

Australian Property Institute and
Property Institute of New Zealand

TECHNICAL INFORMATION PAPER – PREPARING A PROPERTY FOR SALE

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Technical Information Papers

The principal objective of a Technical Information Paper (TIP) is to reduce diversity of practice by identifying commonly accepted processes and procedures and discussing their use. A TIP is designed to be of assistance to property professionals and informed users alike.

A TIP will do one or more of the following:

- provide information on the characteristics of different types of asset that are relevant to the advice,
- provide information on appropriate practices and their application, provide information that is helpful to property professionals in exercising the judgements they are required to make in specific situations.

A TIP does not:

- provide training or instruction,
- direct that a particular approach or method should or should not be used in any specific situation.

The contents of a TIP are not intended to be mandatory. Responsibility for choosing the most appropriate approach is the responsibility of the property professional based on the facts of each task.

Whilst TIPs are not mandatory, it is likely they will serve as a comparative measure of the level of performance of a Member. They are an integral part of “Professional Practice”.

The reader should understand that legislation may change and whilst this TIP is accurate and relevant at the time it was completed, relevant referred reading and legislation should be investigated at the time of relying on this TIP.

Preparing a Property for Sale

1.0 Introduction

1.1 Objective

The objective of this Technical Information Paper (TIP) is to provide a general reference to preparing real estate for sale. This TIP addresses the high-level steps taken in preparing real estate for sale prior to the actual commencement of marketing. It covers the period of preparation of the physical state of the property for sale together with any required financial or technical information brought together in a selling document prior to the placement of the property on the open market.

1.2 Scope of this TIP

This TIP applies to Members who undertake preparing properties for sale on behalf of known clients with whom those Members or their employers have entered into the appropriate Sales Agency Services Agreement. This TIP should be read in conjunction with other TIPs and/or API/PINZ Standards, which are either over-arching or directly applicable to the issues raised in this TIP.

TIPs are intended to embody for API Members recognised 'competent professional practice', and for PINZ Members, recognised 'best practice'. Therefore, a TIP may (although this should not be assumed) assist an API Member to act in a competent professional manner, or a PINZ Member to practice to a level that meets best practice, if properly applied. While TIPs are not mandatory, it is likely that Members who have regard to and apply the guidance provided by TIPs will be able to evidence that they have acted in a competent professional manner (API) or to a level that meets best practice (PINZ). The API and PINZ do not warrant that anything contained in this or any TIP is the definitive and/or final statement on any issue raised in the TIP. Members must perform their own work pursuant to their own professional expertise and experience.

Where recommendations are made in this TIP for Members to undertake a specific professional task, these are intended to represent 'competent practice' for API Members and 'best practice' for PINZ Members, i.e. recommendations that in the opinion of the API and PINZ, as the case may be, would meet practice accepted by peer professional opinion. Although Members are not required to follow the recommendations contained in the TIP, they should take into account the following points.

When an allegation of professional negligence and/or breach of a statutory duty is made against a Member, a court or tribunal will almost always take account of the contents of any relevant TIP published by the API and PINZ in deciding whether or not the Member acted to a standard as required by law.

In the opinion of the API and the PINZ, a Member conforming to the practices recommended in this TIP should have at the very least a partial defence to an allegation of negligence and/or other alleged breach, if they have followed those practices. However, Members have the responsibility of deciding when it is inappropriate to follow a TIP.

It is for each Member to decide on the appropriate procedure to follow in any professional task. However, where Members do not comply with the practice recommended in this TIP, they should do so only for a good professional reason and it is recommended that Members record for their own purposes why they did not comply with something contained within a TIP. Members may wish to seek legal and/or other advice before embarking on a path of non compliance with

practice recommended in a TIP. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice.

2.0 Physical Preparation of the Property

2.1 Importance of Physical Presentation

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

2.2 Areas Requiring Physical Attention

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

Issues may include:

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

2.3 Redevelopment Potential

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

3.0 Preparation of the Property's Financial Details

3.1 Soundness of Income

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

3.2 Tenancy and Lease Status

In preparing a property for sale the practitioner should review a property's tenancy and lease status to ensure that the property is presented in its best financial position.

3.3 Occupancy Levels

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

3.4 Tenancy Security

- Ensure that all leases have been signed, stamped and/or registered, and that a comprehensive set of leases and any lease variation documents are available for scrutiny by potential buyers.
- Ensure that all personal or bank guarantees have been obtained and copies of each are attached to the leases.
- Provide a resume of the tenant(s) business history, number of outlets and other available information as this will assist in the purchaser's acceptance of the security.

3.5 Lease Tenures

- The Weighted Average Lease Expiry (WALE) should be calculated and understood being an important metric for investors. If lease terms are about to expire, endeavours should be made to secure either new leases or lease renewals over existing tenancies.
- At the very least enter into correspondence with existing or potential tenants to provide a positive outlook as to the future letting of space which may otherwise appear as potential vacancy.

3.6 Re-negotiation of Unsatisfactory Lease Terms

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

3.7 Preparation of Tenancy Schedule

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

- Description to identify the area leased, e.g. Shop number, floor level, suite number etc.
- Lessee's name, (including trading name).
- Area leased in square metres.
- Lease rent plus outgoings.
- Lease commencement and expiry dates.
- Lease option terms and dates.
- Lease rent review dates and method of rent review i.e. market rent review or fixed increase or CPI adjustment.

- Tenant's proportion of recoverable outgoings, recovery calculation with calculation details to be provided.
- Comments in relation to particular items of variation of a tenant's lease to the standard lease, e.g. non recovery of certain outgoings.
- Ownership of fit-out and if included in sale.

3.8 Other Sources of Income

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

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

3.9 Outgoing Schedules

- These can be provided either in the form of past actual outgoings or budgeted outgoings and preferably a combination of both to compare the last completed financial year actuals to budgeted. Additionally, the current financial year budget and actual year to date outgoings should be provided.
- The outgoings budget should identify each item of outgoings together with the annualised amount of past actual outgoings and future budgeted outgoings.
- Trends can be established and analysed if several previous years' outgoings are obtained.

3.10 Arrears Schedule

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

3.11 Depreciation Allowances

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

3.12 Overseas Purchasers

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

3.13 Building Energy Efficiency Certificate

For commercial properties for sale or lease over 1,000sqm (as of July 2017) a Building Energy Efficiency Certificate is required, and subsequent disclosure of the building's energy efficiency rating to be displayed on all advertising material. This will comprise the need for a Building Energy

Efficiency Certificate assessment to be conducted by a suitably qualified practitioner. This will require a NABERS energy rating assessment, which requires 12 months of energy data from the building. This requires appropriate metering within the building between base building energy consumption and tenant usage, in order for a base building assessment under NABERS to be conducted. If separate metering is not in place then a whole building assessment will need to be conducted. Once the NABERS rating is completed further steps include a lighting tenancy assessment and the application to be submitted by a CBD accredited assessor.

In the Australian Capital Territory, all residential properties for sale or lease are required to attain and display on any advertising and present future purchasers/tenants with an Energy Efficiency Rating.

4.0 Marketing Strategy and Budget

4.1 Target Market Determines Marketing Strategy

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

4.2 Discussion with Vendor

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

4.3 Marketing Mediums

Depending on the marketing strategy adopted and how the property is to be offered marketing mediums may include:

- Professional photography
- Internet exposure on websites that are widely used by property seekers and have global reach
- Onsite signage
- Electronic brochure
- Print Media

4.4 Marketing Budget and Costs

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

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

A marketing budget should be agreed to in writing where a sales agent is appointed.

It is important that all marketing materials and mediums have accurate content, as errors can negatively affect prospective purchaser's disposition about the property.

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

- Advertising
- Website
- E-mail
- Internet
- Brochure / video production and cost of circulation
- Cost of producing a comprehensive information memorandum, tender documents or information pack.
- Signage preparation and installation
- Mailing and courier costs
- Photography
- Travel expenses
- Cost of other specialists consultants advice (if required)
- Cost in relation to obtaining a Building Energy Efficiency Certificate
- Cost of auction venue (if required)
- Auctioneer's fee (if applicable)

4.5 Information Memorandum

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

- Description of the property's location
- Proximity to public transport and amenities
- Quality of surrounding development including description of surrounding uses.
- Benefits of the location to the particular property e.g. a high profile site has a considerable volume of passing traffic, an elevated site has unrestricted views, etc.
- Ease of ingress and egress
- Photographs
- Title Description and Survey Plan

The full legal description should be inserted in the document with a photocopy of the title document. Title description would give details of the lot and title plan, and registered encumbrances.

Where registered interests (such as Leases) and encumbrances (such as Easements) exist, details of these should be provided.

A survey plan showing the land area and dimensions should also be included. This information provides the purchaser with an accurate identity of the property being acquired.

- **Building Description**

This description can be brief or comprehensive depending on the nature of the asset being sold. Obviously, a detailed description gives the purchaser a better understanding of the asset being acquired. Items for mention include, date of construction, date of additions or refurbishment, extent of built area, style of architecture, building construction methods, NABERS Energy star rating, materials and finishes, services and maintenance.

- **Land Description**

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

- **Tenancy Information**

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

- **Financial Details**

Information as described under the heading “Preparation of the Property’s Financial Details” would be provided in the information memorandum.

- **Property Plans**

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

- **Statutory Information**

In addition to the financial information provided on an investment property there is usually the inclusion of council rates and tax information. The Statutory Value(s) on which rates and taxes is payable should be detailed in addition to specific obligations for tenants.

- **Town Planning/Resource Management**

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

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

- Market Commentary
- Building energy efficiency certification or Energy Efficiency rating information

The information assimilated for the marketing material should be accurate given the responsibility imposed by Section 30 of the *Competition and Consumer Act 2010* and preferably, all information should be verified by the Vendor's written certification of its accuracy. Matters affecting the property should be requisitioned from the vendor's solicitor so that appropriate documents can be considered and be available for perusal (e.g. Title reference and survey plan).

5.0 Method of Sale

5.1 Decided in Consultation With Owner

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

- Potential competition
- Expected Realisation
- Target market
- Competing properties
- Timing of sale
- Requirements of the vendor
- Complexity of the property
- Confidentiality requirements of the vendor
- State of the market.

5.2 Methods

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

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

Where an agent is engaged to for sale of property, instructions must be confirmed in writing with relevant appointment to act documentation.

5.3 Variations

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

5.4 Primary Methods

The four primary methods of sale are described hereunder:

5.4.1 Private Treaty

This method of sale requires an opinion of price. Pricing a property for sale may be unacceptable to the vendor in a rising or falling market. However, providing a price estimate allows the market to judge the vendor's expectations and determine whether or not the vendor is genuine.

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

5.4.2 Public Auction

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

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

The system is also seen and recognised by the courts as the fairest method for property disposal, especially for deceased estates and or "Third Party Sales".

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

5.4.3 Public Tender

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

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

5.4.4 Expressions of Interest

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

This method provides the following:

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

A two staged Expressions of Interest process works as follows:

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

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

6.0 Preparation of Disclosure Material

6.1 Due Diligence an Integral Part of Preparation

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

The Member should also refer to the API's Due Diligence Technical Information Paper.

6.2 Extent and Complexity Varies

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

6.3 Recommended Prior to Marketing

Due Diligence information is often assembled after commencement of Marketing. However, as this process has gained particular relevance (and could potentially de-rail the transaction) it is recommended that preparation of the due diligence material be undertaken prior to commencement of marketing. The Member then has the opportunity to advise the owner of any adverse issues that could affect both the potentiality of sale and achievable price. It is important to address these issues prior to sale rather than them becoming an insurmountable obstacle to settlement. It is better that all detrimental issues are dealt with prior to offering the property for sale.

6.4 Due Diligence Items

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

- A copy of the property’s Title Search and Survey Plan and copies of any encumbrances on the title such as easements, caveats, or resumption notices.
- Leases - copies of any leases or license agreements over the property or part thereof.
- Environmental Management and Contaminated Land Search - a report from the relevant State Government Department showing the EMR and CLR status of the property. If the status indicates the property is contaminated or likely to be contaminated it is important to undertake further testing to provide a contamination report, including the extent of the contaminants and the cost of clearing the site. It may be necessary to undertake decontamination work (remediation) prior to marketing the property.
- Heritage / Land Use Issues - if a property is subject to a Native Title claim, information regarding this land claim must be provided. If the property is listed as having some heritage significance, information relating to this must be identified and provided. It is further advisable to include any local government registration as this could have an impact on future dealings with the property.
- Main Roads / Local Government - Any requirements by either of these authorities for road widening, truncation or dedication must be identified and information provided.
- Flood Information - a flood report from the relevant local authority should be provided showing any history of inundation of a property due to flooding.
- Outgoings - an audited report on previous years’ outgoings together with the current year’s outgoings budget is important to provide an accurate outgoings estimate.
- General Rates and Land Tax Assessment Notices – it is important to include the most recent notices.
- Depreciation Information – both Building and items subject to Depreciation Allowance should be scheduled to provide the purchaser with knowledge of possible deductions against income for tax purposes.
- Council Compliance Certificate – inclusion of this document confirms absolutely Council’s approval of the completed development at the time of construction.
- Building Energy Efficiency Certificate (Commercial Property) and Energy Efficiency Rating (Residential ACT) required for properties for sale and/or lease.
- Approvals - any related approvals to the site for development or other future redevelopment.
- Other Reports - any other property reports that are relevant to the property and are likely to influence the purchaser’s interest in the property and / or the sale price. This should include a full copy of building plans, any relevant site or soil reports, building structure reports, services reports, engineer’s reports, etc.
- Other Issues – refer ANZRPNG 6 Performing Due Diligence for guidance on other issues that may be applicable in certain circumstances.

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

6.5 Due Diligence Material and Data Room

The due diligence material would normally be at an accessible location for inspection by prospective purchasers. This could be the vendor's agent's offices or vendor's solicitor's offices. A data room should be enabled for vendors to view and download documentation about the subject property. Confidentiality Agreements should be in place with those prospective purchasers accessing the data room.

7.0 Commencement of Marketing

7.1 Conclusion of Preparation

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

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

FOOTNOTE:

These notes have been prepared for general guidance. It is acknowledged that various State Governments have similar but not always identical legislation and consequently the practitioner is required to be aware of relevant legislation and local customs in applying these notes.

The vendor's solicitor will generally liaise with the vendor and the appropriate authorities in collating the material. Nevertheless, the practitioner should be familiar with the above prescription in Preparing Property For Sale and should not deviate from scrutinizing the process to ensure that a comprehensive professional and successful outcome is facilitated.

8.0 Effective Date

This TIP is effective from:

Australian Adoption Date: 1 July 2017

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The above TIP, ANZRPTIP 5, replaces the superseded Guidance Note "ANZRPNGN 8 Preparing Property for Sale", which operated from 1 August 2008 to 30 June 2017.