

Development Management

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Guidance Papers

Objectives

The principal objective of a Guidance Paper (GP) and Resource Pack (if applicable) is to clarify professional and industry processes, best practices, and procedures and to discuss their use and implementation.

A GP is designed to be of assistance to Members and those who use Members' services. They serve as a guide and measure of acceptable professional practice and conduct of a Member.

The intention of a GP is to:

- a) provide information on the characteristics of different types of assets that are relevant to the advice.
- b) provide information on appropriate practices and their application.
- c) provide information that assists Members in exercising the judgements they are required to make in specific situations'; and
- d) convey elements of what is considered "competent professional practice" for Australian Property Institute (API) Members and "best practice" for Property Institute of New Zealand (PINZ) Members.

A GP is not intended to provide comprehensive training, instruction or prescriptive practices and procedures, or direct that a process, professional approach, or method should or should not be used in any specific instruction or situation.

Member Obligations

The Member is responsible for choosing the most appropriate approach in a matter based upon the task and instruction. It is a matter for each Member to decide the appropriate practice in any situation, and if they are unclear, seek professional advice from others, or contact the Institute(s). Members have the responsibility of deciding when it is appropriate to depart from the guidance and practices contained in a GP.

The Institute(s) do not warrant that anything contained in this, or any GP is the definitive or final statement on any issue. Members must perform their own work pursuant to their own professional expertise and experience and if required, seek additional advice which might include legal advice.

Court or Tribunal Reliance

A court or tribunal may consider the contents of any relevant GP or other document relating to a recommended professional practice published by Institute(s) in deciding whether the member acted to a standard required by law.

Currency of Publication

Case law and relevant legislation may change over time and whilst the Institutes(s) consider this GP current at the time of publication, Members and those who use Members' services should have regard to legislative changes and new rulings and if necessary, seek further advice prior to having regard to this GP.

Departure or Non-Compliance

Where a Member considers that a circumstance exists that warrants the departure from or non-compliance with any of this GP, the Member's report (or other advice) must include a statement that outlines:

- a) the reasons for the departure or non-compliance with this GP; and
- b) any impact the Members departure or non-compliance may have on the content of the report.

Members are advised to seek legal and/or other advice before departing from practice recommended in a GP.

Enquiries

If any Member considers any information or advice in this GP to not be accurate or up to date, or wish to raise any issue for consideration arising from the contents of this GP, please refer this to

API contact: standards@api.org.au

PINZ contact: standards@property.org.nz

1.0 Introduction

1.1 Scope of this Guidance Paper

This Guidance Paper (GP) is to provide guidance on the role and responsibilities involved in the process of Development Management.

This GP applies to Members involved in carrying out the Development Manager's role

- (a) either as an independent consultant; or
- (b) directly employed by a property development group.

It is not intended to be used where a Member is involved in detailed construction management and supervision, or where a builder's license is usually required.

This GP should be used in conjunction with other Guidance Papers and/or API/PINZ/IVS Standards, which are either over-arching or directly applicable to the issues raised in this GP or issues involved.

GPs are intended to embody for API Members recognised 'competent professional practice', and for PINZ Members, recognised 'best practice'. Therefore, a GP may 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 GPs are not mandatory, it is likely that Members who have regard to and apply the guidance provided by GPs 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 GP is the definitive and/or final statement on any issue raised in the GP. Members must perform their own work pursuant to their own professional expertise and experience.

Where recommendations are made in this GP 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 GP, they should consider 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 GP published by the API and PINZ in deciding whether 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 GP 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 GP.

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 GP, they should do so only for an accepted and recognised professional reason, and it is recommended that Members record for their own purposes why they did not comply with something contained within a GP. Members may wish to seek legal and/or other advice before embarking on a path of noncompliance with practice recommended in a GP. 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.

1.2 Certification

The API provides a certification for Members who are suitably qualified and experienced in property development as a **Certified Development Practitioner (CDP)**. This certification is for a Member who demonstrates they are regularly involved in the development of property including site selection, development strategies, feasibility studies, planning applications and implementing construction of developments through to the ultimate purpose of the sale or lease of the land and/or buildings for profit.

2.0 Definitions

The following defined words and terms have relevance to and appear in this GP. Other words and terms that are also defined in the joint API / PCA / REIA 2007 Glossary of Property Terms may be used but are not listed below in the interests of brevity.

Development Management is the practice of delivering the right development, in the right location, at the right time. It includes the conceptualisation and optimisation of a development strategy, following through the various stages in the development project to achieve the completed project and meeting pre-defined cost, value, and time budgets. It is providing the advice that would be the thinking of a developer.

Development management comprises the skills of project management in the applied context of property development; and a development manager is a person who demonstrates expertise involved in the development of property or roles to achieve the development of the property, and these may include site selection, development strategies, feasibility studies, planning applications, procurement, construction, management and disposal of the property in the development process.

In larger organisations, there may be a team of professionals managing the development, and individuals may be taking on certain roles and responsibilities and may have different disciplinary areas that are integrated to contribute to the broader process of development management.

Project Management Dedicated Project Manager – to deliver a specific stage of the development process.

For this Guidance Paper the definition of **Development Management** is distinct from dedicated Project Management which is more concerned with delivering an already defined project or construction related outcome. Project management is a professional discipline comprising stages relating to managing teams or groups of people in the initiation, planning, execution, control and completion of tasks, projects or work. In the property and construction industry the use of project management is perceived to be approached in the context of tasks, project or work undertaken in the property and construction sector, however broader concepts of project management are not limited to construction or development context. There is often no clear industry distinction between the two terms, development management and the use of project management in the property and construction industry, which tend to be inter-changed by clients and various other professions when referring to the development and project (construction) roles.

Development Manager is responsible for the overall management of all aspects of a property development either directly or by delegation. The discipline ensures that all aspects are fully aligned into a single cohesive strategy, while balancing often competing objectives such as quality on one hand and cost control on the other.

A Development Manager may be acting in the role of a Consultant or could be employed directly by a Developer or Property Owner to look after the development process on their

behalf. Professional developers sometimes provide a development management service to property owners either on a fee basis or in a joint venture capacity. Furthermore, within development organisations the roles of the development manager may be spread across a team that collectively achieve the objectives outlined in Development Management. Further, a development manager may be involved in the end-to-end development process, although equally they may only be involved in certain stages of the development process. This is dependent on the project type, size, engagement, and purpose of the development managers' role.

Institute All references to "Institute" means API/PINZ.

3.0 Types of Property Development

There are a diverse range of property development projects which may be new, redevelopment, refurbishment, subdivision, etc. Although the general process of property development is usually the same, each project will have its individual characteristics and needs to be managed and modified according to its own requirements. Examples of property development include:

3.1 Commercial Office

This typically comprises the construction of a new commercial office building or a major redevelopment/refurbishment of an existing office building. It may be a single storey, office park style, medium or high rise, and the ownership structure maybe for owner occupation or investment. The standards of finish, layout, services, etc. need to match market requirements. Adaptive re-use from an industrial building to refurbished offices is another example of commercial development.

3.2 Retail

This could be a single lock up shop, a retail shopping centre or bulky goods project. Refurbishment of retail centres including changing tenant mix is another typical role for Development Managers.

3.3 Industrial

Development of industrial property could either include a single warehouse or a group of industrial units, buildings, or industrial park.

3.4 Mixed Use

This is typically a mix of a number of development types in one development and commonly includes commercial office, retail and residential (e.g. retail use on ground floor and residential uses above).

3.5 Agribusiness

Typically, the development of rural properties for uses including intensive agricultural (cropping), viticulture, aquaculture, and primary production (dairy, beef).

3.6 Hotels, Resorts and Motels

There is a variety of hotel development with accommodation types and facilities ranging from backpackers up to 6-star, high rise, and tourist resorts.

3.7 Residential

The development management role is usually in housing estates, residential communities, medium density, or high-rise unit projects.

3.8 Subdivisions

There are different types of subdivisions typically involving residential or industrial land subdivisions. Other examples include strata or stratum subdivisions, or re-subdivisions of existing strata plans.

3.9 Specialised Use or Purpose Projects

A project which results in a completed development which has a limited, or specialised, range of potential purchasers and uses. Examples include a church, marina, racecourse or golf course.

3.10 Miscellaneous Projects

There are numerous specialist types of development projects including medical, child minding centres, parking stations, storage centres, marinas, service stations, clubs, etc.

3.11 Refurbishment/Conversion of Use

The redevelopment or refurbishment of an existing structure. This may include a change of use within the development process.

3.12 Infrastructure

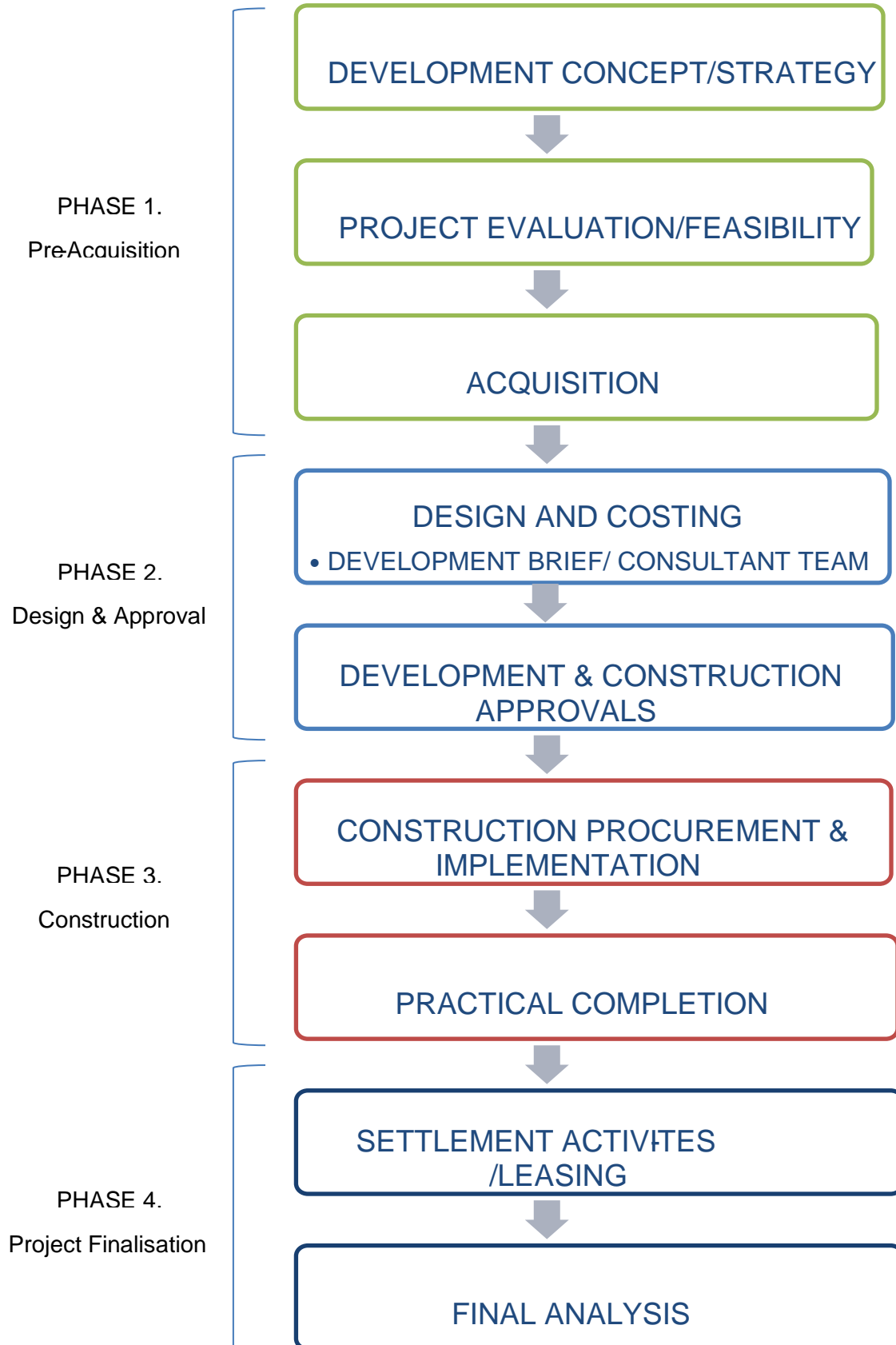
Infrastructure projects are more likely to be managed by Project Managers with experience and qualifications in Engineering, Architecture, Quantity Surveying, etc.

4.0 The Development Process

A typical development process involves a variety of key element, however, there is no 'one' standard process in development. In theory and practice there are a variety of approaches all of which are specific to a multitude of factors, however, many of the process adopted comprise similar activities, although not necessarily in the same order or categorization.

The development process is aligned more specifically with the development strategy, type of development, involvement of key stakeholders and situation of development. Consequently, in theory and practice, there are multiple development process models utilised by professionals. However, often there are similar steps in the process that will be undertaken, just not necessarily in the same order or to the same level. This section provides an observation of key steps in the development process; but does not infer that this is neither the only process nor an absolute in terms of each stage. For example, in the case of a high-rise residential tower, the sale stage would more than likely occur much earlier than shown in the process below.

A typical development process is shown below and has the following steps which are categorized into separate phases to assist in identifying the activities undertaken at different stages in the development process:



4.1 Development Concept/Strategy

The development concept is the type of project it is proposed to develop. The development strategy should align with the overarching organisational strategy and the actual concept and development strategy should always be market driven. The development strategy can be broadly separated into two categories:

'A use in search of a site' and 'A site in search of a use'

A development strategy needs to incorporate a broad range of considerations that are not limited to demand, supply, market cycles, timing, absorption, feasibility and inform the process of site selection, proposed property use, type, style and timing of the development. In particular, understanding the end user/purchaser/occupier needs, wants and requirements is imperative to ensuring the success of the project.

In general considerations there are internal factors that need to be considered regarding the organisation and these range from financial capacity, technical capacity for identifying, developing, managing, and selling the proposed development. These factors need to be considered regarding key external factors which are not limited to current market conditions, extant knowledge of market and aspirations of the future market in the area; competitors and competitor sites (existing, under construction, in planning process and potential sites) and an understanding of the success of development sites within the area.

Timing is important to ensure the product remains relevant and viable when the development is completed. If the project can be pre-sold or pre-leased, the development concept can be packaged around this need. Alternatively, it may be a "spec" project, where it is developed in anticipation of future demand. It is the role of the Development Manager through their experience and ability to have a development concept, within realistic time and cost budgets, which on completion best meets market demand. This will involve market research and insight into market supply, demand, market penetration and more particularly a key understanding of potential purchasers and occupiers' demands, wants, needs, and trends.

4.2 Consultation

Community consultation is a critical step in the development process. Having the support of the local and wider community, and other stakeholders prior to proceeding with applications for planning approval can have a materially positive impact on development timelessness and professional service costs in the initial phases.

Further, through proper consultation, the positive outcomes of a development may be increased.

A community consultation strategy should be implemented for the subject development, which should seek to identify:

- Likely community issues surrounding the proposed development.
- A risk assessment of the process, along with mitigation strategies
- A clearly defined process for the community consultation along with desired outcomes

A plan to implement results of the consultation process into the development to arrive at a development proposal which has wider community and stakeholder support.

4.3 Project Evaluation

The Development Manager's task is to carry out an initial due diligence process on the site (See GP Due Diligence). In practice this will essentially involve the steps to ascertain the highest and best use for the site, clearly identifying what is legally permissible (title, planning etc.) physically possible (establishing the main site characteristics including size, services, topography, linkages etc.), feasibly possible, and maximally productive (requiring understanding of market parameters, profile, and understanding of proposed development and the completion of initial feasibility analysis).

Sufficient information is required for the purpose of preparing a preliminary feasibility analysis to determine if the project is financially viable. This would normally include a "static" financial feasibility with basic assumptions to determine if the proposed project is likely to meet the required profit threshold and an initial estimate of the programme for the project. If the outcome is positive, the preliminary feasibility study can later be refined and is used as the basis for the future Development Strategy. It is regularly reviewed and updated during the project. (See GP Feasibility Studies)

4.4 Acquisition

The initial assessment will have determined the viability of the project and the need to proceed further with extended full-scale feasibility, putting in an offer on the property (if required), finalising detailed Due Diligence ascertaining and obtaining approvals required and then finalising the purchase.

The initial evaluation and preliminary feasibility study are likely to have identified various issues that need further investigation. These may include vacant possession, easements, contamination, structural, geotechnical, town planning requirements, design options and opportunities, target markets, etc.

At this stage, all relevant factors can be brought together into a cohesive development strategy, with a detailed "dynamic" financial feasibility/cash flow, cost plan and a detailed program. This is usually prepared on a pre-GST basis (excepting for a residential project). If the project continues to be feasible, it is likely that purchase of land (if required) and a formal Development Management Agreement can be entered into with the client if required.

4.5 Design and Costing

a) Design Considerations

The design, form, and function of a development needs consideration of many factors including those listed below and align with the end user/purchaser/occupier needs, desires, and demand requirements:

Description & Size of Project

Quality, Finishes & Functionality

Construction Type

Layout & Efficiency- sub-divisibility of floors, net/gross floor area, access to lifts, amenities, parking, loading area, etc.

Main Entry- quality of presentation, etc.

Structural- type of façade, core, etc.

Car parking- number, above/below ground, efficiency, etc.

Services -Electrical (capacity), Mechanical (type), Hydraulic, Lifts (number/capacity/speed), Communications, Security (latent & active), Building Management System (BMS)

Amenities –toilets, kitchens, showers, gym, etc.

Safety, Security, Accessibility

Environmental Standards and Environmentally Sustainable Development

b) Development Brief/Consultant Team

It is important to have a development brief, which clearly sets out the commercial objectives and general description of the proposed project. The Development Manager will obtain fee submissions from and bring together a suitable team of consultants including architect, engineer, planner, quantity surveyor, lawyer, and consultation/communication expert. The team will differ on a project-to-project basis.

Consultant fees are often related to the quality of design required, scale and cost of a project. The scope of the brief will define the extent of the consultancy services required. For example, is the scope simply to obtain a development approval, or does it include detailed design and supervision through to completion of the project.

Choosing the right mix of consultants who best meet the scope and who can work together in an effective team is an important task of the Development Manager. It is usual to first appoint the Architect. Fee proposals are then requested from a group of other consultants. These appointments are typically agreed between the Development Manager and the Architect, with recommendations made to the client. Separate fee agreements are generally entered into directly between the client and the individual sub-consultants. A builder or construction manager may also be engaged early in a design and construct contract, or alternatively on a limited engagement to review “buildability” of the design concept, subject to re-tendering when the construction phase begins.

A detailed consultant checklist is shown in Annexure B.

4.6 Development and Construction Approvals

The Development Manager will progress the project to a pre-lodgement meeting with the relevant planning authority, discussions with neighbour’s, local interest groups, etc. When this feedback has been incorporated into the planning submission and reviewed with the client, the Development Manager can organise formal lodgement of the development application, in conjunction with the Architect and Town Planner. If the development is approved by the relevant statutory authority, this can move to satisfying the conditions required for a construction approval, which is issued by a Council or Private Certifier.

4.7 Construction Procurement & Implementation

It important to ensure that the project has been reviewed during the design process by an experienced building consultant or construction group, to ensure the final design is practical and efficient. The design would also have an updated cost plan.

The Development Manager is involved in the appointment of a suitable builder. There are various types of construction agreements that can be used, depending upon the type of project involved.

Traditional Tender	Project is fully documented with tenders called on a selected or open basis
Competitive Negotiation	Providing a preliminary design and appointing builder as part of project team on an agreed margin to manage sub-contractors, etc.
Cost Plus Contract	Builder appointed by owner on an open book cost basis plus a pre-agreed percentage margin of cost.
Design & Construct	Builder is directly involved in both the design and construction.
Guaranteed Maximum Price	This is usually in a D&C contract, with a guaranteed maximum price, often with the owner sharing in any savings.
Construction Management	Project manager is directly appointed to the consultant team, to assist in design and construction matters, supervise all sub-contracted work, etc.

In some circumstances the Development Manager may also carry out the role of “Project Manager” to oversee the construction management. If this also involves supervision of subcontractors a builder’s license may be required. The Development Manger will represent the owner’s interests and chair the PCG meetings during the construction phase of the project. This will include issues such as budget variations, extensions of time, etc. It is important that the Development Manager monitors the project to ensure it stays on time and budget and achieves the design and marketing objectives in terms of the finishes and quality of the project.

4.8 Settlement Activities - Sales and/or Leasing

It is likely the Development Manager will have briefed the leasing or selling agents early in the project to ensure the final product meets market expectations. They will most likely co-ordinate the formal appointment of agents and are involved in optimizing the market strategy including finding suitable tenants and/or purchasers or pre-sales and advising on

of pre-commitment and pre-sales are required for financing. Common strategies often involve maintaining communication with purchasers after the signing of the contract throughout the development process to minimize settlement risk. After practical completion in the development process, this would commonly involve in the residential sector a settlement team who would ensure that all the procedures, contracts, collection of monies, purchaser inspection and valuations are completed. Consequently, a marketing or sales consultant and/or team will likely be involved throughout the development process, these may comprise the same consultant/team or there may be different actors for the different stages engaged.

4.9 Practical Completion

Practical completion is an important milestone. It means that the building works have reached the stage where there is a builder declaration the works have been completed in accordance with the contract, except for minor omissions and, where applicable, has done all that the builder is required to do under the contract to enable a certificate of occupancy to be obtained. It determines who is then responsible for ensuring the works, final payment, when the defects period starts, retentions and if there is a liability to pay liquidated (delay) damages, etc. How the notice of practical completion is issued will be contained in the contract and this may be by an architect, or the “supervisor” appointed under the terms of the building contract.

Practical completion includes the handover operation manuals, warranties, title information and other project specific information.

(a) Occupation Certificate

On completion of construction the Development Manager will arrange for an Occupation Certificate (this term may vary in some jurisdictions) to be issued by the Council or Private Certifier for final handover from the builder.

(b) Commissioning of Building

The commissioning of all services including fire services, lift, air conditioning, etc. is an important part of the Development Manager’s role.

4.10 Final Analysis

The Development Manager prepares a final report including the development milestones and financial analysis which shows the outcome of the project. It is not unusual for there to be several variations to the original forecasts, which result in a different outcome to the original intention and expectations of the parties. Property development is a high-risk enterprise and should include realistic contingencies from the beginning. A primary role of the Development Manager is to professionally manage these risks and ensure that where possible, the project meets the original expectations and projections identified at commencement.

5.0 Role of the Development Manager

The Development Manager has an important role particularly during the formative stages of the project. This is where the initial concept is being formulated and tested to determine if it is viable. The Developer Manager may have initiated the project, or it may have come from the client who has a requirement to occupy, hold as an investment, or develop for a profit. The actual roles and responsibilities of a development manager or a development management team vary according to market demand, pricing and assist in a pricing strategy for the project. This will occur at earlier stages in the development process, generally, due to financing requirements where in the current environment the process to the organisational structure, development strategy, complexity, and size of the project. There are no fixed defined roles and responsibilities for a 'development manager' as the variability, flexibility and changeable nature of the sector means there is unpredictability to defining roles and responsibilities. Consequently, it is inherently important in the drawing up and signing of a Development Management Agreement that roles, responsibilities, and expectations of the

Development Manager are clearly expressed. In larger organisations there may be a team of Development Managers that individual manage different parts of the development process, again this is dependent on project size and style and the organisational systems in place for the company.

5.1 Understanding the Client Requirements

It is fundamental from the outset to have a clear understanding of the client's specific requirements and objectives. This will involve developing some understanding of the client's financial objectives but under no circumstances should any attempt be made to provide financial advice or supplant the role of a financial planner in this process.

At the initial consultation, as much information as possible should be captured. When it appears that the subject has been well covered, summarise the position with the client to ensure you clearly understand his needs and objectives. It would be beneficial to confirm this in writing for the client as well as indicating what plan of action you propose and the basis of your fee.

5.2 Site Acquisition/Due Diligence/Pre-Lease

The site needs to be fully researched to ensure all issues have been considered. There are numerous due diligence considerations at the concept stage (see Due Diligence GP and Feasibility GP). Development sites can often be purchased subject to development approval.

If the Development Manager is not the principal, a real estate agents' licence may be required where negotiating directly to purchase or lease the property. Where there are tenants or preleases involved, the Development Manager also needs to have a good understanding of the occupancy and fit out requirements.

5.3 Ownership Structure & Funding

The nature of the development will determine the type of ownership entity used. It is common to use a Special Purpose Vehicle (SPV) or Entity whose operations are limited to the acquisition and financing of the specific asset. The SPV is usually a subsidiary company with an asset/liability structure and legal status that makes its obligations separate from the parent company or entity.

Funding is an important consideration of the project, including the source of funds, the terms and equity required. The extent of finance will be driven off the back of a valuation, which will set the end value of the asset as security. While the Development Manager cannot advise on funding, as this is a financial product, they can highlight the need for the client to have these aspects fully considered by an appropriate professional party – finance broker, solicitor or accountant acting on behalf of the client.

5.4 Risk Management & Contingency

As defined in International Standard ISO 31000 – Risk Management, risk is ‘the effect of uncertainty on objectives’ and involves the processes of conducting risk management planning, identification, analysis, response planning, and controlling risk on a project.

The objectives of project risk management are to increase the likelihood and impact of positive events and decrease the likelihood and impact of negative events in the project. (PMBOK).

All property development projects require careful risk management and frequent communication with the client especially where projects are complex, involve many consultants and are carried out over a period of at least several years. There are many causes that can lead to unsuccessful development projects including:

- a) Delays or changes to anticipated development approvals.
- b) Unexpected sub-ground conditions.
- c) Contamination of site or existing improvements.
- d) Delays from weather, onsite labour disputes, materials delivery etc.
- e) Cost over runs or construction variations.
- f) Poor construction management or builder going into liquidation.
- g) Interest rates and holding costs rise.
- h) Inappropriate design, poor quality details and issues with buildability of design; and
- i) Changing market conditions - unable to lease or sell as originally forecast.

It is important at the commencement of the appointment that the client understands the required resources, estimated cost/budget, programme/timeframes, processes being followed, agreed outcomes being sought and the risks involved. Provision of a realistic contingency needs to be included in the feasibility to allow for these factors.

Regular Project Control Group (PCG) meetings and reports indicating progress against agreed milestones and work completed during the period is a way of monitoring and managing risk. Other key consultants may also attend the PCG meetings. (If there are any matters confidential to the client these may be addressed in a separate client meeting). The Development Manager is responsible for the keeping of records, issuing minutes, and following up actions.

5.5 Insurances & Warranties

There are several insurance issues to be considered with a new project. Typical insurances include Building, Contents, Contractors All Risk Insurance, Professional Indemnity (PI), Public Liability, Workers Compensation, any Warranties etc.

It is normally the role of the Development Manager to check with the client that all owners' insurances are in place. Copies of insurance policies and warranties should be obtained from all consultants and checked to ensure they are relevant; there is sufficient cover; that they are current; and if necessary, are updated during the life of the project.

A Development Manager should not provide advice on the types of insurance contracts as they are considered a financial product unless the Development Manager has an Australian Financial Services Licence (See GP Property Advisors).

An appropriate level of PI cover attributed to the full extent of the project is recommended. Members should refer to their PI provider and discuss available cover prior to committing to a project.

5.6 Copyright

The issue of copyright is legally complex and tends to rely upon individual circumstances. In development projects copyright mainly concerns Architect CAD drawings and how they can be used. Generally, there is an implied licence with the Architect to use the set of plans, provided the Architect has been paid. It is important to seek legal advice and check the copyright status of all consultants' reports and plans. Particularly if a site is purchased with permits, the copyright aspects need to be investigated, negotiated with the architect, and established prior to the purchasing of the site.

5.7 Novation of Key Contracts

A prudent developer manager will ensure that any key contractual arrangements are capable of being novated in the event of unforeseen contingencies during the life of the project. Novation means the ability to replace or add an obligation to perform with another obligation or replacing a party to an agreement with a new party (step-in rights).

6.0 Development Management Agreements

Development Management Agreements can take many forms and need to be carefully considered for individual circumstances. The "Development Management Agreement" is between the Client (normally the owner of the property) and the Development Manager and sets out the scope and objectives of the development and the responsibilities of the parties.

6.1 Development Management Agreement Content

It is vital that the Development Management agreement defines the scope and roles of the Development Manager. The agreement is important in setting up the main elements and objectives of the Agreement, so these can be documented into a workable legal arrangement which is fair and equitable to all parties.

An agreement typically includes the following detail:

- a) Description of Current Property.
- b) The Objectives of the Client and Detailed Description of the Proposed Development.
- c) The respective roles and responsibilities of both the Client and the Development Manager to achieve the agreed development outcome.
- d) Financial Feasibility including a development budget and a monthly cash flow.
- e) Development Programme including critical milestone events (development approval, construction, occupation, etc.) and the consultants/resources required; and
- f) Preliminary concept plans or sketches showing the initial development proposal.

It is important there is sufficient detail so that all parties have a clear understanding of what is intended to be achieved. Inclusion of detailed cost and time budgets are important so the final development outcome can be monitored in relation to the original expectations of all parties.

A good development management agreement is not over prescriptive. Development projects are by nature risky ventures and involve variations and modifications to be successful. The outcome cannot be guaranteed exactly as forecast at the beginning of the project, so it is useful to have some mechanism in the agreement, which allows for such contingencies. Provision for mediation or referral to an expert in the event of a dispute between the parties can help resolve how a project should be progressed.

7.0 Professional Standards for Development Managers

Members who act as a Development Manager are required to follow the Institute's Professional Rules including the following guidelines:

7.1 Professional Training

Members should have the general requisite educational training for the role of a Development Manager. Where appropriate, Members should seek to undertake specialist courses in specific areas of property development, or act under supervision of an experienced Practitioner where required.

7.2 Practical Experience & Knowledge

Members should have the practical experience in the type of Property Development they are working in. Members should not accept appointments or act outside their level of expertise and knowledge.

7.3 Code of Professional Conduct

Members are required to act independently and where appropriate, impartially. They cannot act where there is a Conflict of Interest, nor accept Third Party Fees, and must maintain.

Confidentiality. In some circumstances, it may be appropriate to act in an advocacy role to best represent their client, but not in any circumstances where they are bound to act impartially.

7.4 Disciplinary Process

Members can be subject to the disciplinary code if a complaint is made that they acted inappropriately or outside the Code of Professional Conduct. Any person who believes a member has not complied with the API's Constitution, Valuation and Property Standards or the Code of Professional Conduct or who is aggrieved by the conduct of an API member may lodge a formal complaint with the API. The complaints procedure for a Development Manager follows the disciplinary process as specified by the API in the Complaints Policy.

7.5 Professional Indemnity Insurance

There is not currently a compulsory requirement for Certified Development Practitioners to have PI Insurance, but it is encouraged where members provide this service.

8.0 Effective Date

This Guidance Paper is effective from 1 July 2021. Earlier adoption is permitted.

This GP, *ANZPGP 204*, replaces *ANZRPTIP 4* which was withdrawn on 30 June 2021.

9.0 ANNEXURE A: Development Check List

The following is a non-exclusive checklist for a typical development project:

Development Concept
Research & Define the Proposed Project
Identify Suitable Site(s)
Project Site Acquisition/Consolidation
Negotiations with Vendor
Instruction of Solicitors, Valuers, Surveyors, Town Planners, etc.
Pre-purchase investigations
Contamination Report
Due Diligence Guidance Paper
Preliminary Feasibility Study
Preliminary Market Research
Preliminary Consultation
Town Planning Requirements
Design Criteria
Site & Building Services (water, sewerage, drainage, electricity, communications, etc.)
Legal (title, easements, etc.)
Highest and Best Use Options
Preliminary Financial Analysis and Cash Flow
Development Management Strategy and Program
Design and Planning
Development/Design Brief
Planning Requirements
Testing Design Options

Liaison with Authorities/Pre-Lodgement Meeting
Initial Dilapidation Report
Detailed Site Analysis
Environmental Audits and Impact Statements
Insurances
Appointing Development Team
Financial Feasibility
Financial Analysis
Sensitivity Analysis
Competitive Analysis
Finance Establishment
Financial Feasibility (continued)
Marketing Options
Construction Cost Plan
Project Cash Flow
Project Programme
Approvals
Liaison with Statutory Authorities
Liaison with Community, Resident Action, etc.
Development/Construction Approvals
Rezoning Applications
Court Appeals
Pre-Construction
Value Management Assessment
Notice Existing Tenants
Working Documents/Alternative Procurement Review Methods

Appointing Builder/Project Manager
Tender Process
Environmental Controls
Cost Control and Accounting Systems
Construction
Dilapidation Report
Monitoring Construction/Variations
Project Control Group/Site Meetings
Construction Finishes
Cost Control and Budgets
Progress Payments
Environmental Controls
Fit Out
Tenancy Negotiations/Agreement
Appointing Interior Architects/Designers
Appointing Builder/Fit Out Specialist
Completion & Occupation
Practical Completion
Occupation Certificate
Liability and Retention Bonds/Defect Periods
Construction Manual (sub-contractors, specifications, consents, permits etc.)
Leasing and Marketing
Leasing/Sales Strategy
Appointment of Leasing/Selling Agents
Review of Marketing Campaigns
Rents, Terms and Conditions

Leases Documentation
Review of Sale Prices

10.0 ANNEXURE B: (Non-Exclusive) Consultant Check List

1	Development Manager
2	Architect (Design, Documentation, Construction Supervision)
3	Builder
4	Interior Architect
5	Engineer- Structural
6	Engineer- Services (water, sewer, AC, hydraulic, lifts)
7	Project/Construction Manager
8	Quantity Surveyor
9	Building Code of Australia (BCA) Consultant
10	Principal Certifying Authority (PCA)
11	Town Planner – (Statement of Environmental Affects NSW)
12	Environmental Design Consultant
13	Heritage/Conservation Architect
14	Heritage (photographic record)
15	Acoustic Report
16	Surveyor Identification, Survey/Levels, Strata, Floor Areas, etc.
17	Landscape Architect/Arborist
18	Traffic Engineer
19	BASIX (Building Sustainability Index) Certifier
20	Accessibility Consultant
21	Wind & Reflectivity Reports
22	Economic/Social Impact Statements
23	Archaeologist Report
24	Waste Management Plan (Construction/Operational)
25	Energy Audit Report
26	Demographics/Market Research Report
27	Management Operational Consultant/Report (hotels, backpackers, etc.)

28	Model Maker
29	Feng Shui Report
30	Endangered Fauna & Flora
31	Native Title Consultant
32	Solicitor/Barrister
33	Accountant
34	Valuer
35	Real Estate Agent
36	Financier/Broker
37	Mine Subsidence
38	Airport (height/noise)
39	Asbestos Report
40	(Underground) Railway