APPENDIX 3

UWS – GUIDELINES ON COMMERCIAL ACTIVITIES (BOT 3/12/2014 – (amended)

Introduction

These Guidelines are prepared in accordance with Part 4, Division 4 (sections 32A-32E) of the University of Western Sydney Act 1997 dealing with the compliance aspects of commercial activities. They provide a set of principles and processes for the development and conduct of commercial activities that support achieving optimal benefits and minimise the risks to the University. Core elements include requirements for undertaking feasibility and due diligence assessments, identifying appropriate governance and administrative arrangements, undertaking risk assessment and risk management measures, and monitoring and reporting on commercial activities. The Vice-President, Finance and Resources has the responsibility for providing advice in relation to these Guidelines.

1 Interpretation

In these Guidelines:
"**Act**" means the University of Western Sydney Act 1997 as amended.
"**Board of Trustees**" means the governing authority of the University of Western Sydney.
"**Board of Trustees Standing Committee** " means a committee of the governing authority of the University of Western Sydney.
"**controlled entity**" has the same meaning as provided for under section 22A of the Act.
"**commercial activity**" means:
(a) any commercial activity as defined in Section 32A of the Act. This includes:
- (i) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (ii) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

(b) any other activity which is determined by the Board of Trustees to be a commercial activity for the purpose of these Guidelines and this currently includes:
- (i) The establishment and operations of all controlled entities including partnerships, trusts, companies and joint ventures whether in the exercise of a commercial function of the University or not.
- (ii) All offshore agreements where the University contracts the delivery of teaching on a fee-paying basis.
- (iii) The commercial exploitation of any intellectual property including, but not limited to that property protected by the University through patents, trademarks and copyright.
- (iv) All contract consulting carried out by and/or through the University or its staff as employees of the University.
- (v) All land and property related lease and licence agreements.
- (vi) Any other Memorandum of Understanding, Agreement, Licence Agreement, or other commercial agreement entered into where revenue or contribution by the University will exceed an amount of $100,000 per annum in any one year except for investment in community engagement.
- (vii) Consulting which means "the purchase by external agencies of (a) the skills and expertise of University staff and/or (b) access to University equipment or facilities to work on a specific project"

(c) In determining whether or not an activity is a commercial activity the following criteria should be considered:

(i) Does the principal purpose of the activity involve the commercial exploitation, development or provision of University property, facilities or resources to members of the public, including corporations?
(ii) Is the existence of the unit undertaking the commercial activity dependent upon the funding to be derived from that activity?
(iii) Does the commercial activity involve user-charges for goods and services?
(iv) Do managers of the commercial activity have a degree of independence in relation to production or supply of the goods or service and the price at which it is provided?
(v) Does the commercial activity involve the establishment of a joint venture with one or more other parties that involves the commitment of University resources, whether actual or contingent?
(vi) Other than an investment activity undertaken in accordance with Schedule 2 of the Act, does the activity, regardless of what it is, involve the commitment of University finances or other resources?
(vii) Even when a commercial activity exists primarily for the purpose of providing facilities for students and staff it may be a commercial activity or may contain a significant commercial component that should be subject to these Guidelines.

The above excludes investment in community engagement activities.

"**community engagement**" means activities to develop and provide cultural, sporting, professional, technical and vocational services to the community which contribute to the social, economic and/or intellectual life of the University and Greater Western Sydney. These activities promote the interests of the University but may not offer a commercial return.

"**delegate**" means a person, committee or entity to whom the Board of Trustees delegates a function in accordance with paragraph 9 of these Guidelines and the UWS Delegations.

"**proposal**" means any proposal for the University to participate in a commercial activity.

"**risk**" means:

(a) risk of financial loss;
(b) risk of incurring a legal liability;
(c) risk of loss of or damage to the reputation of the University;
(d) risk of impairment of the conduct for the University's principal functions under section 8 of the Act;
(e) risk of adverse tax or duty consequences to the University;
(f) risk of corruption or fraud;
(g) any other type of risk determined by the Board of Trustees to be a risk for the purposes of these Guidelines.

2 Proposal or Activity subject to these guidelines

All commercial activities of the University are subject to compliance with these guidelines although it may not be required to conduct a full commercial and financial evaluation as described in these guidelines if the projected expenditure or revenue does not exceed $100,000 per annum. Without limiting the Board of Trustees' right to determine other criteria, any commercial activity that involves the receipt or expenditure (including funding) or uninsured risk by the University in excess of $100,000 per annum must be evaluated in accordance with these Guidelines. For the purpose of calculating whether a proposal exceeds this threshold, the full cost of the proposal including resource inputs, whether cash or in kind, must be considered. A proposal must be considered in its entirety and must not be segmented in order to circumvent the threshold figure.

3 Evaluation of a Proposal

The Board of Trustees of the University shall establish and maintain procedures for any proposal subject to these guidelines for any one or more of the following purposes:

- (a) to identify whether the proposal is for the overall benefit of the University, taking into account the risks, opportunity costs, effect on the University's activities and non-financial benefits to the University;
- (b) to carry out financial analysis, and projected cash flow models and expected rates of return to the University (where applicable) covering a range of risk scenarios;
- (c) to recommend an appropriate source and level of funding or resource commitment from the University required to implement the proposal or carry on the proposal;
- (d) to assess compliance with competitive neutrality principles as outlined in the NSW Treasury publications: *Policy Statement on the Application of Competitive Neutrality*, January 2002 and *Guidelines for Pricing of User Charges*;
- (e) to identify risks associated with the proposal, to carry out analysis of risks (including liability exposure) and recommend risk management procedures required for the proposal;
- (f) to carry out financial accounting and legal due diligence of the proposal and relevant assets including due diligence of each proposal participant;
- (g) to identify the effect of the proposal on intellectual property ownership and value, and to recommend a strategy for protecting the University's interests in the intellectual property;
- (h) to assess the insurance coverage, and limitations including insurable and uninsurable risk, and make recommendations as to appropriate insurance coverage;
- (i) to carry out market analysis and assessment for the proposal;
- (j) to report to the Board of Trustees or its delegate on each of the matters in sub-paragraphs (a) to (i) of this paragraph inclusive;
- (k) to certify the proposal satisfies the feasibility, due diligence and risk analysis requirements as established by these Guidelines.

Where any proposed commercial activity is intended to be conducted outside Australia, additional independent expert advice relating to matters such as legal and regulatory including foreign exchange restrictions (if any), and tax advice must be obtained. Where the potential outcome of a proposed commercial activity is outside the objects and functions of the University, as stated in section 8 of the University's Act, consideration must be given to the need for specialist and independent external advice as part of the evaluation process in (a) to (k). Where the proposed activity is consulting, then such activities will be marginally costed i.e. direct revenues and costs only will be considered in the feasibility analysis if cash inflows or outflows are less than $100k per project but will be fully costed above this threshold.

Please refer to Schedule 1 which provides procedures for documentation and evaluation of a proposal.

4 Governance and Documentation

Where a proposal is commercially viable in accordance with the requirements of paragraph 3 above of these Guidelines, due consideration must be given to the following:

- (a) selection of the appropriate structure for the proposal from a legal, tax, regulatory and any other perspectives determined to be appropriate in the circumstances;
- (b) identification and recommendation of appropriate exit arrangements including termination and asset distribution and liability payment obligations which protect the interests of the University;

(c) identification of insurance arrangements required;
(d) recommendation of corporate governance provisions. Where the proposal involves the establishment of a University invested entity, this includes the appointment of directors and shareholders' representative(s), together with control mechanisms in the Constitution or other documents of the entity, and in any agreement between shareholders, partners or participants;
(e) establishment of accounting and auditing procedures and requirements for regular reporting to the Board of Trustees or its delegate which are appropriate for the proposal;
(f) preparation of transaction documents, (including warranties, indemnities and limitations of liability) appropriate for the proposal;
(g) identification of the availability of budgeted funds or if not previously budgeted, approval of the Vice-President, Finance and Resources on unbudgeted requirements;
(h) securing of independent legal and/or tax advice on the structure, tax and accounting consequences and on the documentation prepared pursuant to this paragraph if the Board of Trustees, its Standing Committee or its delegate determines that the liability risks are such that legal and/or accounting advice should be obtained.

5 Final Approval

(a) Subject to sub-paragraph (b) of this paragraph, when the Evaluation of a Proposal has been completed and certified in accordance with paragraph 3 of these Guidelines and the Governance and Documentation procedures have been completed and certified in accordance with paragraph 4 of these Guidelines, the proposal may be submitted for approval to the delegate nominated pursuant to paragraph 8 of these Guidelines
(b) Any proposal or commercial activity that involves the receipt or expenditure (including funding) by the University in excess of $1 million requires the approval by resolution of the Board of Trustees' Standing Committee.
Any proposal or commercial activity that involves the receipt or expenditure (including funding) by the University in excess of $2 million requires the approval by resolution of the Board of Trustees.
(c) The Board of Trustees or its delegate shall review the certificates and recommendations made under paragraph 3 of these Guidelines and the documentation prepared in accordance with paragraph 4 of these Guidelines, before giving final approval for the proposal to be implemented.

6 Conflict of Interest

(a) The Board of Trustees shall establish procedures to maintain a Register of Interests. The Register will record any directorships held by, and any significant commercial interests of: each Trustee member; any member of a committee appointed by the governing body in relation to commercialisation of any of the University's resources ("a relevant committee") and any relevant University manager or sponsor of a commercial activity. The procedures will require that such persons notify the Registrar of any such directorships or significant commercial interests at or before their appointment, and ensure that the Registrar is notified of any changes to the Trustee's directorships or significant commercial interests.
(b) Under such procedures, each member of the Board of Trustees and of any committee appointed by the governing body in relation to commercialisation of any of the University's resources ("a relevant committee") and any relevant University manager or sponsor of a commercial activity will be required to notify the Registrar of any interest in any company, institution or other entity that is involved in a commercial activity with the University at the earliest practicable opportunity. A notification may be made generally or with respect to a particular proposal.

(c) Under such procedures, the Register of Interests will be able to be inspected by the Chancellor and any member of the Board of Trustees (by request through the Chancellor), the Director Audit and Risk Assessment, the Auditor General of New South Wales and any representative of the Minister or the Treasurer.

(d) Under such procedures, any member of the Board of Trustees or of a relevant committee who has an interest in any company, institution or other entity which is, or is proposed to be, involved in any commercial activity of the University or any relevant University manager or sponsor of a commercial activity shall be required to:

  (i) not vote in respect of the commercial activity or the proposal;

  (ii) not participate in any discussion by the governing body or the relevant committee about the commercial activity or the proposal.

(e) A delegate approving a proposal in accordance with clause 6 of this guideline must not have been the sponsor of the proposal.

7 Register of Commercial Activities

(a) The Board of Trustees or its delegate shall establish and maintain in accordance with Section 32C of the Act a register of commercial activities of the University and its controlled entities.

(b) The Board of Trustees or its delegate may authorise the registrar of the register of commercial activities to alter any details included in the register if:

  (i) the registrar considers that the details are inaccurate or incomplete;

  (ii) there is a change in a proposal or in a commercial activity which necessitates a change in the details included in the register.

(c) The establishment or participation in any partnership, trust company or company or other incorporated body or joint venture by or on behalf of the University may be treated as a single activity for the purposes of the register.

(d) The Register will be available for inspection by any member of the University's Board of Trustees:

(e) Each commercial activity listed in the register will be fully reviewed at least once every three years. Such reviews will be conducted in accordance with the evaluation process prescribed in section 3 of these Guidelines to ensure that the review considers all aspects of the ongoing operation of the commercial activity. Review outcomes will be recorded in the register.

(f) The Register will be reviewed annually to ensure that it is up to date and accurate in its content.

8 Board of Trustees Delegations

(a) The Board of Trustees may by resolution delegate any or all of its functions in relation to the commercial activities of the University (except this power of delegation) to any member of the Board of Trustees, a committee of the Board of Trustees or to any authority or officer of the University or to any other person or body prescribed by the University's by-laws. Such a person or body must have appropriate commercial experience and/or have access to advice from a suitably qualified person.

(b) A delegation by a Board of Trustees under this paragraph 9 may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the Board of Trustees.

(c) The general delegations of the Board of Trustees may be obtained from the Delegations (Administrative) Policy of the University.

9 Procedures for Controlled Entities

Controlled entities are defined under section 22A of the Act. The Board of Trustees in reviewing and approving any proposal to establish a controlled entity must ensure that any controlled entity does not propose to exercise any function or engage in any activity that the University itself is not authorised to undertake by the Act unless specific permission has been obtained from the Minister. The Board of Trustees thereafter will be responsible for monitoring the controlled entity.

The boards of controlled entities are responsible for ensuring that evaluation, risk management and accountability processes are in place and are consistent with the requirements of applicable legislation and policy, including these Guidelines. In considering the appointment of directors to the boards of controlled entities, the Board of Trustees should ensure that the appointees possess an appropriate level of skill, knowledge and experience to discharge their duties as a director. Where a University commercial activity is an activity managed by a controlled entity that has a board of directors and is subject to the Corporations Act, then the activity will be managed in accordance with the constitution of that entity provided that:

(a) the board of directors shall be responsible for ensuring that appropriate evaluation and risk processes are followed by the management of the entity;
(b) the board of directors shall include in an annual report to the University any significant change in the range of commercial activities and the risks entailed; and
(c) the Board shall be responsible for informing the registrar of the Register of Commercial Activities of any new or altered activity or any new or altered details of existing activities that should be entered in the Register.

Nothing in these Guidelines derogates the responsibilities that directors have under The Corporations Act.

10 Prevention of Corruption, Fraud, Maladministration and Waste

Commercial activities must be managed in such a way as to comply with the University's obligations as a public authority, and to minimise the risk of corruption, fraud, maladministration or waste. Staff involved in the activity must adhere to the Code of Conduct and to all policies of the University including those relating to the management of the University's finances and resources.

Members of the University community who identify possible instances of corruption, fraud, maladministration or waste have an obligation to report these in accordance with the University's Protected Disclosures Policy.

The University's approach to the prevention of corruption, fraud, maladministration and waste will be informed by the various guidelines published by the ICAC.

11 Review of Guidelines

The University shall review these Guidelines one year after the date of approval and every two years subsequently.

SCHEDULE 1: DOCUMENTATION AND EVALUATION OF THE VIABILITY OF A COMMERCIAL ACTIVITY

UWS guidelines on Commercial Activities

The viability of any commercial activity needs to be assessed in accordance with Guidelines on Commercial Activities and the following criteria:

1. Strategic 'Fit' and Impact
2. Financial viability
3. Funding availability

1. Strategic 'Fit' and Impact

What are the key objectives of the proposed activity and how does it fit with the strategic objectives of UWS? Explain the benefits of undertaking this project to UWS. What are the non-financial benefits of the proposal? Will the project enhance UWS community engagement, reputation or profile? Will it contribute to the development of our teaching and research and, if so, how?

2. Financial Viability

The financial evaluation should begin with a definition of the scope of the project. This should not be broken up into small components which are inter dependent nor should it be aggregated into large programs which have components that can independently proceed and deliver benefits without other projects.

The evaluation should also examine all feasible options for the proposal. This could include alternate service delivery options including staffing, systems and facilities.

There are several measures commonly used to assess financial viability in industry. In keeping with good practice, a set of evaluation criteria is recommended ie:

1. Payback
2. Return on investment (ROI) (used presently in course approvals)
3. Discounted cash flow (DCF) analysis (see below)

The ROI method is used currently in course approvals. A new course is usually evaluated over five years. Whilst each one of the above methods has its merits, the former two methods are not always the most accurate. However, they are included as they provide an intuitive 'gut feel' and are used commonly to provide a quick assessment of an investment proposal.

Payback

The payback method evaluates the income and expenditure for an investment proposal and provides an indicative time frame within which an investment outlay is expected to be recouped. The example below is for a hypothetical "course":

Year	Year 1	Year 2	Year 3 ($'000)	Year 4	Year 5	Five Year Total ($'000)
Total Fee Income	$170	$360	$416	$450	$477	$1,873
Total Income to UWS	$170	$360	$416	$450	$477	$1,873
Costs						
Total Course Costs per Year	($168)	($353)	($377)	($398)	($420)	($1,716)
Course Development Costs	($20)	$0	$0	$0	$0	($20)
Project Surplus	($18)	$7	$39	$51	$57	$137
Cumulative Result	($18)	($11)	$28	$79	$137	
Payback period			2.3 years			

Return on Investment (ROI)

The return on investment (ROI) provides an indication of the net return expressed as a percentage of the investment. It can be viewed on a single year basis or across a period. The ROI over the 5 year period in the above example is evaluated as the project surplus over the whole period expressed as a percentage of the total costs. Hence, the ROI above is simply:

$$\frac{\$137{,}000}{\$1{,}736{,}000} = \underline{\mathbf{7.9\%}}$$

The above calculation assumes that there is no economic value beyond the five year period. In reality a proposal may have significant value beyond the period eg. with a student accommodation project which has considerable economic value beyond 5 years.

Discounted cash flow (DCF) method

Both the payback and the return on investment measures ignore the time value of money, ie $100 in 2010 is worth considerably less in 2015. Therefore a project delivering significantly better discounted net cash flows could offer greater value, even though it may provide a lower ROI and have a longer payback period.

The discounted cash flow (DCF) method simply analyses the net cash flows of a project to assess future cash flows on a common basis i.e. in ‘today’s’ dollars. The discount rate used is based on a few factors including the risk of the investment and the capital structure of UWS based on precedents with listed organisations offering education services. For any specific advice on discount rates, kindly contact the Manager, Corporate Finance, Division of the Vice-President, Finance and Resources of an appropriate discount rate.

Where an investment proposal has a life beyond the period of analysis, the terminal value should be estimated. This can be done through the salvage value of assets on termination of the operation. However, if it is an ongoing operation, the terminal value can be estimated on the basis of the final year net cash flows adjusted for any long term growth assumptions.

Year	Year 1	Year 2	Year 3 ($'000)	Year 4	Year 5	Year 6	Year 7	Year 8	Eight Year Total ($'000)
Total Fee Income	$170	$360	$416	$450	$477	$506	$480	$300	$3,159
Total Income to UWS	$170	$360	$416	$450	$477	$506	$480	$300	$3,159
Costs									
Total Course Costs per Year	($168)	($353)	($377)	($398)	($420)	($446)	($423)	($264)	($2,849)
Course Development Costs	($20)	$0	$0	$0	$0				($20)
Capital expenditure:	($40)								($40)
Project Surplus	($58)	$7	$39	$51	$57	$61	$57	$36	$250
Net cash flow:	($58)	$7	$39	$51	$57	$61	$57	$36	$250
Cumulative Result	($58)	($51)	($12)	$39	$97	$157	$214	$250	
Payback period			3.3 years						

At end of 4 years, NPV ignoring any terminal value: $20,711 at a discount rate: 9.2%
This ignores ongoing value beyond 4 years

If project is assumed to have negligible value after 8 years, NPV **$153,063** over the life of the course

If however, project evaluation is conducted over 4 years, the terminal value may be assumed based on a few methods such as the net book value of assets, the capitalisation method (which is based on the cash flow at the end of the period) amongst others
Assuming the assets acquired are depreciated on a straight line basis over 5 years, then the net book value of the assets would be: $8,000
The evaluation over 4 years would now show: $26,854 instead of $20,711
However, this is still substantially below the value over the life of 8 years of $153k estimated above.
The method used may be different for different scenarios and needs specialist financial advice.

3. Funding availability

Where a proposal is financially viable, the availability and source of funding should be identified. Where funding is not budgeted, it will be necessary to ensure that adequate funding is available and specified in the proposal.

4. Documentation requirements of proposal

Where a proposal is assessed as financially viable, the proposed transaction should be documented with the following information provided as a guide:

(a) names and status of the parties (including ABN numbers);
(b) description or specification of the activity to be undertaken;
(c) start and end date for the activity (including any option periods for renewal);
(d) what each party is required to do in relation to that activity, including any milestones or deadlines;
(e) rights of each party (including default obligations and rights);
(f) liability limits of parties – actual or contingent;
(g) ownership, use or exploitation of any assets created out of that activity (including intellectual property rights);
(h) accounting, auditing, reporting and record keeping procedures;
(i) appropriate procedures for and on termination of the commercial activity (whether by notice or breach);
(j) insurance of risks;
(k) confidentiality requirements including obtaining any third party consents to the inclusion of such information as may be considered on the Commercial Activities Register and,
(l) any other matters that the Vice-President, Finance and Resources, University Secretary and General Counsel or other professional or legal advisor recommend should be dealt with in the transaction documents

Reference:

1. Guidelines for Financial Appraisal - NSW Treasury
http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0014/7412/tpp07-4.pdf

For further information/clarification, kindly contact the Finance Office.