



**In the matter of General Property Trust
[2004] ATP 30**

Catchwords:

bidder's statement, scrip bid, offer price, time for pricing bidder and target securities, Net Tangible Assets, value of distributions, efficient market, Listed Property Trust

Corporations Act 2001 (Cth) sections 602, 621(3), 657A, 201A

Takeovers Panel Guidance Note 1 – 'Unacceptable Circumstances'

Takeovers Panel Guidance Note 16 – 'Correction of Takeover Documents'

These are the Panel's reasons for concluding proceedings without making a declaration of unacceptable circumstances and orders concerning the affairs of General Property Trust. The Panel accepted an undertaking from Stockland Trust to send a supplementary bidder's statement with Stockland's bidder's statement, in a form approved by the Panel, which addressed the Panel's concerns. Stockland's bid for all of the units of GPT offered Stockland securities as consideration. The Panel was concerned about the date selected by Stockland to value the securities it was offering as consideration and the date Stockland selected to value GPT units when discussing the value of its bid and comparing that value to the value of GPT units.

SUMMARY

1. These reasons relate to an application (**Application**) to the Panel from GPT Management Limited as responsible entity of General Property Trust (**GPT**¹) dated 3 December 2004² alleging unacceptable circumstances in relation to the off-market takeover bid by Stockland Trust Management Limited as the responsible entity for Stockland Trust (**Stockland**³) for all the ordinary units in GPT.
2. The Panel accepted an undertaking from Stockland to send a supplementary bidder's statement with Stockland's original bidder's statement⁴, in a form approved by the Panel, which addressed the Panel's concerns in relation to:
 - (a) basing comparisons within Stockland's bidder's statement on the price of Stockland securities immediately before Stockland's announcement of its takeover offer (i.e. 5 November 2004, almost 3 weeks prior to lodging its bidder's statement), rather than the most recent price;
 - (b) basing comparisons within Stockland's bidder's statement only on the price of GPT securities immediately before the announcement of a proposal made by Lend Lease Corporation Limited (LLC) to merge with GPT by way of linked

¹ Unless otherwise stated the Panel refers collectively to both GPT Management Limited and General Property Trust as GPT.

² Unless otherwise specified, all dates relate to 2004.

³ Unless otherwise stated the Panel refers collectively to both Stockland Trust Management Limited and Stockland Trust as Stockland.

⁴ Stockland's bidder's statement was dated 24 November.

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schemes of arrangement⁵ (**Lend Lease Proposal**): (i.e. 24 May 2004, more than six months prior to lodging its bidder's statement), rather than on the most recent price; and

- (c) disclosing the effect of the Stockland offer on the notional Net Tangible Asset (**NTA**) backing of GPT securities in the merged entity.
3. The Panel declined GPT's request that Stockland adjust its "offer value" to reflect the expected Stockland distribution in December which GPT security holders will not receive, but the Panel required Stockland to explain why it considered that it was not appropriate to make such an adjustment.
4. Based on the undertaking provided by Stockland, the Panel concluded the proceedings on the basis that it was not necessary to make a declaration of unacceptable circumstances and that no order was required.

THE PANEL & PROCESS

5. The President of the Panel appointed Norman O'Bryan (sitting President), Mark Paganin (sitting Deputy President) and Marian Micalizzi as the sitting Panel (the **Panel**) for the proceedings arising from the Application (**Proceedings**).
6. The Panel adopted the Panel's published procedural rules for the purposes of the Proceedings.
7. GPT and Stockland appeared in the Proceedings. The Panel consented to the parties being legally represented by their commercial lawyers in the Proceedings.
8. The Panel decided to commence proceedings in relation to the Application, and, under Regulation 21 of the Australian Securities and Investments Commission Regulations 2001 (Cth), issued a brief to parties on Friday 3 December.
9. Following the receipt of submissions and rebuttals, the Panel wrote to parties again on 8 December setting out the Panel's preliminary view that unacceptable circumstances existed in relation to the Stockland bidder's statement, setting out the Panel's reasons for reaching that view, and various orders that the Panel was considering making. The Panel asked Stockland to offer an undertaking which would remedy the unacceptable circumstances identified by the Panel. Stockland responded on 8 December with an offer of undertakings which adequately addressed the Panel's concerns. The Panel and Stockland then discussed the form of the supplementary bidder's statement which Stockland would issue to remedy the unacceptable circumstances. The Panel gave GPT an opportunity to provide comments on the supplementary bidder's statement. The Panel concluded its proceedings on 9 December.

APPLICATION

10. In its application, GPT raised concerns regarding the following statements in, and omissions from, Stockland's bidder's statement:

⁵ The merger was proposed to be achieved by way of a company scheme of arrangement between LLC and its members, and a "Trust Scheme" approved by GPT unitholders.

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- (a) Stockland adopted an “Offer Value” throughout its bidder’s statement of \$3.65 per GPT unit, based on the five trading day volume weighted average price (VWAP) of Stockland securities to 5 November of \$6.00. This was more than a month prior to the intended dispatch of Stockland's bidder's statement.
- (b) Stockland's bidder's statement did not make any adjustment to the “Offer Value” to take account of the anticipated Stockland December distribution which, under the terms of the offer, accepting GPT unitholders would not receive.
- (c) Stockland's bidder's statement claimed that the “Offer Value”, which was calculated using Stockland securities prices as at 5 November, represented a 20% premium to the GPT unit price, based on the three month GPT VWAP prior to the announcement by LLC of the initial Lend Lease Proposal: i.e. 19 May.
- (d) Stockland's bidder's statement represented that the Stockland offer was at a premium to the NTA backing of GPT units. However, it did not include a clear analysis of the effect of the bid on NTA backing per equivalent GPT unit in the merged entity.
- (e) Stockland's bidder's statement included three bar chart graphs illustrating compound annual growth rate (CAGR) calculations for three previous acquisitions by Stockland, which represented the returns to target security holders if they had held securities in the target and received Stockland securities (i.e. the graphs included the control premiums paid to the target security holders within the growth rates).

Interim orders and the dispatch of Stockland's bidder's statement

- 11. In its application, GPT sought an interim order restraining the dispatch of Stockland's bidder's statement in its current form, or until the conclusion of the Panel's proceedings.
- 12. Following receipt of the Application, the Panel accepted an undertaking from Stockland that it would not dispatch its bidder’s statement before 9 December. The Panel considered that this undertaking gave a reasonable opportunity for a final decision to be made in the Proceedings without the need for interim orders. In the event, agreement on the replacement pages of Stockland's bidder's statement was not able to be reached until 9 December and Stockland gave a further undertaking not to dispatch prior to 13 December, by which time the supplementary bidder’s statement would be printed.

Background

The Lend Lease Proposal

- 13. Before Stockland announced its proposed bid for GPT on 8 November, GPT and LLC had announced the Lend Lease Proposal. GPT had advised its unitholders on 6 August that it recommended the Lend Lease Proposal, in the absence of a higher offer, and had called a meeting of GPT unitholders for 17 November.

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14. LLC had first announced the Lend Lease Proposal on 24 May. Immediately following the announcement by LLC, the market price of GPT units rose approximately 15% from \$3.00 to \$3.45.
15. The meeting of GPT unitholders held on 17 November to approve the Lend Lease Proposal failed to achieve the required 75% of units present and voting to enable the merger to proceed and the proposal lapsed.
16. At the time of Stockland's announcement and the subsequent lodging of its bidder's statement, the market price of GPT units was \$3.73 and \$3.64 respectively i.e. it had not fallen back by the amount it had risen following announcement of the Lend Lease Proposal.

The Stockland bidder's statement

17. Stockland's bid offered 0.608 of Stockland's stapled securities (essentially a unit in Stockland Trust and a share in Stockland Corporation Ltd "stapled" together to form one tradeable security) for each GPT unit. Stockland lodged its bidder's statement with ASIC and GPT on **24 November** and intended to dispatch its bidder's statement and offers on **9 December**.
18. Between 30 November and 3 December the solicitors for GPT and Stockland corresponded about several concerns expressed by GPT in relation to the Stockland bidder's statement. The parties managed to resolve a number of issues between them but the issues which gave rise to these Proceedings remained in dispute. Stockland maintained to GPT that they were all issues which GPT could address in its target's statement.
19. As described in paragraph 10 above, the Overview section at the front of Stockland's bidder's statement:
 - (a) used the five day VWAP of Stockland securities leading up to 5 November (**5 November Price**) i.e. the trading period before the announcement by Stockland of its bid on 8 November, as the price for its securities in the valuation of its bid and comparisons with GPT securities;
 - (b) did not "discount" the value of the Stockland offer for Stockland's expected December dividend distribution (which GPT unitholders who accepted the Stockland offer would not receive and which broker estimates put at around \$0.19 per Stockland security);
 - (c) represented that Stockland's offer provided a significant premium to the market price of GPT units (based on the 3 month VWAP to 19 May) (**Price Premium**);
 - (d) represented that Stockland's offer provided a significant premium to the NTA backing of GPT units (based on the 30 June 2004 NTA backing of GPT units) (**NTA Premium**); and
 - (e) included three bar chart graphs illustrating CAGR calculations for three previous acquisitions by Stockland, which represented the returns to target security holders if they had held securities in the target and received Stockland securities (i.e. the graphs included the control premiums paid to the target security holders within the growth rates).

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20. In the Overview section Stockland also presented a number of bar charts and graphs supporting these and other representations, including:
 - (a) a bar chart setting out the comparisons in paragraph 20(a) to (d) above (**Premium Bar Chart**)⁶;
 - (b) a price-line-graph showing the market price of GPT units over time against the value of the Stockland offer (using the Stockland 5 November VWAP set out in paragraph 19(a) above) (**Price Graph**); and
 - (c) a bar chart setting out the CAGRs which target security holders would have gained if they had acquired Stockland securities under three takeover bids by Stockland for listed property trusts (**LPT**), and held those securities until 5 November (**CAGR Chart**).
21. GPT's complaints related to the matters set out in paragraph 19 above, and the graphical representations of those matters in the Bidder's Statement, as set out in sub-paragraphs 20(a), (b) and (c) above.
22. While the Overview section of Stockland bidder's statement made a claim that its offer represented a premium over the NTA backing of GPT units, and presented its merger as providing the highest such premium of a range of mergers, it did not provide any information on the NTA backing of Stockland securities, the premium (or discount) to NTA backing at which Stockland securities traded, or the effect of the merger on the NTA backing of a notional GPT unit in the merged entity (**Post-Merger GPT NTA**).
23. The Stockland bidder's statement did make it clear that the price of Stockland's securities was likely to vary during the offer period and therefore the imputed price being offered for each GPT unit would vary. To assist GPT unitholders, Stockland included a chart setting out the imputed price being offered per GPT unit for each of a range of different Stockland security prices. The Price Graph also showed that GPT units had traded at levels above the value of the Stockland offer based on the 5 November VWAP of Stockland securities.

PARTIES' SUBMISSIONS

5 November Price

24. GPT submitted that Stockland should use the most recent practicable price for Stockland securities in its bidder's statement, especially in the "headline" figures that it used in its bidder's statement and in comparisons, notwithstanding that Stockland's bidder's statement indicated that the actual value of the offer depended upon the value of Stockland Securities from time to time.
25. GPT pointed out that Stockland had announced its takeover bid on 8 November, that Stockland did not give its bidder's statement to GPT until 24 November (16 days later) and did not propose to dispatch its bidder's statement and offers until 9 December at the earliest (31 days after the Stockland announcement).

⁶ GPT also highlighted the NTA Premium of GPT's offer, in comparison to other transactions involving listed property trusts, in another bar chart in the Overview section.

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26. GPT noted that the Stockland securities had traded significantly below the 5 November VWAP since Stockland's announcement (although at times the Stockland market price had also been higher than the 5 November VWAP) and submitted that therefore the price which Stockland gave as the value of its securities was false and misleading at the time that Stockland gave its bidder's statement to GPT and would likely be so at the time Stockland sent its bidder's statement and offers to GPT unitholders.
27. GPT submitted that, had Stockland used the most recent VWAP prior to printing of its bidder's statement, the price would have been \$3.55 per GPT unit rather than the \$3.65 cited in Stockland's bidder's statement.
28. GPT noted that it was not asking for Stockland to issue a supplementary bidder's statement due to changes in the price of Stockland's securities after the bidder's statement had been dispatched. Rather it only sought that the bidder's statement have a price as close as practically possible to the price which was current at the date on which the bidder's statement was dispatched.
29. Stockland submitted that the market price of its securities at the time of the Proceedings i.e. immediately prior to when Stockland was proposing to dispatch the Bidder's Statement, was very close to the 5 November VWAP, and that therefore the Bidder's Statement was not misleading in using the 5 November VWAP. Stockland also submitted that the Bidder's Statement disclosed the basis of calculating all of the prices and values used in the Bidder's Statement.
30. Stockland submitted that its bidder's statement made it clear that the imputed offer value would vary with the market price of Stockland securities. On that basis, it submitted, any particular snap shot of its security price was potentially misleading. It submitted that of all snap shots, the most sensible was the price immediately before the market price of its securities was disturbed by the fact of Stockland announcing the takeover bid for GPT. Stockland submitted that this was market practice for takeover bids in the LPT sector.

Distribution discount

31. GPT submitted that Stockland's security price had an amount "built in" to it representing investors' expectations of receiving the December dividend distribution and that Stockland's security price would fall after the distribution was paid in December. GPT submitted that it was therefore misleading for Stockland to represent that the current market value of Stockland securities (which included the distribution expectation) represented the value which GPT unitholders would receive.
32. GPT submitted that historically Stockland's security price fell immediately after the ex-date for each distribution and that Stockland should discount the value which it represented GPT unitholders would receive by some amount related to the expected December dividend distribution. GPT also submitted that Stockland had made such an adjustment to its bid value in its last takeover bid for an LPT.

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33. GPT provided evidence that on the day immediately after the date of Stockland distributions in the past, the market price of Stockland securities had decreased, on average, by \$0.18⁷. However, Stockland submitted that the market price of its securities recovered quickly, and provided evidence over several distributions that, if looked at 30 days after the distribution, there was no discernable pattern of increase or decrease.
34. Stockland submitted that because the earliest it appeared likely that accepting GPT unitholders would be receiving their Stockland securities was 23 January 2005, the 30 day period was more appropriate for assessing the effect of a distribution on the market price of Stockland securities than the days immediately after the distribution as suggested by GPT.
35. Stockland also submitted that the date from which GPT unitholders would be eligible to receive Stockland distributions was disclosed in the bidder's statement. Stockland submitted that GPT unitholders who accepted would receive distributions on their securities for continuous periods without a break or double dip⁸, and that whilst breaks or double-dips in security entitlement periods were reasons for making adjustments, no such reason was present in this case.

Price Premium

36. Because Stockland used the VWAP for the three months leading up to the announcement of the Lend Lease Proposal, i.e. the three months leading up to 19 May, GPT submitted that the following matters in Stockland's bidder's statement in relation to the Price Premium were misleading:
 - (a) the bidder's statement failed to make clear that the prices used for the price comparison were taken from dates almost six months apart;
 - (b) Stockland's choice of price for GPT units, which generated the 20% "premium" claimed in Stockland's headline comparison between the price of GPT and Stockland securities; and
 - (c) the use of a price range from between seven and ten months before the day the offers were to be dispatched.
37. GPT submitted these matters were misleading even though GPT unitholders could look up current prices in newspapers or online when they received the offers.
38. GPT noted in particular that the LPT sector of the ASX market (excluding GPT) had risen by approximately 12.4% between 19 May and 24 November and any premium which Stockland represented that its bid offered to GPT unitholders should be reduced by at least such a margin. GPT submitted that Stockland itself had included comparisons of its offer price against target security prices immediately before the lodgement of its bidder's statements in previous takeover bids Stockland had made.

⁷ The average distribution was \$0.165

⁸ GPT unitholders who accepted the Stockland offer would be entitled to receive and retain the GPT December quarterly distribution and would become entitled to receive and retain the distribution on their new Stockland securities for the period commencing 1 January 2005 i.e. there was no break in entitlement periods, nor any overlap.

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39. Stockland submitted that it would be misleading to use, as the comparison price of GPT securities, a price which had been inflated by the unsuccessful Lend Lease Proposal. Stockland repeated its submission that its bidder's statement disclosed the basis for calculating the GPT security price used in the comparison and that GPT unitholders could look up the current price of GPT securities at any time throughout the takeover bid.
40. Stockland also submitted that GPT had similarly used the 19 May price of GPT units in its notice of meeting for the Lend Lease Proposal which was given to GPT unitholders after 15 October.

NTA Premium

41. GPT submitted that the NTA backing of an LPT security is a key factor for securityholders to consider in assessing the value of a takeover bid in relation to such securities. Accordingly, Stockland should present transparently and accurately for GPT unitholders the impact of its offer, if successful, on equivalent GPT NTA backing. GPT submitted that if Stockland's offer was successful and Stockland acquired 100% of the units of GPT, NTA backing per equivalent GPT unit would be reduced from \$2.74 to \$2.50.
42. Stockland submitted that there was information available in its bidder's statement and elsewhere which GPT unitholders could find and use to calculate the effect of the bid on the Post-Merger GPT NTA. Stockland also submitted that it was more important for unitholders to look at the earnings and distribution growth prospects of the merged entity rather than NTA figures.

Success in integrating acquisitions

43. Stockland included three bar charts in its bidder's statement illustrating CAGR calculations for three previous acquisitions by Stockland. The bar charts were in the Overview section under a heading "Success in Integrating Acquisitions and Executing a Growth Strategy". The bar charts represented the returns which security holders in each of three target LPTs would have received if they had held securities in the target and then held the Stockland securities they received as bid consideration until the 5 November announcement of Stockland's takeover bid for GPT.
44. GPT submitted that these bar charts were misleading because they included the takeover premiums paid to the target security holders in those transactions. GPT submitted that the returns should be calculated by taking the price of the target securities after the announcement of Stockland's takeover bids, not the pre-bid price.
45. GPT submitted that the bar charts misrepresented Stockland's success at managing and integrating acquisitions, because a large component of the improvement that the bar charts showed was actually the takeover premium which Stockland had offered to the target security holders to acquire the targets rather than any measure of Stockland's management capabilities. GPT compared the ex-takeover premium CAGRs with the LPT Accumulation Index CAGR to show that Stockland had actually underperformed the index in some of the acquisitions.

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46. Stockland responded that the bases of its calculations were clearly shown next to the graphs and GPT could provide its own interpretation or graphs in its target's statement if it wished.

Retail investors

47. GPT submitted that the Panel should ensure that Stockland's bidder's statement was clear and not confusing because a large percentage of GPT's unitholders (over 80%) were not sophisticated investors and should be given clear information which was not likely to mislead or confuse them. GPT submitted that retail investors should not be required to seek out information and do arithmetical calculations to derive important values in relation to the Stockland offer.
48. GPT also submitted that as it had a high proportion of retail investors it was more important to dispatch a complying bidder's statement, rather than relying on later corrective statements or argument in the target's statement.
49. The Panel noted GPT's and Stockland's submissions and took them into account when considering the issues before it.

DISCUSSION

Stockland "Offer Value" – 5 November Price

50. The Panel considered that it would constitute unacceptable circumstances for Stockland to describe, in its bidder's statement, the value of its offer based **solely** on the VWAP of Stockland securities for the period ending 5 November when its Bidder's Statement was to be dispatched on or after 9 December. The Panel noted that the market price of Stockland securities at the time of its determination was not materially different to the 5 November Price, but considered this to be fortuitous and not a basis for saying that unacceptable circumstances did not exist.
51. The Panel required Stockland to base the value of its offer also on the most recent VWAP value of the Stockland securities being offered (meaning, practically, the VWAP for the five trading days prior to the last day on which Stockland could make changes before its printers actually commenced printing its bidder's statement) rather than **only** on the 5 November Price.
52. The Panel noted Stockland's submission that the most appropriate price of its securities for assessing the value of its offer was the VWAP of its securities immediately prior to the announcement of Stockland's offer for GPT. The Panel agreed that such a price may be relevant and useful for GPT unitholders. However, the Panel considered that a material period of time had elapsed between 5 November and the expected date of dispatch of the Stockland offers.
53. The Panel considered that the lapse of that period of time made the 5 November Price no longer appropriate to be used as the **sole** indicator of the value of the Stockland offer in Stockland's bidder's statement. In the absence of any clear material updating unitholders regarding the Stockland VWAP since that period, use of the 5 November Price was misleading and constituted unacceptable circumstances.

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54. The Panel considered that Stockland's bidder's statement should have included, clearly and prominently, the most recent value which Stockland could practically include in its bidder's statement.
55. The Panel required Stockland to state, in a supplementary bidder's statement, the most recent market value of Stockland's securities, and to amend the statements and comparisons that were in Stockland's original bidder's statement so that they referred to the most recent price of Stockland securities.

Price Premium

56. Frequently a bidder will compare the value of its offer to the price of the target's securities prior to the announcement of its bid. The rationale for this is that the alternatives before the securityholders are to accept the takeover bid or to continue their investment in the target after the takeover bid has concluded. If the bid is unsuccessful, then the market price of the target securities is likely (other things being equal) to fall back to its pre-bid level, and that is the alternative to which the bid should be compared.
57. The Panel recognised that this reasoning has merit and may provide useful additional information to target security holders. However, the Panel considered that it is normal and appropriate market practice in scrip takeover offers for the bidder to include in its bidder's statement a comparison of the most recent practicable market values of the target's securities and the bidder's securities, even if bidders wish to make the pre-announcement comparison as well.
58. The Panel noted Stockland's view that the most appropriate price of GPT units to compare against Stockland's offer was the price prior to the announcement of the Lend Lease Proposal. The Panel also noted that the market price of GPT units has been influenced by takeover speculation and activity since the announcement of the Lend Lease Proposal. On this basis, the Panel accepted that Stockland had a rational basis for using the 19 May VWAP for GPT units in the comparative pricing disclosure.
59. However, the Panel considered it unacceptable for the Price Premium comparison in Stockland's bidder's statement to refer **only** to the VWAP of GPT units at 19 May. The Panel considered that a material period of time had elapsed since 19 May. Further, there had been too many material changes and too much market activity in the LPT sector (and in other sectors of the market and the wider economy) in the intervening six month period for the 19 May price to be the sole relevant figure, without a current price comparison.
60. The Panel considered that the statement that the Stockland offer represented a 20% premium to the 19 May VWAP of GPT units (and its graphical presentation) in Stockland's bidder's statement (i.e., using a value of GPT units for a comparison that was more than six months old at the date of dispatch of Stockland's bidder's statement), in the absence of any clear material updating unitholders regarding the GPT VWAP since that period, was misleading and constituted unacceptable circumstances.
61. The Panel noted Stockland's submission that GPT itself had used a GPT unit 19 May VWAP to compare against the premium offered under the Lend Lease Proposal in its

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15 October notice of meeting for the Lend Lease Proposal. However, **immediately** below, and included under the same section heading, the GPT notice of meeting also gave the most recent practically available price of GPT units and noted that GPT units had consistently traded above the offer price under the Lend Lease Proposal since the announcement of the proposal.

62. The Panel required Stockland to amend, in a supplementary bidder's statement, the statement and the graphical representations that were in Stockland's original bidder's statement so that they compared the most recent price of Stockland securities against a similarly calculated price for GPT units presented in an equally prominent manner and revise the headings for the relevant sections accordingly.

Stockland December distribution

63. The Panel accepted the submissions from Stockland that there appeared to be no consistent pattern of price movement of Stockland securities one month after the books closing date for entitlements to Stockland distributions. Given the evidence which Stockland produced, the Panel considered that there was no basis for requiring Stockland to adjust the "Offer Value" specified in Stockland's bidder's statement to take account of any expected December distribution by Stockland.
64. However, the Panel did not consider that the statement in the Chairman's letter that by accepting Stockland's offer GPT unitholders would be "entitled to receive distributions on your Stockland Securities accruing for periods commencing on 1 January 2005", and a proviso to the definition of "Offer Value" in the definitions section on page 115 of Stockland's bidder's statement, was adequate information or explanation to GPT unitholders concerning this issue.
65. Having regard to current market practice and the nature of an LPT's distributions, the Panel required Stockland, in the supplementary bidder's statement, to:
 - (a) state clearly that the imputed "Offer Value" did not take into account, or make any adjustment for, the expected December distribution of \$0.19 per Stockland security; and
 - (b) explain clearly why Stockland considered it inappropriate to make any adjustment to the "Offer Value" for the expected Stockland distribution.
66. The Panel considered that it remained open to GPT to raise in its target's statement the argument that the value of the Stockland offer should be discounted to some extent for the value of the December dividend distribution.
67. However, the Panel considered that provided Stockland clearly disclosed its approach to the distribution issue, and explained why it considered it appropriate to do so, the merits of making an adjustment or not in this case could be assessed by the market. Therefore, the Panel considered that the issue was appropriate for argument and discussion in communications to target security holders from bidder and target, rather than the Panel determining which was the preferred approach.

Effect on NTA

68. NTA backing is considered a material feature and value measure for LPT securities. On that basis, the Panel considered that it would be consistent with market practice

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for Stockland to disclose, in an appropriately prominent position, a comparison of the NTA backing of GPT securities (using the most recent value publicly available) with the notional NTA backing per GPT security for the merged entity if the Stockland offer was successful. For example, the GPT notice of meeting for the Lend Lease Proposal raised a reduction of NTA backing as a specific sub-heading under the “Potential Disadvantages” section of the notice of meeting. The notice gave the pre, and expected post, Lend Lease Proposal NTA backing per unit.

69. Stockland submitted that information regarding the NTA backing per Stockland security after the proposed merger of GPT and Stockland was contained in a Stockland investor presentation released to ASX on 8 November 2004. Similarly, Stockland submitted that the projected NTA of the merged entity, and hence the notional NTA per GPT security, could be calculated using information in section 6 (at page 66) of Stockland's bidder's statement.
70. Given market practice, and the importance of NTA backing in the LPT sector, the Panel did not consider this to be adequate disclosure.
71. The Panel considered that unitholders should not be required to search out and calculate information in relation to a material valuation criterion for LPT securities when it was readily available to Stockland and plainly material.
72. The Panel also noted the fact that Stockland had prominently compared the value of its offer to the NTA of GPT securities in at least three separate places in its bidder's statement. The Panel considered that this increased the onus on Stockland to disclose the effect of its offer on the notional NTA backing of GPT securities.
73. The Panel required Stockland to insert a clear analysis of the NTA issue in an appropriately prominent position in the supplementary bidder's statement.

CAGR calculations

74. The Panel did not consider the presentation in Stockland's bidder's statement concerning Stockland's claims as to “Success in integrating acquisitions and executing a growth strategy” to be misleading. The basis for calculating the percentage CAGR increases set out in the three tables discussed in the application was adequately disclosed.
75. The Panel did not accept GPT's submissions that non-takeover-premium CAGRs ought to be disclosed instead or as well. GPT has the opportunity to make its own comments in its target's statement as to its preferred methodology for calculating CAGRs, its reasons for preferring that methodology and its reasons for disagreeing with Stockland's methodology.

DECISION

Interim Orders

76. Given the undertakings provided by Stockland in relation to the dispatch of its bidder's statement, the Panel determined that no interim order was required.

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Declaration

77. On 8 December, the Panel wrote to parties advising them of its views in relation to the above issues and stating that it was minded to make a declaration of unacceptable circumstances and final orders to remedy the unacceptable circumstances it had identified.
78. However, the Panel advised that it was prepared to consider an undertaking by Stockland to correct its Bidder's Statement to remedy the unacceptable circumstances.

Form of corrective statements

79. The Panel's preferred approach regarding the correction of the identified mis-statements and omissions was to have a replacement bidder's statement prepared, incorporating the amended and new information, for dispatch to GPT unitholders.
80. However, in order to mitigate any unnecessary cost or delay, the Panel was prepared to consider having the additional and corrective disclosure contained in a supplementary bidder's statement to be dispatched with the existing Bidder's Statement. The Panel was only prepared to accept corrective disclosure in this form on the following bases:
 - (a) the supplementary bidder's statement contained statements consistent with those required under the Panel's *Guidance Note 16: Correction of Takeover Documents*;
 - (b) as the additional and corrective disclosure was to replace existing misleading disclosure on pages 6 and 7 of Stockland's bidder's statement, the Panel required the supplementary bidder's statement be as close as possible in form to those relevant pages of Stockland's bidder's statement which were to be disregarded and clearly state that unitholders should disregard those pages in Stockland's bidder's statement; and
 - (c) the supplementary bidder's statement was placed ahead of Stockland's bidder's statement in the package of material provided to GPT unitholders, so that unitholders were more likely to read and consider this material.
81. Stockland accepted the Panel's requirements and provided a draft supplementary bidder's statement correcting the identified mis-statements and omissions for the Panel's review. GPT was given an opportunity to make submissions regarding the draft supplementary bidder's statement.
82. While the Panel took the issue of cost and delay of reprinting Stockland's bidder's statement into account in deciding to accept a supplementary bidder's statement, the issue of cost played a relatively small part in the Panel's consideration. This was because Stockland had chosen to commence printing its bidder's statement while there were clearly issues outstanding in the discussions between GPT and Stockland over the content of Stockland's bidder's statement, while there were no statutory or other deadlines imminent, and while GPT had clearly foreshadowed that it was considering making an application to the Takeovers Panel if the issues were not resolved within a very short period.

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Date of bidder's statement

83. Stockland noted in its discussions with the Panel that it had printed its bidder's statement with a date of offer being 9 December. Stockland submitted that the Panel should not require the supplementary bidder's statement to be printed in colour or be identical in form and appearance to the pages of the bidder's statement that they were replacing because the time to print the supplementary bidder's statement would delay dispatch of Stockland's offers and bidder's statement beyond 9 December.
84. The Panel did not accept Stockland's submissions. It considered that printing the supplementary bidder's statement in black and white on plain stock paper (compared to full colour glossy paper in the Stockland bidder's statement) would risk losing the attention of GPT unitholders and thus negate the corrective function which was the purpose of requiring the supplementary bidder's statement in the first place. The supplementary bidder's statement therefore was required to note that the date of the Stockland offers was 13 December rather than 9 December. As the closing date of the bid had been set by Stockland as 14 January 2005, the change of the date of the offers did not affect the minimum period required for Stockland's bid to be open.

Undertaking

85. The Panel accepted an undertaking from Stockland to issue a supplementary bidder's statement with Stockland's bidder's statement, in the final form approved by the Panel. A copy of the undertaking given by Stockland is at Annexure A to these reasons.
86. Based on the undertaking provided by Stockland, the Panel concluded its proceedings on the basis that it was not necessary to make a declaration of unacceptable circumstances and that no order was required.

Costs

87. The Panel did not receive any application for an award of costs, and made no order for costs.

Norman O'Bryan

President of the Sitting Panel

Decision dated 9 December 2004

Reasons published 21 December 2004

Takeovers Panel

Reasons for Decision – General Property Trust

Annexure A

In the Matter of General Property Trust

Undertaking by Stockland to the Takeovers Panel

Stockland Trust Management Limited (“STML”) undertakes⁹ to the Takeovers Panel under section 201A of the ASIC Act that it will despatch a Supplementary Bidder’s Statement in the form attached together with the Bidder’s Statement to General Property Trust unitholders commencing on 13 December 2004. This undertaking supersedes the undertakings previously given concerning despatch of STML’s Bidder’s Statement and Supplementary Bidder’s Statement.

⁹ The undertaking was provided on Stockland's behalf by Stockland's solicitors and had a copy of the supplementary bidder's statement attached.