

# **NorthWest Healthcare Properties REIT Group (including Vital Healthcare Management Limited)**

---

**Conflicts Policy for Australia and New Zealand**

**Private and confidential  
Effective: 15 December 2017**

**Baker & McKenzie**  
ABN 32 266 778 912  
AMP Centre  
Level 27  
50 Bridge Street  
Sydney NSW 2000  
Australia  
[www.bakermckenzie.com](http://www.bakermckenzie.com)



# Conflicts Policy

---

## 1. Introduction

- 1.1 NorthWest Healthcare Properties REIT (TSX:NWH.UN) (**NorthWest**) and entities within its control (**NorthWest Group**) conduct a broad range of healthcare and aged care related activities in Australia and New Zealand for the purposes of managing the NorthWest Group's two Australian and New Zealand property portfolios, being:
- (a) Vital Healthcare Property Trust (**Vital**), a New Zealand REIT listed on the New Zealand Stock Exchange, which is managed for its investors, including the NorthWest Group; and
  - (b) Generation Healthcare REIT and its immediate Australian holding entities (**Generation**), which is managed for the NorthWest Group and its investors.
- 1.2 NorthWest Group's Australia and New Zealand activities are, or will be, undertaken on an integrated basis, and whilst this policy is designed to avoid conflicts (where commercially reasonable), there is potential for an actual or perceived conflict of interest to arise between Vital and Generation.
- 1.3 This policy applies to the NorthWest Group entities that are involved in any way with the NorthWest Group's Australia and New Zealand activities, including:
- (a) NorthWest Healthcare Australia Acquisition Company Pty Limited (**NorthWest Australia**);
  - (b) Generation Healthcare Management Pty Limited (**Generation Manager**), which manages Generation;
  - (c) NorthWest Healthcare Australia RE Limited, which is the responsible entity of Generation Healthcare REIT and the trustees of its immediate Australian holding entities (**NorthWest Trustee**);
  - (d) Vital Healthcare Management Limited (**Vital Manager**), which manages Vital.
- 1.4 For the purposes of this policy, Vital and Generation are each a **Party** and together the **Parties**, and where the context requires, a reference to a Party includes:
- (a) in the case of Vital, Vital Manager; and
  - (b) in the case of Generation, Generation Manager and / or NorthWest Trustee.

---

## 2. Executive summary

- 2.1 A conflict of interest exists whenever the interests of the Parties are involved in a process or transaction and their commercial or legal interests are not the same.
- 2.2 This policy outlines the principles by which NorthWest Group will avoid (where commercially reasonable), and otherwise manage and resolve, conflicts in a manner which complies with any relevant legal obligations and is equitable to each Party.
- 2.3 The key objective of this policy is to enable all NorthWest Group entities to implement and comply with the various obligations they have to relevant stakeholders of each Party. Broadly the policy envisages:
- (a) an **Investment Committee** (as this term is defined below) being established to manage actual or perceived conflicts in accordance with this policy;

- (b) the appointment of separate persons to specifically represent the interests of each Party (**Party Representatives**);
  - (c) specific guidelines which apply to particular types of potential conflict situations;
  - (d) the approval of all related party transactions between Vital and a NorthWest Group entity (including Generation) by the Board of the relevant trustee (including a responsible entity) or manager where this is required by law;
  - (e) the approval of all investment decisions by each Party to be taken by the Board of the Vital Manager with respect to investments by Vital and the relevant NorthWest Group entities with respect to investments by Generation;
  - (f) the importance of awareness and training in relation to the identification and management of potential conflicts of interest; and
  - (g) monitoring and reporting to reinforce awareness of this policy and the culture of compliance.
- 

### **3. When does a conflict exist?**

#### **Overview**

- 3.1 To determine if a conflict of interest may exist, it is essential to first determine whose interests may potentially be affected.

#### **Actual and perceived conflicts of interest**

- 3.2 An actual conflict of interest exists whenever the interests of both Parties are involved and their commercial or legal interests are not the same.
- 3.3 The perception of a conflict of interest can arise whenever the Parties are involved in a commercial dealing, as these parties will have separate interests which are not always the same or similar.
- 3.4 Conflicts of interest can arise in a variety of circumstances, including for example:
- (a) where each Party is considering whether to acquire or bid for a property;
  - (b) negotiations between the Parties in relation to the joint acquisition of a property and the terms which will determine their ongoing rights as co-owners of the property;
  - (c) the purchase and allocation of a property and its ownership between the Parties;
  - (d) the sale of a property from one Party to the other Party (or another NorthWest Group entity where Vital is the seller) or the sale of a property from a NorthWest Group entity to Vital;
  - (e) leasing deals in a market where both Parties own lettable space which would suit a prospective tenant's requirements; or
  - (f) a decision of NorthWest Group which could benefit one Party at the expense of the other Party, could confer benefits disproportionately on one Party or could impose burdens disproportionately on one Party.

#### **Potential for conflict of interest**

- 3.5 As the NorthWest Group owns Generation and also the Vital Manager and the Generation Manager, and also employs or contracts the staff involved in NorthWest Group's Australian and New Zealand business, this creates a potential for conflict between the interests of the NorthWest Group and its duties to Vital, as an entity managed by the NorthWest Group for third party investors.

- 3.6 If you are in doubt as to whether a conflict of interest exists you should consult with your local CEO or the NorthWest General Counsel.
- 

## **4. General approach**

### **Method of resolution of conflicts**

- 4.1 It is intended that the representatives of the Parties should do their very best to avoid conflicts where commercially reasonable, and otherwise resolve potential conflicts in accordance with this policy. This may include obtaining relevant advice or guidance, including from the NorthWest General Counsel or other senior corporate executives.
- 4.2 Any matter not so resolved should be referred to the Investment Committee for resolution in accordance with this policy.

### **Investment Committee**

- 4.3 NorthWest will establish an Investment Committee to manage potential conflicts in accordance with this policy.
- 4.4 The Investment Committee will initially comprise:
- (a) Paul Dalla Lana; and
  - (b) Bernard Crotty,
  - (c) an independent director of the Vital Manager,
- or as otherwise determined by NorthWest.
- 4.5 Where a matter is referred to it, the Investment Committee will ultimately make the final decision as to how to manage a potential conflict between the Parties. For example, the Investment Committee may determine whether a joint bid is made by the Parties for the acquisition of an asset, whether either Party is permitted to individually pursue the full acquisition of an asset, the bid price(s), the ownership structure of any joint bid (including the ownership interests) and any other material matters.
- 4.6 Each Party may refer a matter to the Investment Committee for resolution where there is a potential conflict. The Parties may make recommendations to the Investment Committee and the Investment Committee may also hear submissions for each Party.
- 4.7 In making its decision the Investment Committee should be guided by the guidelines set out in section 5 of this policy.

### **Party Representatives**

- 4.8 As there is likely to be overlap between the Boards or the staff used by the Vital Manager, the NorthWest Trustee and / or the Generation Manager, each Party Representative will specifically represent the interests of its Party.
- 4.9 A Party Representative may be required to:
- (a) assess, advance and protect the interests and position of the Party that it represents;
  - (b) make recommendations in respect of that Party's position to the appropriate decision maker (as determined in accordance with NorthWest Group's delegated authorities) and with reference to the strategic plan for the relevant portfolio; or
  - (c) make submissions to the Investment Committee in respect of that Party's position in relation to the relevant transaction or matter being considered by the Investment Committee.

- 4.10 The Board of each Party, a Party Representative and the Investment Committee will have access to the full resources of the NorthWest Group and may seek external advice or support if appropriate in relation to potential conflicts of interest if it is reasonable and necessary to do so.

### **Property services and support services**

- 4.11 NorthWest Group will provide property management services and other support services to the Parties such as:

- (a) asset and development management;
- (b) finance and administration; and
- (c) company secretariat, legal and compliance.

- 4.12 In these areas, the need for specialist advice may mean that the same individual is involved in providing advice or assistance to both Parties. In such cases, the individual concerned must:

- (a) behave in a fair, balanced and non-partisan manner to both Parties;
- (b) use commercially reasonable efforts to maintain the confidentiality of a Party's information at all times; and
- (c) immediately advise the Investment Committee that they are providing advice or services to more than one Party in the event that an actual or perceived conflict arises. It is for the Investment Committee to then decide whether they wish for that individual to continue to provide services in relation to that particular matter.

### **Related party transactions**

- 4.13 Any transactions between Vital and a NorthWest Group entity, including Generation (**Related Party Transactions**) would give rise to a perceived conflict of interest and potentially to actual conflict. The relevant transaction may involve the transfer of interests in land, the provision of services or the leasing of premises.
- 4.14 Related Party Transactions would require the approval of the Board of the relevant trustee (including responsible entity) and / or manager (as applicable) of the Party to that transaction and of the other NorthWest Group entity (depending on delegated authorities), as well as any approvals required by law. Executive Directors on any Board should consider whether they will abstain from voting on any Related Party Transactions that require Board approval. Consideration may need to be given in particular circumstances as to whether Executive Directors should not only abstain from voting on Related Party Transactions, but should also absent themselves from the board discussion of such matters.

---

## **5. Guidelines**

### **Guidelines for specific transactions**

- 5.1 Set out below are guidelines for avoiding (where commercially reasonable) and otherwise managing potential conflicts in the context of transactions where such potential conflicts are most likely to arise.

#### **Leasing**

- 5.2 Each Party will act independently on leasing activities within the parameters of strategic and asset plans for its portfolio.
- 5.3 Where a property manager is responsible for a number of properties located in a particular geography that might be owned by the Parties and each of those properties are competing against each other for

a certain tenant requirement, the property manager must provide notice of this conflict to the Parties. The way in which this potential conflict is managed will depend on all relevant circumstances, including the size of the lease, the likelihood of one asset being the preferred choice of the tenant and whether a Party has a strategic or significant relationship with the tenant. However, competing proposals may be referred by either Party to the Investment Committee for resolution where appropriate.

### **No poaching of tenants**

- 5.4 No Party will persuade, or attempt to persuade, a tenant of another Party to leave its premises unless that tenant is actively pursuing alternative space in the marketplace. To assist tenants in assessing requirements and alternatives, a Party may, at its discretion, seek assistance from other areas of NorthWest Group.

### **Asset sales**

- 5.5 Each Party will be responsible for the sale of assets of their portfolio. External selling agents may be appointed to assist in the sale process.
- 5.6 A Party may pursue the acquisition of an asset being sold by the other Party.

### **Related party off-market transactions**

- 5.7 Subject to the duty to act in the best interests of its stakeholders, a Party may decide to offer an asset to the other Party or another NorthWest Group entity through an off-market transaction rather than make a general offer to the market. Such transactions should be managed in accordance with paragraphs 4.13 and 4.14 of this policy. In addition, in relation to Related Party Transactions involving the off-market sale of an asset by a Party, the following process will be adopted:
- (a) the vendor Party and the purchaser Party or other NorthWest Group entity will agree a price on which they are prepared to deal (**Agreed Price**);
  - (b) each party involved in the transaction must obtain an independent valuation of the asset the subject of the sale; and
  - (c) if the independent valuation of the purchaser Party supports the Agreed Price the transaction can proceed (subject to Board approval) at the Agreed Price. For the purposes of this paragraph the independent valuation of the purchaser Party where the independent valuation is greater than or equal to the Agreed Price.

### **Acquisition and development opportunities**

- 5.8 Each Party has the right to pursue the acquisition of any asset which meets the investment objectives of its portfolio. Each Party also has equal rights of acquisition of each opportunity identified or obtained by the NorthWest Group. Naturally, potential acquisitions need to be assessed by reference to the strategic plan or investment strategy for the relevant Party.
- 5.9 When investment opportunities are identified by the NorthWest Group a preliminary investment proposal must be prepared by the person identifying or proposing the opportunity. The proposal must include sufficient detail about the asset to enable the relevant Party to decide whether or not to pursue the opportunity. An opportunity to acquire an asset includes an opportunity to acquire a co-ownership interest or to undertake a development.
- 5.10 Preliminary investment proposals for all investment opportunities will be presented for consideration to each Party and the Investment Committee.

- 5.11 After receiving the preliminary investment proposal each Party must promptly advise the Investment Committee if they wish to pursue the acquisition of that asset. If both Parties wish to proceed then the asset can be pursued on one of the following bases:
- (a) A joint bid to acquire the asset by the Parties, with the proportionate ownership of each Party and key commercial terms governing their post-acquisition relationship (both as co-owners and as a provider of any relevant services) being agreed prior to the acquisition. The proportionate ownership of each Party to a joint bid asset will be equal, unless otherwise agreed by the Parties or mandated by the Investment Committee. The principles outlined in this policy will apply to any negotiations between the Parties regarding either their percentage interests or their post-acquisition relationship.
  - (b) The Parties are encouraged to bid jointly as set out above to provide the best possible opportunity of a successful outcome for the Parties. However, if the Parties cannot agree on a joint bid or it is commercially reasonable for one of the Parties to pursue the full acquisition of the relevant asset independently (as determined by the Investment Committee), the Investment Committee may permit one of the Parties to pursue the full acquisition of the relevant asset independently.
  - (c) In making a determination that it is commercially reasonable for only one Party to pursue an opportunity, the Investment Committee may give consideration to the following:
    - (i) Whether a Party has a strategic or significant relationship with the operator, tenant(s), developer or owner of the property.
    - (ii) Where the opportunity involves properties adjoining a property already owned by a Party (in which case the relevant Party will generally be the only Party entitled to pursue the acquisition of the relevant asset and / or development on an independent basis).
    - (iii) The jurisdiction in which the property is located and what presence the Party has in that jurisdiction.
    - (iv) Situations where an owner will not transact with an individual Party, whereby it will be excluded from participating.
  - (d) Appropriate confidentiality, commercial discipline, professionalism and courtesy must be maintained by the Parties at all times.
- 5.12 The Parties will be responsible for the due diligence process. The costs of due diligence shall be borne by the Party which pursues the opportunity, or if the Parties pursue the opportunity jointly, in agreed proportions which should generally be the same as the proportions in which they will own the asset if they are successful in acquiring the asset.
- 5.13 In the exceptional circumstance where both Parties are independently pursuing an investment opportunity, the following procedures will apply:
- (a) The Investment Committee (or its delegate) will oversee the arrangements and procedures in relation to the bidding process to ensure that there is sufficient separation of teams and that the Parties participating in the process have access to sufficient dedicated resources to participate in the process.
  - (b) Where NorthWest Group personnel are providing assistance to both Parties in respect of an investment opportunity, such personnel must:
    - (i) ensure that the Party Representatives are fully informed;
    - (ii) disclose to both Parties that they are doing so; and

- (iii) ensure that any confidential or commercially sensitive information of one Party is not disclosed to the other Party (without consent).
  - (c) The Parties may request dedicated internal resources or seek external advice (to the extent necessary) where NorthWest Group personnel are assisting both Parties.
- 5.14 The process set out in paragraphs 5.8 to 5.13 above does not apply to the following:
- (a) M&A activity involving a listed entity or an operating business;
  - (b) properties forming part of an asset swap transaction; and
  - (c) sales by a Party.

## **Confidentiality**

- 5.15 The Investment Committee (or its delegate) may put in place confidentiality protocols if it considers it appropriate in the circumstances.
- 

## **6. Policy implementation and monitoring**

- 6.1 The NorthWest General Counsel (or their designee) is responsible for ensuring that all senior managers are aware of, and have access to, this policy.
- 6.2 It is the responsibility of all staff, including senior managers, to familiarise themselves with the requirements of this policy. If any members of staff have any questions or require further information about this policy they should contact the NorthWest General Counsel (or their designee).
- 

## **7. Periodic review**

- 7.1 This policy will be reviewed by NorthWest as may be required and any changes to the policy will be notified to NorthWest Australia and each trustee (including responsible entity) and manager of a Party.
- 

## **8. Questions**

- 8.1 Please contact the NorthWest General Counsel (or their designee) should you have any questions.