm handshake is the sign of a strong solid person. It is not. Firm handshakes are a sign of outward confidence, which could mask deceit or a weak bullying nature, or indicate a strong solid person. Strength of a handshake is not by itself an indicator of positive 'good' mood or personality, and caution is required in reading this signal. It is widely misinterpreted.
Handshake with arm clasp	handshake	seeking control, paternalism	When a handshake is accompanied by the left hand clasping the other person's right arm this indicates a wish to control or a feeling of care, which can be due to arrogance. To many this represents an unwanted invasion of personal space, since touching 'permission' is for the handshake only.
Legs and Feet - Body Language			
Signal	**Part of body**	**Possible Meaning (s)**	**Detailed Explanation**
Leg direction, sitting - general	legs/knees	interest, attentiveness (according to direction)	Generally a seated person directs their knee or knees towards the point of interest. The converse is true also - legs tend to point away from something or someone which is uninteresting or threatening. The rule applies with crossed legs also, where the upper knee indicates interest or disinterest according to where it points. The more direct and obvious the position, the keener the attraction or repellent feeling.

Uncrossed legs, sitting - general	legs	openness	In sitting positions, open uncrossed leg positions generally indicate an open attitude, contrasting with with crossed legs, which normally indicate a closed attitude or a degree of caution or uncertainty.
Parallel legs together, sitting (mainly female)	legs	properness	This unusual in men, especially if the knees point an angle other than straight ahead. The posture was common in women due to upbringing and clothing and indicates a sense of properness.
Crossed legs, sitting - general	legs	caution, disinterest	Crossed legs tend to indicate a degree of caution or disinterest, which can be due to various reasons, ranging from feeling threatened, to mildly insecure.
Crossing legs, sitting - specific change	legs	interest or disinterest in direction of upper crossed knee	Generally the upper crossed leg and knee will point according to the person's interest. If the knee points towards a person then it signifies interest in or enthusiasm for that person; if it points away from a person it signifies disinterest in or a perceived threat from that person. Signs are more indicative when people first sit down and adopt initial positions in relation to others present. Signs become less reliable when people have been sitting for half-an-hour or so, when leg crossing can change more for comfort than body language reasons.
American or figure-4 leg cross	legs	independent, stubborn	The 'American' or 'figure-4' leg cross is a far more confident posture than the conventional 'both knees' leg cross. It exposes the genital region, and typically causes the upper body to lean back. The crossed leg is nevertheless a protective barrier, and so this posture is regarded as more stubborn than the 'both knees' leg cross.
American or figure-4 leg cross with hand clamp	legs / arm / hand	resistant, stubborn	This is a more protective and stubborn version of the plain American leg cross, in which (usually) the opposite hand to the crossing leg clamps and holds the ankle of the crossing leg, effectively producing a locked position, which reflects the mood of the person.

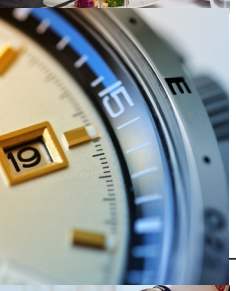
Open legs, sitting (mainly male)	legs	arrogance, combative, sexual posturing	This is a confident dominant posture. Happily extreme male open-crotch posing is rarely exhibited in polite or formal situations since the signal is mainly sexual. This is a clear exception to the leg/knee point rule since the pointing is being done by the crotch, whose target might be a single person or a wider audience. Not a gesture popularly used by women, especially in formal situations and not in a skirt. Regardless of gender this posture is also combative because it requires space and makes the person look bigger. The impression of confidence is increased when arms are also in a wide or open position.
Ankle lock, sitting	legs	defensiveness	Knees may be apart (among men predominantly) or together (more natural in women). There is also a suggestion of suppressing negative emotion.
Splayed legs, standing	legs	aggression, ready for action	Splayed, that is wide-parted legs create (usually unconsciously) a firm base from which to defend or attack, and also make the body look wider. Hands on hips support the interpretation.
Standing 'at attention'			
Legs / body	respectful	Standing upright, legs straight, together and parallel, body quite upright, shoulders back, arms by sides - this is like the military 'at attention' posture and is often a signal of respect or subservience adopted when addressed by someone in authority.	

Legs intertwined, sitting (female)	legs	insecurity or sexual posing	Also called 'leg twine', this is a tightly crossed leg, twined or wrapped around the supporting leg. Depending on the circumstances the leg twine can either be a sign of retreat and protection, or a sexual display of leg shapeliness, since a tight leg-cross tends to emphasise muscle and tone. Assessing additional body language is crucial for interpreting such signals of potentially very different meanings.
Legs crossed, standing (scissor stance)	legs	insecurity or submission or engagement	Typically observed in groups of standing people at parties or other gatherings, defensive signals such as crossed legs and arms among the less confident group members is often reinforced by a physical and audible lack of involvement and connection with more lively sections of the group. Where legs are crossed and arms are not, this can indicate a submissive or committed agreement to stand and engage, so the standing leg cross relays potentially quite different things.
Knee buckle, standing	legs / knees	under pressure	Obviously a pronounced knee buckle is effectively a collapse due to severe stress or actually carrying a heavy weight, and similarly a less obvious knee bend while standing can indicate the anticipation of an uncomfortable burden or responsibility.
Feet or foot direction or pointing	feet	foot direction indicates direction of interest	Like knees, feet tend to point towards the focus of interest - or away from something or someone if it is not of interest. Foot direction or pointing in this context is a subtle aspect of posture - this is not using the foot to point at something; it is merely the direction of the feet when sitting or standing in relation to people close by.
Foot forward, standing	feet	directed towards dominant group member	The signal is interesting among groups, when it can indicate perceptions of leadership or dominance, i.e., the forward foot points at the leader or strongest member of the group.
Shoe-play (female)	feet	relaxation, flirting, sexual	A woman would usually be relaxed to display this signal. In certain situations dangling a shoe from the foot, and more so slipping the foot in and out of the shoe has sexual overtones.

© Alan Chapman/Businessballs 2016. Retrieved from www.businessballs.com 2016. Full source material at http://www.businessballs.com/body-language.htm. Not to be sold or published. Alan Chapman/Sandra McCarthy/Businessballs accepts no liability for any issues arising.

For the charts in their entirety, please visit:
http://www.businessballs.com/body-language.htm










PLATINUM ACCELERATOR

MODULES 6-9

MODULE 6: FEASIBILITY & REVERSE FEASIBILITY

MODULE 7: CONTRACTS & DUE DILIGENCE

MODULE 8: FINANCE & JOINT VENTURES

MODULE 9: PURCHASE & SALES STRATEGY

© Copyright Dymphna Boholt

I LOVE REAL ESTATE