



12 STEPS

OF THE DEVELOPMENT PROCESS

STEP FIVE: DUE DILIGENCE

35

LATITUDE

PROPERTY
DEVELOPMENT

I bet you thought we had already covered off on Due Diligence. But it's such a big topic, it just doesn't seem to go away! It's true, we have discovered a myriad of sections that can be classified as Due Diligence, but there's still more to learn. Yes, Due Diligence includes all the issues outlined in:

- Step One - The Importance of an Exit Strategy and Contingency Plan
- Step One Challenge Task - Market Analysis
- Step Two - The Concept Stage & Creating a Development Team
- Step Three - The 7 aspects of finding the Right Site
- Step Three Bonus - Understanding the DCP/LEP
- Step Four - Financial Feasibility Analysis

But I'm sorry to tell you, we still have some more to uncover. Next Stop -

“CONTRACT FOR THE SALE AND PURCHASE OF LAND”

The Contract of Sale is littered with traps for the inexperienced, and your best friend now will be your Solicitor or Conveyancer. I like to review the contract quite early in the process, before I even make an offer or race off to see my solicitor, because there is a raft of information in the contract that helps me make the decision about the suitability of a property. So let's start at the beginning, and try to identify some of the risks.

(Please keep in mind, we are NSW based, and our discussion is based on the NSW version of a sale contract. Whilst this may not be exactly the same in other states, overall the situation may be very similar, albeit certain documents may have differing names.)

The Front Page - This page will set out (importantly) the property details (including title reference numbers). Obviously this is a pretty important part of the contract, to ensure you are actually buying the right property. It also includes your entity details (how you are buying it) as well as the improvements (what it is) and the inclusions (what it includes).

Quite often, a developer is not overly interested in what may or may not be included, but I would suggest this is particularly important IF/WHEN you might be looking to rent the property whilst sorting out your plans and approvals.

What is the agreement with regards to Land Tax and GST? Is the Vendor passing a Land Tax Liability onto you, the new purchaser? Is the purchase inclusive or exclusive of GST??? Are you able to make use of the “Margin Scheme”? Ensuring you get this part of the contract right can mean the difference between making a profit or not, so ensure you speak with both your solicitor and your tax professional to make sure you make the right selection.

Additionally, the front page will generally have a completion date, so ensure you have enough time to get your matters in order well before you need to finalise the purchase.



Special Conditions - now I am not going to spend too much time on special conditions, as these can be quite straight forward, or as complicated as the vendor wishes. Having said that, you can also negotiate a variety of special conditions into the contract as well, as this is not a “one way street”.

Title Search - The title search is a very important piece of the puzzle. Many development opportunities have quickly made their way on to the “scrap heap” once reviewing the title search. The search may reveal:

- Exclusions (generally minerals are owned by the commonwealth)
- Limitations
- Interested Parties (like mortgagees)
- Easements
- Covenants and Lease

Now easements and covenants are the most likely items you are going to come across. The main difference between an easement and a covenant is that an easement grants a right to the holder of the easement (easement to drain storm water) while a covenant imposes a restriction against the landholder affected (timber fencing, minimum dwelling size, materials).

New land releases are quite easy to follow, but older estates become a bit more confusing. Often there has been re-definitions of land, subdivisions and changes in titles, which all can obscure the “document trail” of these easements. Even in a new estate (particularly if it has been staged) it is important to identify the correct easements to the correct stages and lot numbers, to correctly identify how your block may be effected.

Whilst most easements and covenants can be designed to accommodate, they can also potentially spell the death to what initially appears to be a great opportunity.

Service Location plan (Local Water Authority or Council) - The inconvenient location of a sewer line can prove fatal for your development. Identifying where the current Sewer and Water lines are located in relation to the site will enable you to determine if there may be significant additional costs involved to develop. Whilst a Sewer Main may not seem an issue, rectifying when not ideally located can be costly. The sites topography in relation to the services can become a key consideration in your due diligence.

Section 149 Planning Certificate - We have mentioned the 149 Certificate in the Step Three Bonus (What's the Fuss about the DCP). This section may highlight other areas that might have specific council or state government controls, and could include:

- Zoning Permissible Use Critical habitat/Conservation Area Flooding (Sea or Lake Level rise) Bush fire Mine Subsidence Acid Sulphate Soils
- Road Widening Contamination Significant Tree Orders Heritage Issues Environmental Issues Natural Watercourse

Property effected by existing tenancies - Also be cautious you are not buying someone else's problem. If the property is currently tenanted, the contract should include a copy of the lease agreement, even if the lease is now expired. It is also important to make enquiries about the tenant. Have they looked after the property? Are they paying their rent on time? What issues have they had in the past? The last thing you need is a recalcitrant tenant, who not only doesn't pay but damages your (soon to be) property, and becomes a "squatter from hell".



CONVEYANCERS VS SOLICITORS

Now before we finish with this chapter, which has really dealt with reviewing the contract of sale, let's quickly look at what the difference is between a conveyancer and solicitor?

It can be confusing when you're offered what seems to be the same service by two different professionals. Basically, every time a property changes hands the process is called conveyancing, and conveyancing can be done by either a solicitor or a conveyancer.

Generally conveyancers have detailed knowledge in one area of law, being property law. Solicitors on the other hand have specific knowledge about property law but also broader knowledge of the law in general. This means that a solicitor can advise their client not only on all aspects of a sale, but also on issues that might relate to the transaction, such as the tax implications, or how the sale of a house might impact their client's divorce proceedings.

This difference in knowledge and experience is what commonly creates a price difference between conveyancers and solicitors. One of the biggest reasons people hire a conveyancer over a solicitor is because hiring a conveyancer is often cheaper.

COMPLEXITY OF THE TRANSACTION

It is important to bare in mind how complex the property transaction is likely to be. The more complex the transaction, the more important it will be to ensure any technical issues, uncertainties or problems that arise can be dealt with swiftly.

If you've hired a conveyancer and something goes wrong, they'll often need to send you off to see a lawyer, in which case you'll probably end up paying more than you would have had you hired a lawyer to begin with.

The advantage of hiring a solicitor to do your conveyancing is they have extensive legal knowledge in most areas of law, so they'll be on hand to quickly solve any legal issues that arise during the course of the transaction.

