

ANZVGN 8

VALUATIONS FOR USE IN OFFER DOCUMENTS

1.0 Introduction

1.1 Purpose

The purpose of this Guidance Note is to provide advice to Members providing valuations for inclusion in offer documents. This Guidance Note does not purport to be a comprehensive description of the law and members should obtain independent legal advice.

1.2 Status of Guidance Notes

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

1.3 Scope of this Guidance Note

This Guidance Note applies to Members providing valuations of real property and related assets that are to be included in an offer document.

This Guidance Note addresses general concepts and principles to be followed by Members when preparing valuations for inclusion in offer documents.

Offer documents may include, but not be limited to, regulated offer documents (including prospectuses and product disclosure statements), unregulated offer documents (including information memorandums) and bidder's and target's statements.

1.4 Structure of This Guidance Note

The advice for Members provided in this Guidance Note includes:

- advice on process including:
 - responsibility of Member;
 - instructions;
 - obligations;
 - style;
 - statement of valuation;
- advice on transparency including:
 - conflicts of interest;
 - assumptions and qualifications;
 - forecasts;
 - value statement;
 - risk statement;
 - development properties; and
- advice on regulatory observance.

1.5 International Valuation Standards

This Guidance Note is intended to be consistent with Standards and Guidance Notes published by the International Valuation Standards Committee, except as otherwise stated.

2.0 PROCESS

The following comprises advice to Members concerning issues of process in the provision of valuations for inclusion in offer documents

2.1 Responsibility of Member

2.1.1 Requirement for Valuation

A Member may be instructed to provide a valuation for inclusion in an offer document at the request of a party such as the promoter, manager or trustee but for the benefit of potential or existing investors.

Such a valuation is likely to be an important consideration within a range of matters considered by a potential investor in determining whether or not to make an investment.

A Member should be aware that the valuation may be considered by other parties involved in the offer including lenders, accountants, auditors and lawyers.

A Member may be required to provide both a full report and a summary report for inclusion in the offer document.

2.1.2 Role of Member

A Member is fulfilling the role of an informed professional in providing an objective and impartial view and drawing the attention of a reader to key issues impacting on value.

A Member should, therefore, provide disclosure of relevant information (including assumptions and qualifications) to assist a reader understand the basis of the valuation (when included).

A Member should aim for maximum rather than minimum disclosure, seeking to exceed technical compliance in order to exceed public expectations, in their full report. A summary report should, therefore, seek to mirror the spirit of this approach within the confines of brevity and cross-referencing to other parts of the offer document where relevant.

The level of information provided should be such as potential investors and their advisers would reasonably require and reasonably expect to find in an offer document in relation to property value for the purpose of making an effective, fully informed decision.

A Member should not provide comment on the merit of the offer.

2.1.3 Relevant Skills and Expertise

In accordance with Rule of Conduct 1.6, a Member should not accept an instruction beyond their competence.

If a Member does not have the relevant skills and expertise to undertake the provision of a valuation, the Member should decline the instruction or retain an appropriate specialist to provide advice.

2.2 Instructions to Member

2.2.1 Written Instructions

In accordance with Rule of Conduct 1.20, a Member should accept instructions in writing.

Written instructions should be obtained prior to the valuation being undertaken.

2.2.2 Clarity of Instructions

In accordance with Rule of Conduct 1.20, a Member should ensure clarity of instructions concerning the interest that is to be valued.

2.2.3 Contents of Instructions

Such instructions should be clear and include all relevant details, which may be provided in a letter of instruction, contract between the parties or other form of appointment.

A Member should note that the form of appointment may be regarded as a public document.

A Member should consider attaching a copy of the instructions to the valuation report.

2.2.4 Incomplete Instructions

In the event that any of the following are omitted from the instructions:

- a) identification of the instructing party;
- b) acknowledgment of respect for the Member's independence;
- c) provision to meet the cost of independent legal or other expert professional advice for the Member, if required;
- d) exact scope of the valuation, disclaiming responsibility for matters outside such scope;
- e) basis of valuation;
- f) date of valuation;
- g) purpose/reasons for valuation including a statement that it is for use in an offer document;
- h) the manner of distribution and likely recipients of the valuation including, if the valuation is to be used in an offer document;
- i) any requirements for a summary report for inclusion in an offer document;
- j) confirmation that, if a summary report is required, potential investors can have access to the full report;
- k) unfettered rights to inspect the property;
- l) the facts of the proposal;
- m) any data relevant to the proposal;
- n) any partial ownership arrangements or other restrictions on marketability;

- o) if the subject property is subject to current or previous acquisition, relevant details such as contract of sale, survey, due diligence reports and related documents;
- p) details of any consultants with whom the Member should liaise regarding the offer document, with costs arising there from to be borne by the instructing party;
- q) reference to statutory requirements and any additional requirements contained within the documents constituting the offer or entity;
- r) requirement for the instructing party to review and confirm the factual accuracy of the draft valuation report;
- s) whether any assumptions or qualifications have been prescribed by the instructing party; the reasonableness or achievability of such prescribed assumptions or qualifications and the sensitivity of the valuation to variations or non-compliance with such prescribed assumptions or qualifications;
- t) requirement for the Member to provide their consent to being named in the offer document and a description of any consents the Member may be required to sign in connection with the inclusion of their valuation in an offer document;
- u) specific requirements of the instructing party for the scope of continuous disclosure; or
- v) provision of draft offer documents together with adequate time for review and the right to control edited versions of the valuation contained therein

a Member should consider requesting same from the instructing party.

2.3 Obligations of Members

2.3.1 Duty to Prospective Investors

A Member should consider their responsibility to potential investors to whom the report is directed for their information and decision making. If a Member is uncertain concerning their responsibility, they should seek independent legal or professional advice.

2.3.2 Nature of Information to be Included

A Member should, if not provided by the instructing party with all information required for consideration or appropriate access to records, premises, etc as required, decline to provide a valuation.

2.3.3 Significant Change in Information

A Member should be aware of the obligation on the issuer of any offer document to issue a supplementary offer document if a significant change occurs.

A Member should promptly inform the issuer of any offer document in which a Member's valuation report is contained of any matter that could have a material impact on the valuation.

In the event that the valuation becomes impacted by a significant change during the offer period and the instructing party does not amend or withdraw the offer document accordingly, the Member should consider withdrawing their consent to being named in the offer document.

2.4 Style

2.4.1 Goal

A Member should consider the test of a valuation to be measured as much by its clarity and utility to users as by the sophistication of its analysis and its information content.

2.4.2 Written Style

A valuation should be worded and presented in a clear, concise and effective style using plain and direct language.

2.4.3 Terminology

A Member should use terminology consistent with widely accepted industry guidelines, but without unnecessary technical jargon.

Where unavoidable, technical jargon should be used consistently and with an explanatory glossary provided in the full report, especially where, the definition or interpretation of specific or technical terms is central to the valuation.

2.5 Statement of Valuation

2.5.1 Member's Consent

It is recommended that a Member's valuation not be published in part or full in an offer document without the Member consenting to the form and context in which it will appear. Before consenting, a Member should confirm by sighting that the valuation has been accurately reproduced in the offer document and is being used for the purpose for which it is produced.

A Member should be vigilant to ensure misrepresentation or omission of factors, assumptions or qualifications that may be relevant to a party likely to rely on the offer document does not occur.

A Member should limit their responsibility for an offer document to solely their contribution to the offer document.

A Member may withdraw consent for the inclusion of a valuation in an offer document at any time.

A Member should withdraw consent for the inclusion of a valuation in an offer document if:

- the Member becomes aware of something occurring after the issue of the valuation which would cause the valuation, or a statement in the offer document to which a Member has consented, to be misleading or deceptive;
- the Member has informed the issuer of the occurrence; and
- the issuer has refused to issue a supplementary offer document or otherwise inform potential investors of the nature of the occurrence and its impact on the valuation.

2.5.2 Summary Valuation

If a Member provides a valuation and then also provides a summary valuation, it is recommended that each refer to the other.

The valuation, when read in full, should not contain any unexpected material issues for a reader who has previously read the summary valuation.

2.5.3 Currency of Valuation

A Member should make it clear that the valuation is applicable at the valuation date and that any change in circumstances or market condition after that date would require the valuation to be reviewed.

2.5.4 Assumptions and Qualifications

A Member should detail all assumptions and qualifications affecting the valuation (section 3.2 below).

The use of sensitivity analysis is encouraged to highlight those assumptions and qualifications that significantly impact the valuation.

2.5.5 Risk Statement

A Member should include a risk statement (section 3.5, below).

3.0 TRANSPARENCY

The following comprises advice to Members concerning issues of transparency in the provision of a valuation for inclusion in offer documents.

3.1 Conflicts of Interest

3.1.1 Independence

It is of paramount importance that a Member is and is seen to be independent of the parties making the offer.

3.1.2 Declaration of Interests

A Member should be independent of the parties making the offer, their advisers and associates for the duration of that period from first approach to publication of final report for its required purpose.

A Member should disclose any conflicts of interest (real, perceived or potential) including any interest by a Member's employer, family or associate or related parties.

A Member should disclose, clearly and prominently, any interest in the subject matter of the valuation even if it is considered that no conflict exists.

3.1.3 Business Relationship

A Member should consider whether any previous, existing or intended future business relationship (within last two years or longer if sufficiently significant), with any relevant parties has the potential to affect or to be perceived to affect the independence of the Member.

3.1.4 Performance Fees

In accordance with Rule of Conduct 1.7, a Member should not negotiate a fee contingent on the success of the offer.

3.1.5 Client Interaction

A Member should not discuss the merits of an asset or the approach that may be adopted in the valuation until after the party making the offer has provided written instructions.

A Member must assess the merits of the asset independent of the party making the offer or anybody associated with that party.

A Member may supply the instructing party with a draft copy of a report for review and confirmation of factual accuracy only.

The party making the offer may seek to provide further information to, or clarification of matters for a Member, which a Member may then verify and consider.

Having regard to the correction of factual errors or following verification and consideration of further information or clarification, a Member may review their valuation. Otherwise, it is inadvisable for a Member to change judgemental assessments in a draft report (such as rental, growth, capitalisation or discount rates or opinion of value) following comment by the party making the offer.

A Member should keep accurate written records of such interaction with the party making the offer and of any changes that may be made by the Member to the draft in order to substantiate independence in the event of a claim otherwise.

3.2 Assumptions and Qualifications

3.2.1 Statement of Assumptions and Qualifications

It is recommended that a Member's valuation clearly discloses any assumptions or qualifications made or relied upon.

A valuation concerning a development property is often subject to assumptions and/or qualifications (section 3.6.2 below).

Accordingly, a Member should take as much care with the formation and publication of assumptions and qualifications as with the valuation itself.

The use of sensitivity analysis is encouraged to identify those assumptions and qualifications that significantly impact the valuation.

3.2.2 Prescribed Assumptions and Qualifications

Where the instructing party has prescribed assumptions or qualifications, to be included in a valuation, the Member should restate these in the report and write explanatory comments where necessary.

A Member should critically evaluate information provided by an instructing party, taking note of any grounds for questioning the veracity, accuracy or completeness of such information and undertake whatever checks, inquiries, analyses and verification procedures as are considered necessary.

If assumptions or qualifications provided by an instructing party result in advice that differs from Market Value, a Member should report such difference and/or effect and the reasons why.

3.2.3 Reliance on Advice or Reports by Others

If a Member relies on advice or a report by another expert, the material should preferably be reproduced in full or, if in part, the member should be aware of the risk of material omissions and, include a statement of the material on which a Member has relied and (if applicable) how this has impacted upon the valuation.

If a Member has relied on advice or a report by another party without conducting any independent investigation into the matters contained therein, the Member should clearly state this in the valuation.

3.3 Forecasts

3.3.1 Basis of Forecasts

A Member may be required to undertake forecasts in the preparation of a valuation.

Advice concerning development properties is often reliant on forecasts (section 3.6.3 below).

Members should have regard to International Valuation Guidance Note 9, concerning the use and basis of forecasts.

Forecasts should be supported by reasoned assumptions, recognising that past trends may not be a guide to future trends.

A Member should make sufficient inquiries to establish that forecasts are prepared on a reasonable basis. Appropriate documentation should be retained to prove such reasonable grounds.

A statement of assumptions relevant to the forecasts is essential for the proper assessment of information contained in the forecast. A Member should clearly disclose any such assumptions in the valuation.

A Member should seek professional advice concerning the need for accreditation or licensing for the provision of information in an offer document and should ensure that the reliant party does not adopt any such forecasts as the basis for their own forecasts in the offer document without the Member's prior written consent.

3.3.2 Sensitivity Analysis

Members are encouraged to include a sensitivity analysis within the valuation to ensure that readers are aware of the degree of uncertainty which such forecasts entail. Such analysis should address key risks which may impact upon the valuation outcome.

Members should, avoid potential confusion by clearly indicating which is their opinion of value.

3.4 Reporting The Value

3.4.1 Value

After considering all the issues affecting the property, including various approaches to valuations and any sensitivity analysis, Members are encouraged to provide a single point value.

3.4.2 Market Volatility

Members are encouraged to discuss the implications of market volatility in relation to the value ascribed.

3.5 Risk Statement

3.5.1 Risk Statement

It is recommended that a Member's valuation include a risk statement comprising a balanced view of the negative and positive risks associated with the subject of the valuation.

3.5.2 Unusual Attributes

A Member's advice should draw the readers' attention to any atypical features or influences associated with the subject of the valuation.

Advice concerning development properties may be expected to include extensive analysis of risk (section 3.6.4 below).

3.5.3 Marketability

A Member should comment upon the marketability of the property.

3.6 Development Properties

3.6.1 Value As if Complete

If a Member provides a valuation of a property or asset to be subject to a material change of state, the Member is encouraged to report the value of the asset "as is" and the value of the asset in the "as if complete" state.

(For example, an offer document may contemplate the acquisition of a block of land upon which will be built an income producing multi-storey office property.)

3.6.2 Assumptions and Qualifications

If the "as if complete" value is dependent upon stated assumptions and qualifications, these should be fully addressed together with the implications should any fail to materialise.

(For example, an offer document may be based on development approval, a building contract and certain tenants to change a block of land into an occupied, income producing multi-storey office property.)

3.6.3 Forecasts

If the "as if complete" value is dependent upon forecasts, these should be fully addressed and the Member should include a discussion of the reasonableness of such forecasts.

(For example, an offer document may contemplate certain time frames for the achievement of development approval, a building contract at a certain price and tenants at certain rentals to change a block of land into an occupied, income producing multi-storey office property.)

3.6.4 Risk Analysis

Advice concerning a material change of state may include extensive risk analysis.

A Member should comment on the risks involved and upon the vulnerability to multiple risks, both related and unrelated.

(For example, a valuation may include a detailed statement of the various risks involved in contemplating the acquisition of a block of land on which an income producing multi-storey office building will be built).

4.0 REGULATORY OBSERVANCE

4.1 Financial Services Licence

In Australia, the inclusion of a valuation report in an offer document may constitute the provision of financial product advice. Members that do not hold, or are not covered by an Australian Financial Services Licence, are advised to seek independent legal advice before providing a valuation report for inclusion in an offer document.

If it does constitute financial product advice, there may be an exemption from the requirement to hold a licence available if the following conditions are met:

- a) the valuation is included in a document issued in connection with an offer of a financial product;
- b) the advice is an opinion on matters other than financial products and does not include advice on a financial product;
- c) the document includes a statement that the person is not operating under an Australian Financial Services Licence when giving advice; and
- d) the person discloses in the document information about any remuneration or other benefits received or any interests, associations or relationships that might reasonably be expected to be or to have been capable of influencing the person in providing the advice.

This exemption is narrow in operation and will not apply to the following documents where they do not possess a 'connection' with the 'offer of a financial product':

- a) an explanatory booklet for a scheme of arrangement;
- b) a compulsory acquisition notice under Chapter 6A of the Corporations Act; or
- c) an offer made in the circumstances where the shares to be acquired are held by shareholders dissenting from a scheme or contract approved by the majority.

4.2 Relevant Law

In Australia, relevant law may include but not be limited to:

- a) Common Law – including potential liability to a third party for loss suffered as a consequence of reliance upon negligent information or advice where it was not unreasonable for the third party to rely on the information or advice;
- b) Statute – including but not limited to:
 - Corporations Act – in particular;
 - s9 concerning the definition of an expert (being distinguished from a professional and/or an adviser);
 - s1041E relating to an offence of making false or misleading statements in relation to a financial product or service;
 - s1041H relating to a civil offence to engage in misleading or deceptive conduct in relation to a financial product or a financial service, and
 - ss 710 and 1013C(3) concerning information that should be included within prospectuses and product disclosure statements respectively;

- Trade Practices Act – in particular, s52 concerning misleading or deceptive conduct or conduct that is likely to mislead or deceive;
- ASIC Act – in particular s12DA concerning the prohibition against misleading or deceptive conduct in relation to financial services; and
- Fair Trading Acts, consumer protection legislation, trustee legislation, valuers registration legislation.

4.4 Texts

In Australia, relevant texts may include but not be limited to *The Legal Liability of Valuers* by Lindsay Joyce and Keith Norris (Southwood Press, Second Edition), particularly pages 48 to 53 and Chapter 2.

In New Zealand, relevant law may include but not be limited to:

- Common Law – including the potential liability to a third party for loss suffered as a consequence of reliance upon negligent information or advice where it was not unreasonable for the third party to rely on the information or advice;
- Statute – including but not limited to:
 - a) Securities Act 1978 and Amendments;
 - b) Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 1996 – in particular the Second Schedule which outlines mandatory matters to be specified in Independent Registered Valuer's reports;
 - c) Securities Act (Contributory Mortgage) Regulations 1988 – in particular Schedule 3 (Information and Other Matters to be Contained in Valuation Reports). The inclusion of these specified details is mandatory; and
 - d) Fair Trading Acts, consumer protection legislation, trustee legislation, valuers registration legislation.

4.3 Relevant Guidance

In Australia, relevant guidance may include but not be limited to:

- o ASIC
 - Practice Note 42 – Independence of Expert's Reports;
 - Practice Note 43 – Valuation Reports and Profit Forecasts;
 - Practice Note 55 – Disclosure Documents and PDS: consent to quote;
 - Policy Statement 56 – Prospectuses;
 - Policy Statement 74 – Acquisitions Agreed to by Shareholders;
 - Policy Statement 75 – Independent Expert Reports to Shareholders;
 - Policy Statement 77 – Property Trusts and Property Syndicates;
 - Policy Statement 146 – Licensing: Training of Financial Product Advisers;
 - Policy Statement 170 – Prospective Financial Information;
 - Policy Statement 175 – Licensing: Financial Product Advisers – Conduct and Disclosure; and
 - Policy Statement 181 – Licensing: Managing Conflicts of Interest.

In New Zealand, relevant guidance may include but not be limited to:

- o Securities Commission
 - Inquiry into the 1 Parliament Street Car Park Limited Contributory Mortgage – 3rd May 2002
 - Offers of Unlisted Interests in Commercial Properties – A Review – 30th March 2000