

# ASSESSING RENTAL VALUE

<b>Reference:</b>	NZVGP 505 Assessing Rental Value
<b>Published Date:</b>	25 June 2021
<b>Effective Date:</b>	1 July 2021 with technical amendments 1 August 2022
<b>Owner:</b>	Manager Professional Standards

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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 "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

PINZ contact: [standards@property.org.nz](mailto:standards@property.org.nz)

## **1.0 Introduction**

### **1.1 Scope of this Guidance Paper**

This GP applies to Members who undertake valuations involving rental value on behalf of known clients with whom those Members or their employers have entered into the appropriate services agreement. The purpose of this GP is to set out matters to be addressed in the valuation.

Valuers providing valuations of rental value must do so to the standard of professionalism and skill required and consistent with membership of the Institute(s) and in compliance with the law.

This GP should be read in conjunction with other relevant GPs, Guidance Notes and any other relevant publications from the Institute(s) /or API/PINZ Practice Standards, which are either over-arching or directly applicable to the issues raised in this GP. International Valuation Standards.

International Valuation Standards (IVS) published by the International Valuation Standards Council (IVSC) are adopted by the Institute(s).

It is the Valuers responsibility to comply with the IVS applicable at the date of valuation, keep informed of any changes and, apply them appropriately and consistently when providing valuations.

The GP is also intended to be consistent with the concepts and definitions contained in the IVS, however, there may be departures from the IVS to reflect New Zealand law and practice. This GP refers to and uses IVSC definitions to promote consistency.

### **1.2 Definitions**

The definitions contained below and used in this GP are applicable to this GP and have been included to assist with the interpretation and understanding of certain stated terms used within this GP. Where a defined term is included in this GP it is identified as a capitalised term.

**Institute(s)** All references to Institute(s) mean, as the context requires, the PINZ and/or NZIV.

**Member(s)** A Member(s) of PINZ and NZIV.

## **2.0 Instructions**

### **2.1 Prior Written Instructions**

In accordance with the relevant Rules of Conduct (PINZ), a Member should confirm acceptance of instructions in writing prior to the valuation being undertaken.

### **2.2 Content of Instructions**

Members should have regard to relevant provisions within Professional Practice concerning the content of instructions.

### **2.3 Supporting Documentation**

In assessing rental value, the following documentation should be considered:

- a) original lease documentation (including collateral agreements and executed documents) to be sighted where possible, otherwise the copy relied on should be executed.
- b) confirmation of current rent and other matters as may be appropriate.
- c) documents relating to financial implications such as outgoings.
- d) details of the floor areas, preferably surveyed in accordance with an industry accepted method such as NZPGP601 Methods of Measurement, PCNZ/PINZ Guide for the Measurement of Rentable Areas.
- e) if applicable, a statement from the lessor and lessee as to the extent that information obtained from the parties may be detailed in the report.
- f) details of the fit-out or other incentives provided by the lessor, if applicable; and
- g) details of the lessor's and/or lessee's improvements.

## **2.4 Relevant Skills and Expertise**

In accordance with the relevant Rules of Conduct (PINZ), a Member should not accept an instruction beyond their competence.

If a Member does not have the relevant skills

and expertise to assess rental value, the Member should decline the instruction or retain an appropriate specialist to provide advice.

## **2.5 Full Disclosure**

Full disclosure of all relevant information by the parties is critical to the assessment of rental value. Where a Member suspects that information provided by a party, or the parties to a dispute is false, incomplete or misleading, the Member should advise the parties and, if not resolved, the Member may decide to decline the instructions.

## **2.6 Further Advice**

It may be necessary for a Member to address legal or other issues where these are in dispute. The Member should obtain legal or other appropriate interpretation to ensure the correct course of action is taken. Where a Member is uncertain on the issues, the Member may:

- a) advise the parties to the dispute of the necessity to obtain such advice.
- b) provide to the parties a quote relating to obtaining such advice.
- c) obtain confirmation in writing from the appropriate party/parties accepting liability for the cost of that advice; and
- d) obtain confirmation from the parties that any time limitation that is imposed on the Member for completing the determination is appropriately extended.

### **3.0 Definitions**

#### **3.1 Primacy of Lease Definitions**

In assessing or independently determining the rental value of premises held under the terms of an actual lease, the definition of terms contained within that lease have primacy, unless contrary to any legislation.

#### **3.2 Common Terms**

The following terms are in common use

- a) rent (including gross, net, face, effective, passing/contract and market);
- b) rent review.
- c) lease.
- d) leasing incentives.
- e) tenant.
- f) landlord.
- g) profit rent.
- h) rental shortfall; and
- i) permitted use.

### **4.0 Assessing Rental Value**

#### **4.1 Impartiality**

In assessing rental value, the Member should maintain an independent, unbiased and balanced state of mind.

#### **4.2 Purpose of Assessing Rental Value**

Assessing rental value may comprise:

- a) assessing the rental value of premises held under the terms of an actual lease; or
- b) assessing the rental value of vacant or owner-occupied premises, assumed to be held under the terms of a hypothetical lease; or
- c) independently determining the rental value of premises held under the terms of an actual lease.

#### **4.3 Market Rent Reviews**

Market rent reviews in a lease enable the rental to be varied to reflect changes in the market between the date on which the lease commenced or the

rent was last reviewed and the relevant review date subject to the terms and conditions of that lease.

The fundamental starting point to any assessment of market rent, at rent review, is therefore the lease. A full understanding of the lease is required before the market rent can be assessed.

The agreed rental on review will reflect not only the market influences but also the terms and conditions in the actual lease document.

#### **4.4 Issues for Consideration**

When assessing rental value, a Member should have regard to:

- a) relevant legislation operating in New Zealand, including any retail and commercial tenancy legislation.
- b) directions to the valuer pursuant to the Lease; and
- c) Court decisions.

#### **4.5 Lease Directions**

When assessing the rental value of premises held under the terms of an actual lease or the independent determination thereof, members should follow the directions, if any, provided under the lease.

A Member should comply with any specific provisions contained in a lease unless:

- a) the parties have further agreed to vary that provision and have advised the member in writing of any agreed variations; or
- b) the provision is contrary to law.

#### **4.6 Unspecified or Assumed Lease Terms**

When undertaking an assessment of rental value under the terms of a lease and when notional lease terms are to be assumed, the Member should address (where appropriate) the following elements:

- a) the name of the lessor (where applicable).
- b) the name of the lessee (where applicable);
- c) description of the premises.
- d) permitted use under the lease.
- e) date of commencement.
- f) term of lease.
- g) date of assessment.
- h) option(s) for renewal.
- i) commencing rental.
- j) current passing rent (if applicable).
- k) method and frequency of rent reviews.
- l) period to which the rental being assessed is applicable which may be:
  - i) a period equivalent to the term of the lease; or



- ii) a period equivalent to the unexpired term of the lease; or
- iii) a period equivalent to the interval between rent review; or
- iv) another period.
- m) lessor's and lessee's liability for outgoings.
- n) assignment clause.
- o) sub-leasing rights.
- p) fit out and fit out costs.
- q) treatment of incentives; and
- r) make-good provisions.

#### **4.7 Sources of Comparable Evidence**

In assessing market rent the Member should consider the most appropriate evidence in the marketplace.

The best evidence is generally rentals which have been agreed in comparable tenancies, at the relevant date with vacant possession (i.e. new lettings between arms-length parties), and in particular, where the use is the same or a substantially similar use as the permitted use under the lease.

In the absence of new lettings evidence, the member may have to consider the following:

- a) rentals agreed between arms-length parties at lease renewal or at the exercise of an option.
- b) to renew an existing lease.
- c) rentals agreed at market rent reviews; and
- d) the outcome of mediations or determinations.

#### **4.8 Application of Comparable Evidence**

The terms and conditions of a subject lease may vary from the terms and conditions for leases of comparable premises. These variations should be considered in the assessment of the market rent under the subject lease.

When a Member is required to assess a rental under an existing lease which relates to market rent or similar terminology, a distinction may need to be made between an assessment of market rent under the usual terms and conditions of similar leases/tenancies and the terms and conditions of the actual lease, with adjustments for differences.

### **5.0 Independent Determination**

#### **5.1 Purpose**

In the event of a dispute between a lessor and the lessee, a Member may be instructed or appointed to undertake an independent determination of the rental value of the premises held under the terms of an actual lease.

## **5.2 Basis of Appointment**

Depending on the requirements of the lease, a Member may be appointed to undertake an independent determination by acting as an Expert or as an Arbitrator.

The terms Expert and Arbitrator are defined in the Glossary of Property Terms (2007) and are provided in Appendix 1.

## **5.3 Conflict of Interest**

When acting as an expert and the potential for a conflict of interest arises, Members are referred to ANZPGP 203

‘Acting as an Expert Witness, Advocate or Arbitrator’ and the Institute’s Rule of Conduct 1.3.

## **6.0 GST**

Members should explicitly state the treatment of GST in their report.

## **7.0 Effective Date**

This GP is effective from 1 July 2021.(with technical amendments 1 August 2022) Earlier adoption is permitted and encouraged.

This GP replaces ANZVGN 9 which was in effect from 1 September 2008 and was withdrawn on 30 June 2021.

## **8.0 References**

Relevant texts may include, but are not limited to:

Hyam, A The Law Affecting Rent Review Determinations, The Federation Press, November 2005

Duncan, WD Commercial Leases in Australia, The Lawbook Company, 2005.

## 9.0 Appendix

Terms as defined in the Glossary of Property Terms (2007):

### Arbitrator

An independent person who is contracted by the parties to conduct an arbitration. It is usually a person with experience and/or qualification in a particular field and may be nominated by the parties.

### Advocate

A person who represents the cause or interest of another, even if that cause or interest does not necessarily coincide with one's own beliefs, opinions, conclusions, or recommendations.

### Expert

A person who is recognised as having special knowledge or skills.

### Rent

A payment made periodically by a lessee to a lessor for the use of premises.

The term "Rent" is often associated with a variety of other terms outlined below:

**Base:** The minimum acceptable rental provided in a lease. In retail leases the base rent generally refers to the commencing rent which is supplemented with a 'percentage rent' based on the tenant's turnover.

**Break-Even:** The point at which a tenant's base rent is equal to an agreed level of sales above which percentage rent takes effect.

**Concessionary:** A discounted rent, usually during the initial lease term.

**Effective:** The actual liability for rent and outgoings after adjustments for any incentives to the face rent are considered.

**Equivalent:** Equivalent refers to the rent being adjusted for the effects of any market rent reviews that will occur in the period of consideration.

**Face:** The rent shown on a lease document which may or may not include incentives and may or may not include outgoings.

**Gross:** In a gross lease, all operating costs of the property (excluding direct tenancy expenses) are included in the rental.

**Market:** The estimated amount for which a property, or space within a property, should lease on the date of valuation between a willing lessor and a willing lessee on appropriate terms in an arm's-length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion. Whenever Market Rent is provided, the "appropriate lease terms" which it reflects should also be stated.

*Net:* In a net lease the owner recovers outgoings from the tenant on a pro-rata basis (where applicable).

*Passing (or contract):* The rent specified by a given lease agreement; although a given contract rent may equate to the Market Rent, in practice they may differ substantially, particularly for older leases with fixed rental terms. The term, contract rent is North American usage; passing rent is Commonwealth usage. (IVSC)

*Peppercorn:* A term used where it is desired to reserve only a nominal rent for any period. A minimal rent which is below market value.

*Turnover / Percentage / Participation Rent:* Any form of lease rental arrangement in which the lessor receives a form of rental that is based upon the sales of the lessee. Percentage rent is an example of a turnover rent. (IVSC).

### Rent Review

A periodic review of rental under a lease using a predetermined method.

For example, increase in line with Consumer Price Index (CPI), or in accordance with a market valuation.

### Lease

- a) A contract arrangement in which rights of use and possession are conveyed from a property's title owner (called the landlord, or lessor) in return for a promise by another (called a tenant or lessee) to pay rents as prescribed by the lease. In practice the rights and the duties of the parties can be complex and are dependent upon the specified terms of their contract.
- b) An agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period.

### Leasing Incentives

Inducements offered by landlords to attract tenants to lease space. Typically occurs when supply exceeds demand, but to maintain value by not lowering face rent or contract rent, tenants are given incentives such as rent-free periods, cars and other gifts. Often such inducements are secret. The discount or contribution offered to a lessee at the commencement of a lease which may be applied at the start, during, or at the end of the lease term and is outside the lease terms.

### Outgoings

The expenses incurred in generating income. In real estate, these expenses include but are not necessarily limited to property rates, repairs, insurance, repairs and maintenance and management fees. Operating expenses when subtracted from gross income equal net operating income.

### Profit Rent

The difference between the market rent and the current rent or ground rent resulting in a leasehold interest.

### Rental Shortfall

The amount by which rent is less than the market rental.

**Tenant**

A person or entity paying rent in exchange for the occupancy of a building or dwelling.  
See also Lessee.

**Landlord**

The owner of leased property. The lessor.

**Lessor**

The owner of a property who transfers the right to occupy and use property to another by way of a lease agreement.

**Lessee**

A person / legal entity who receives the right to occupy and use a property under the terms of a lease.

**Permitted Use**

The allowable use within the premises specified in the lease contract (not to be confused with 'permissible use').

**Vacant Possession**

In real estate this refers to a right to possession of land or built-up property in respect of which there is no current occupant.