WESTERN SYDNEY
UNIVERSITY

COMMERCIAL ACTIVITIES GUIDELINES

1 January 2016
(date of effect)

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WESTERN SYDNEY UNIVERSITY

GUIDELINES ON COMMERCIAL ACTIVITIES

1 Introduction

1.1 These Guidelines are made by the Board of Trustees pursuant to Part 4, Division 4 (sections 32A-32E) of the Western Sydney University Act 1997.

1.2 The University has power under the Act to carry on commercial activities as part of its functions.

1.3 These Guidelines establish a framework of principles and processes for the evaluation, approval and conduct of commercial activities that support achieving optimal benefits and minimise the risks to the University

1.4 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

1.5 The Vice-President, Finance and Resources has the responsibility for providing advice in relation to interpretation of and compliance with these Guidelines.

2 Interpretation

2.1 In these Guidelines:

(a) "**Act**" means the Western Sydney University Act 1997 as amended;

(b) "**affiliated body**" means a controlled entity, a residential college of the University or another body that the Board designates as an affiliated body of the University;

(c) "**BIDC**" means the Business and Infrastructure Development Committee which is a committee of the University's executive;

(d) "**Board**" means the Board of Trustees of the University;

(e) "**controlled entity**" means a controlled entity of the University within the meaning of section 22A of the Act;

(f) "**commercial activity**" means an activity defined in section 4 of these Guidelines;

(g) "**community engagement activity**" means an activity to develop and provide cultural, sporting, professional, technical and vocational services to the community that contribute to the social, economic and/or intellectual life of the University and of the Greater Western Sydney region, regardless of whether that activity generates a commercial return;

(h) "**conflict of interest**" means an actual or potential conflict of interest, and includes any material interest referred to in Schedule 2A of the Act;

(i) "**contract research**" means a research or other project that is conducted by the University in return for a fee or other consideration, except grant-funded research;

(j) “**Contracts Register**” means the register of contracts referred to in paragraph 13 and required to be maintained under the Government Information (Public Access) Act 2009;

(k) “**Corporations Act**” means the Corporations Act 2001 (Cth);

(l) “**delegate**” means a person, committee, authority or officer to whom the Board delegates a function under s.23 of the Act, including under the Delegations (Administrative) Policy or these Guidelines;

(m) “**grant funded research**” means a research project:

A. that is listed on the Australian Competitive Grants Register;

B. that is wholly funded by an Australian government or Australian government body; and

C. where the contract or subcontract for that research project provides for the University or a controlled entity to own all intellectual property rights arising from that research project and any licence of intellectual property rights is limited to the funding body only or, where applicable, the named lead institution for that research project;

(n) “**gross income**” means the total revenue (including any in-kind contribution) payable to the University before deduction of any expenses or other amounts, including any sharing of profits with another organization;

(o) “**material interest**” has the meaning given to that term in paragraph 5(9) of Schedule 2A of the Act;

(p) “**managing unit**” means the person or the academic or administrative unit with responsibility for the conduct of a commercial activity throughout its life;

(q) “**proposal**” means any proposal for the University to undertake a commercial activity;

(r) “**risk**” means an actual or contingent risk, including any one or more of the following:

A. risk of financial loss, including any adverse duty, taxation or other financial consequences;

B. probity or compliance risk;

C. legal or regulatory risk;

D. reputational risk;

E. risk to the ability of the University to carry out its functions under the Act, including risk to its business, systems and operations;

F. risk relating to corruption, maladministration or fraud;

G. any other type of risk determined by the Board of Trustees to be a risk for the purposes of these Guidelines generally or for any particular type of commercial activity;

(s) “**Register of Commercial Activities**” means the register referred to in paragraph **12**;

(t) “**Register of Commercial Interests**” means the register referred to in paragraph 11.4;

(u) “**sponsor**” means the person or academic or administrative unit that proposes a commercial activity for approval under these Guidelines;

(v) **"total activity life"** means the total length of time for the conduct of a commercial activity, including any extension or renewal.

3 Principles

3.1 All commercial activities are guided by the following principles:

(a) all commercial activities must fall within the objects and functions (including commercial functions) of the University;

(b) these should align with and support the University's functions and strategic goals and provide optimal benefits (both financial and non-financial) while minimising risks;

(c) all funds and resources should be allocated and managed appropriately throughout the total activity life;

(d) where appropriate, these should comply with competitive neutrality principles (see paragraph 5);

(e) robust systems should be in place to ensure transparency and accountability, and to appropriately identify and manage risks.

3.2 Leases or licences of land owned or controlled by the University are guided by the following additional principles:

(a) consistency with the University's strategic approach to planning and development of its campuses;

(b) contribution to the University's financial and organizational strength;

(c) suitability of tenants, from a strategic, financial and reputational perspective, and taking into account the University's need to ensure a good mix of tenants;

(d) any other principles specified by the University Infrastructure Committee of the Board.

4 Definition of a commercial activity

4.1 Section 32A of the Act defines a commercial activity as:

(a) any activity engaged in by or on behalf of the University in the exercise of its commercial functions; and

(b) 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.

4.2 Section 8(3)(a) of the Act defines "commercial functions" as:

> *... comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others, with particular regard to the need to contribute to the development of Greater Western Sydney*

4.3 The Board has prescribed the following activities as commercial activities for the purposes of these Guidelines:

(a) establishment and operation of any controlled entity or acquisition of any interest in any partnership, trust, company or joint venture whether in the exercise of a commercial function of the University or a non-commercial (including community engagement) function, and except for investments referred to in paragraph 4.4(b);

(b) participation in any cooperative research centre or other research and development structure, whether incorporated or unincorporated, including as part of any grant funded research;

(c) establishment of a campus or similar presence (such as a learning centre) anywhere within or outside Australia;

(d) any activity, including a teaching or research activity, conducted outside Australia, including as part of any arrangement with another organisation;

(e) commercial exploitation of intellectual property rights;

(f) any activity where the University is required to give a financial or other performance undertaking (including a letter of comfort) or guarantee on commercial terms in respect of a controlled entity;

(g) supply of project, contract research, consultancy or other services (unless this involves a community engagement activity) to third parties where annual gross income or costs exceed $100,000;

(h) purchase, management or development of real estate not used primarily for any teaching, research or community engagement activity;

(i) any lease or licence of land owned or controlled by the University to a third person for any purpose (including any casual venue hire arrangements);

(j) an arrangement of any description where the University contributes funds, or contributions where the value exceeds $100,000 per annum, unless this involves a community engagement activity.

4.4 The following activities are **not** commercial activities for the purposes of these Guidelines:

(a) community engagement activities;

(b) investment activities carried out under Schedule 2 of the Act;

(c) grant funded research, except as these relate to activities described in paragraphs 4.3(a) to 4.3(e) inclusive;

(d) acquisition of services, facilities, equipment or other assets by or on behalf of the University for its normal business or operational requirements;

(e) management, maintenance, restoration or improvement of lands or buildings owned by the University or under its control;

(f) management, maintenance, restoration, improvement of or additions to library, art, heritage items or other collections;

(g) charitable fundraising activities conducted by or on behalf of the University.

4.5 Notwithstanding paragraph 4.4, an activity may still have to be evaluated and assessed for risk and approved in the same way as a commercial activity if contribution of University funds or resources or yield gross income is likely to exceed $100,000 over the total activity life. This requirement applies even if the primary purpose of that activity is not commercial or there is no expectation of profit. Advice should be sought from the Vice-President, Finance and Resources before preparing a proposal.

5 Competitive neutrality principles

5.1 New South Wales has adopted a policy of competitive neutrality in relation to commercial activities carried out by all publicly funded institutions, including universities. Refer to the NSW Treasury *Policy Statement on the Application of Competitive Neutrality*, January 2002 and *Guidelines for Pricing of User Charges.*

5.2 The principles of competitive neutrality require that the University should charge a competitive amount for all services conducted as commercial activities, rather than an amount based on cost advantages that the University has as a government-funded institution, including its tax-exempt status and shared infrastructure and resources that often subsidise indirect costs of a particular activity.

5.3 Direct costs are those that are directly attributable to an activity, such as:

- (a) salaries and on-costs (superannuation, payroll tax, worker's compensation insurance, leave entitlements and loading, long service leave);
- (b) other amounts payable for contracted labour (such as research assistance stipends, subcontractor fees, and so on);
- (c) amounts payable for the acquisition of goods or services specific to the activity (including equipment, technology, consulting or scientific services).

5.4 Indirect costs are overheads or infrastructure costs that the University cannot easily allocate to a single activity, such as:

- (a) provision and maintenance of physical infrastructure, such as offices, laboratory facilities, technology and communications;
- (b) access to in-house resources and services, such as legal services, financial management and insurance services, security and other administrative services.

5.5 All proposals must be costed, and will be evaluated, on the basis of total estimated direct and indirect costs, unless the University decides that there are strategic, competitive or other community benefit grounds for not doing so.

6 Preparing a proposal

6.1 All proposals must include the following information:

- (a) a description of the proposed activity and any third party involved;
- (b) what due diligence has been carried out in respect of any third party, and how and why that third party has been selected (see Schedule 2);
- (c) how responsibilities will be divided between the University and any third party;
- (d) details of how the commercial activity aligns with and supports specified University strategic goals;

(e) a description of the scope of the commercial activity over its life (it should not be segmented into a series of small projects or aggregated with larger projects);

(f) actual and potential levels and sources of funds and any other resources needed to conduct commercial activity over the total activity life;

(g) projected cash flow model of projected cash inflows (revenues) and cash outflows (expenditures) over the projected activity life, providing expected rates of return to the University (see Schedule 1),

(h) where project is viable, the source of funding; where funding is not budgeted, source of funding should be specified in the proposal,

(i) if the activity is to be carried out outside Australia, projected tax or other foreign imposed duties, taxes or other liabilities that apply to any income receivable by the University;

(j) projected impact on core University activities and resources;

(k) details of the person(s) responsible for the implementation and management of the commercial activity throughout the total activity life, including qualifications and experience;

(l) any conflicts of interest identified, and how these will be monitored and managed throughout the total activity life;

(m) a matrix describing the nature and levels of key risks, and how these will be monitored and managed throughout the total activity life (see Schedules 2 and 3);

(n) legal, regulatory, financial or other due diligence already carried out or needed before final approval;

(o) any intellectual property rights required to carry on the activity (including if these are to be licensed or acquired from a third party) and how these will be managed and protected during the total activity life.

6.2 Depending on the level of risk and income or expenditure involved, the Vice-President Finance and Resources may direct the sponsor that a simpler form of proposal only is required.

6.3 Sponsors should consult with relevant units of the University when preparing any proposal, including the Office of Commercial and Estate Planning, Capital Works and Facilities, Office of Research Services, Office of Research Engagement, Development and Innovation, Information Technology and Digital Services, Office of People and Culture, Alumni and Advancement, Western Sydney International and Office of General Counsel.

6.4 A proposal must be endorsed before it can be submitted for approval as follows:

(a) in the case of a commercial activity to be carried out or managed by a School (including any research institute within a School), the relevant Dean;

(b) in the case of a commercial activity to be carried out by a School outside Australia, the relevant Dean and the Deputy Vice-Chancellor (Academic);

(c) in the case of commercial activities involving:

A. research and development other than grant funded research

B. exploitation of intellectual property rights; or

C. participation in a cooperative research centre or other research and development structure (even if as part of any grant funded research),

by both the relevant Dean and the Deputy Vice-Chancellor (Research and Development) or Pro Vice-Chancellor (Research and Innovation) ;

(d) in the case of any commercial activity to be carried out or managed by an administrative unit, the relevant Vice-President.

7 Evaluation of proposals

7.1 All commercial activity proposals will be evaluated as follows:

(a) Where projected income or expenditure is less than $100,000, by the Vice-President, Finance and Resources;

(b) Where projected income or expenditure exceeds $100,000, by BIDC.

7.2 All commercial activity proposals will be evaluated according to the following criteria:

(a) compliance with the principles outlined in paragraph 3;

(b) a structure and governance framework that is appropriate from a legal, taxation and accounting perspective;

(c) has appropriate systems and processes to eliminate, minimize or manage risks, including during any transition-in or transition-out stages of the activity;

(d) has adequate and appropriate account, auditing, reporting and other mechanisms and systems;

(e) the activity will be properly project-managed throughout the total activity life;

(f) addresses any other criteria identified by the Vice-President, Finance and Resources necessary or appropriate for that type of commercial activity.

7.3 In evaluating financial viability, the following will be taken into account:

(a) the strategic fit of the commercial activity;

(b) the viability of the proposed activity as assessed by the procedures provided in Schedule 1;

(c) any other criteria the Vice-President, Finance and Resources considers necessary or appropriate, taking into account risks.

7.4 For any proposed commercial activity conducted outside Australia, additional independent expert legal, tax, foreign exchange restrictions and other regulatory compliance advice must be obtained before a proposal can be submitted for approval.

7.5 All proposals will be assessed on a full cost-recovery basis, except proposals for supply of consulting services (including contract research), which will be assessed on a marginal cost basis only if cash inflows or outflows are less than $100,000 per project.

7.6 Please refer to Schedule 1, which provides procedures for evaluation of a proposal.

8 Governance and documentation

8.1 All commercial activities must be properly structured and documented and must incorporate contractual provisions dealing with:

(a) an appropriate structure for the proposal from a legal, tax, regulatory or other perspective in line with any recommendations given by legal or other professional advisers;

(b) appropriate exit arrangements including termination and asset distribution and liability payment obligations to protect the interests of the University;

(c) insurance and other risk minimization strategies (such as indemnity and limitation of liability clause) as appropriate and consistent with the University's risk appetite;

(d) an appropriate governance structure that contains provisions dealing with:

A. identification and appointment of suitably qualified and experienced directors and shareholder representatives to represent the University's interests where an incorporated entity is established;

B. establishment and maintenance of appropriate control mechanisms including, in the case of controlled entities, compliance with s.22A of the Act and these Guidelines;

(e) management of information, including security and confidentiality of records, compliance with privacy laws for handling of personal or health information, public right of access to information;

(f) appropriate accounting and auditing procedures and requirements for regular reporting to the Board of Trustees or its delegate, as appropriate;

(g) appropriate provisions concerning the source, allocation and accounting of income or expenditure for that activity.

8.2 All contracts must be prepared or reviewed by the Office of General Counsel. The Office of General Counsel has prepared a Contract *Development and Management Compliance Manual* that can be downloaded from the OGC intranet (login and password required).

8.3 Any appointments of directors or other office holders to a company or other vehicle (whether incorporated or unincorporated) must be first approved by the Board's Remuneration and Nominations Committee.

9 Final Approval

9.1 Final approval of any proposal shall be in accordance with the University's Delegations (Administrative) Policy – Schedule D following evaluation under paragraph 7.

9.2 Any proposal requiring Board approval must first be endorsed by:

(a) BIDC and, if applicable, the University's executive; and

(b) as applicable, the Board's Finance and Investment Committee, Standing Committee or University Infrastructure Committee.

10 Ongoing operational requirements

10.1 The relevant managing unit is responsible for managing and regularly monitoring the commercial activity throughout the total activity life to the ongoing viability of the commercial activity including ensuring compliance with:

(a) the University's obligations as a public body;

(b) any conditions of approval for that commercial activity;

(c) any internal or external reporting obligations (including any changes to details entered in the Register of Commercial Interests, Register of Commercial Activities or Contracts Register);

(d) all contractual obligations;

(e) all relevant University policies and procedures.

10.2 All commercial activities will be reviewed every three years to:

(a) assess ongoing viability, including achievement of objects or purpose;

(b) identify or assess the effectiveness of any systems of control, including risk management strategies;

(c) identify any significant changes, including changes in risks;

(d) any other matter considered appropriate in the circumstances.

10.3 The Vice-Chancellor or the Vice-President, Finance Resources can at any time direct an unscheduled review or audit of a commercial activity, if considered appropriate.

11 Conflicts of Interest

11.1 Anyone involved in preparing, evaluating or approving a proposal must:

(a) try to avoid an actual or potential conflict of interest or, if it cannot be avoided, ensure there are appropriate strategies in place to manage that conflict; and

(b) disclose full details of that conflict of interest (including notifying any changes to those details) to the person to whom conflicts of interest must be reported under these Guidelines, taking into account the University's:

A. Code of Conduct;

B. Conflict of Interest Policy; and

C. Fraud and Corruption Prevention Strategy.

11.2 The following requirements apply:

(a) a sponsor or head of the unit responsible for managing the commercial activity cannot be involved in any approval process for that activity;

(b) Any person with a conflict of interest cannot participate in any discussion or decision for evaluating or approving the proposal to which the conflict of interest relates;

(c) A conflict of interest involving a member of the Board of any of its committees must be disclosed and managed in accordance with clause 5 of Schedule 2A of the Act.

(d) A conflict of interest involving University staff, students or other officers or representatives must be disclosed and managed in accordance with the University's

Conflicts of Interest Policy.

11.3 All conflicts of interests are to be recorded as follows:

(a) for conflicts of interest involving a member of the Board or any of its committees, in the register required to be kept in accordance with clause 5 of Schedule 2A of the Act; and

(b) for conflicts of interest referred to in paragraph 11.2(d), in accordance with the University's Conflict of Interest Policy.

11.4 A Register of Commercial Interests may be inspected by:

(a) any member of the Board;

(b) any member of the Board's Audit and Risk Management Committee;

(c) the Vice-Chancellor;

(d) the Vice-President, Finance and Resources;

(e) the University Secretary and General Counsel;

(f) the Director, Audit Risk and Assessment;

(g) the NSW Auditor-General, or his or her authorised representative;

(h) the NSW Minister for Education, or his or her authorised representative;

(i) the NSW Treasurer, or his or her authorised representative.

11.5 All requests to inspect the Register of Commercial Interests shall be directed to and managed through the Vice-President, Finance and Resources.

11.6 Any information recorded on the Register of Commercial Interests that consists of personal information will be collected, stored, used and disclosed in accordance with the University's Privacy Policy and Privacy Management Plan.

12 Register of Commercial Activities

12.1 The Board of Trustees has established and maintains a Register of Commercial Activities of the University and its controlled entities in accordance with section 32C of the Act.

12.2 The Vice-President, Finance and Resources is responsible for maintaining the Register of Commercial Activities and ensuring that details of all approved commercial activities are entered and kept up to date, including:

(a) a description of the commercial activity;

(b) when it begins and ends (including any options to extend or renew);

(c) details of parties involved in the commercial activity;

(d) details of the managing unit and sponsor;

(e) details of any appointments of any directors or other representatives of the University;

(f) details of any meetings at which relevant matters were considered and approved for the purpose of compliance with these Guidelines;

(g) details of any reports submitted as part of any reporting requirements;

(h) details of any review or audit conducted under paragraph 10.2; and

(i) any other details that the Board or the Vice-President, Finance and Resources considers appropriate to include.

12.3 The Register of Commercial Activities may be inspected by:

(a) any member of the Board;

(b) any member of the Board's Audit and Risk Management Committee;

(c) the Vice-Chancellor;

(d) the Vice-President, Finance and Resources;

(e) the University Secretary and General Counsel;

(f) the Director, Audit Risk and Assessment;

(g) the NSW Auditor-General, or his or her authorised representative;

(h) the NSW Minister for Education, or his or her authorised representative;

(i) the NSW Treasurer, or his or her authorised representative.

12.4 All requests to inspect the Register of Commercial Activities shall be directed to and managed through the Vice-President, Finance and Resources.

12.5 Material interests recorded on the Register of Commercial Interests that contain personal information of a person will be collected, stored, used and disclosed in accordance with the University's Privacy Policy and Privacy Management Plan.

13 Contracts Register [Government Information (Public Access) Act 2009]

13.1 The *Government Information (Public Access) Act* 2009 requires the University to maintain a publicly available register of all contracts for the procurement of goods or services (including contracted or subcontracted research) with a total value exceeding $150,000. This register is a separate register to the Register of Commercial Interests and is maintained and overseen by the Associate Director (Procurement).

13.2 The managing unit is responsible for ensuring that all details are properly entered onto and uploaded to the Contracts Register.

13.3 More information about the Contracts Register can be found at http://www.uws.edu.au/finance_and_resources/division_of_finance_and_resources/procurement/purchase_requisitions_and_contracts/contract_information_database_-_gipa_data_entry.

14 Delegations of authority

14.1 All commercial activities must be approved in accordance with the University's Delegations (Administrative) Policy (Schedule D or G) or pursuant to a resolution of the Board made under s.23 of the Act.

15 Controlled entities

15.1 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.

15.2 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.

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

16 Prevention of Corruption, Fraud, Maladministration and Waste

16.1 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 comply with the Code of Conduct and all other policies of the University including those relating to the management of the University's finances and resources.

16.2 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 Fraud and Corruption Prevention Strategy.

16.3 Any reports of fraud, maladministration or waste may also be treated as public interest disclosures under the University's Public Interest (Protected) Disclosures Policy.

17 Review of Guidelines

17.1 These Guidelines will generally be reviewed every three years, but more frequently if necessary to incorporate changes to laws or University policy.

18 Further resources and references

18.1 Further information and resources can be obtained from (click on hyperlinks):

(a) NSW Treasury, Commercial Policy Framework: Guidelines for Financial Appraisal (click here);

(b) University *Delegations (Administrative) Policy* can be found at http://policies.uws.edu.au/view.current.pp?id=0087;

(c) Office of General Counsel, *Contract Development and Management Compliance Manual* (staff login and password required) can be downloaded from the Office of General Counsel (click here).

(d) Finance Office Templates (click here).

18.2 For further information/clarification, please contact the Finance Office.

SCHEDULE 1: EVALUATING THE VIABILITY OF A COMMERCIAL ACTIVITY

19 Requirements

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

(a) Strategic 'Fit' and Impact

(b) Financial viability

(c) Funding availability

20 Strategic 'Fit' and Impact

20.1 What are the key objectives of the proposed activity and how does it fit with the strategic objectives of the University?

20.2 Explain the benefits of undertaking this project to the University, in particular:

(a) What are the non-financial benefits of the proposal?

(b) Will the project enhance the University's community engagement, reputation or profile?

(c) Will it contribute to the development of our teaching and research and, if so, how?

21 Financial Viability

21.1 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 interdependent, and nor should it be aggregated into large programs which have components that can independently proceed and deliver benefits without other projects.

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

21.3 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:

(a) Payback

(b) Return on investment (ROI) (used presently in course approvals)

(c) Discounted cash flow (DCF) analysis (see below)

21.4 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.

22 Payback

22.1 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			

23 Return on Investment (ROI)

23.1 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:

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

23.2 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.

24 Discounted cash flow (DCF) method

24.1 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.

24.2 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 the University based on precedents with listed organisations offering education services. For any specific advice on discount rates, please contact the Manager, Corporate Finance, Division of the Vice-President, Finance and Resources of an appropriate discount rate.

24.3 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.

25 Funding availability

25.1 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.

SCHEDULE 2: RISK ASSESSMENT AND DUE DILIGENCE

26 Introduction

26.1 All transactions, and especially commercial activities, come with their own particular risks, which are not necessarily static and need to be reviewed on a continuous basis throughout the life of the total activity life. Risk identification and assessment is an integral part of a business plan and ongoing project management of any transaction.

27 Due diligence

27.1 Due diligence is a critical starting point of any risk assessment plan and should form part of any proposal development.

27.2 Due diligence relates not just to the identity and reputation of the other proposed contracting party, but also to other factors relevant to the proposed activity, including the nature and scope of the activity, market dynamics and influence, market competitors and supply chain risks. Due diligence is also an important tool for understanding the other party's culture and values, and what to expect from entering into a relationship with that party.

28 Risk identification and assessment

28.1 A risk matrix should be prepared for each transaction that:

(a) identifies actual and potential risks;

(b) rates those risks into appropriate categories, such as strategic, legal, financial, political, depending on the transaction;

(c) quantifies the likelihood of occurrence, impact or consequence;

(d) indicates how each risk can be managed or controlled;

(e) indicates how often a risk should be reviewed throughout the life of the activity to ensure appropriate ongoing levels of management or control.

28.2 Sample risk assessment matrices are attached as Schedule 3. However, these are intended as a guide only. Not all risk categories may be appropriate, and there may be other potential risks.

28.3 Each risk should be assigned a risk rating, depending on the likelihood of it occurring and the severity of consequences on University operations. Risks given a "high" or "extreme" rating must always include a management strategy, which should be explained in detail in the proposal.

29 Risk escalation

29.1 Any risks assessed as moderate or high should be escalated as soon as possible to the endorser of a proposal nominated in paragraph 6.4 for resolution in a timely manner. The endorser should seek advice form the Vice-President, Finance and Resources and Office of General Counsel.

SCHEDULE 3: SAMPLE RISK MATRICES

Risk identification and assessment matrix

Sources of risk	Examples of risks	Analysis	Risk Rating	Likelihood	Potential outcomes	Management strategy
Strategic	• Inconsistency with University functions • Impact on principal functions/activities • Non-alignment with strategic priorities • Unsuitability of partner(s) • Failure to research market viability and competition • Failure to take advantage of opportunity				• Adverse financial and legal consequences • Investigation by regulator • Poor performance of partner(s) • Reputational damage • Contractual disputes	
Political (for offshore transactions)	• Regional instability • Ineffective government bureaucracy • Inadequate protection under local laws • Negative relationship with government • Adequacy of local infrastructure				• Adverse financial and legal consequences • Physical risks to staff • Contractual disputes	
Governance	• No involvement or approval of senior management • Failure to obtain legal and other advice • No business or operational plan • No risk assessment plan • No stakeholder/end user input				• Adverse financial and legal consequences (including tax), especially for off-shore transactions • Loss of advantage in negotiating objectives and outcomes • Contractual disputes • Reputational damage	
Human resources	• Staff quality availability • Conflicts of interest *For offshore transactions* • Language barriers • Local immigration, work and professional accreditation laws for University staff working offshore				• Breach of contract obligations • Non-compliance with local laws • Reputational damage	

Sources of risk	Examples of risks	Analysis	Risk Rating	Likelihood	Potential outcomes	Management strategy
Academic (particularly for offshore transactions)	• Cultural fit of activity • Non-accreditation • No research clearances • Curriculum quality compromised • Inadequate assessment arrangements				• Regulatory non-compliance • Reputational damage • Contractual disputes	
Operational	• Outcomes or deliverables not properly identified and specified • Inadequate records and systems of control • No quality or performance measurements • Project team not suitably qualified, experienced or resourced • Failure to plan for problems or delays • Failure to obtain input from stakeholders or users				• Lack of clarity and accountability • Interruption to business • Financial loss • Contractual disputes • Reputational damage	
Financial	• Viability and availability of funding sources or revenue • Unrealistic assessment of all costs (including set up costs) • Failure to estimate transition out/shut down costs • Inadequate insurance cover • Failure to assess tax liability (in Australia and overseas for offshore transactions) • Failure to account for price increases • Fluctuations in currency or interest rates • Failure to identify supplier discounts • Lack of proper payment regime linked to performance				• Source and flow of funds not transparent and may be at risk • Lack of clarity around financial viability over life of transaction • Lack of value for money • Poor performance of partner(s) • Contractual disputes • Reputational risk	

Sources of risk	Examples of risks	Analysis	Risk Rating	Likelihood	Potential outcomes	Management strategy
Legal and contractual	• Inappropriate model for transaction • Failure to identify “deal breakers” and negotiables before beginning contract negotiations • Transaction risks not adequately identified so management strategies can be incorporated into contract, eg, warranties, indemnities, performance reviews, early exit mechanisms				• Adverse financial or legal consequences • Poor or non-performance • Contractual disputes	
Project and contract management	• Contract not recorded on CA or GIPA Register • Inadequate systems and management of performance, including critical milestones • Inadequate communication protocols with partner(s)				• Contractual disputes • Poor or non-performance • Regulatory non-compliance	

Risk severity matrix

Likelihood	5					
	4					
	3					
	2					
	1					
		1	2	3	4	5
	Consequence					

Low	Moderate	Major	Catastrophic

Key	1	2	3	4	5
Likelihood	Rare	Unlikely	Possible	Likely	Almost Certain
Consequence	Insignificant	Low	Moderate	High	Extreme