

Hillhouse  
Burrough McKeown

Lawyers



*everything you need  
to know about*

**motel leases**

## Why choose Hillhouse Burrough McKeown as your solicitor

### *when buying a motel?*

- 1** Hillhouse Burrough McKeown provides an integrated mix of legal services. A major part of our practice is devoted to motels, caravan parks and hotels. We are enthusiastic about our work in the Tourism and Hospitality industry and particularly the area of motels.
- 2** Our motels team is equipped to handle every aspect of purchase and sale transactions and the ongoing operation of the business. The team has been assembled for that purpose with particular care.
- 3** We provide easy accessibility to specialists in motel real estate agents, bankers, accountants and most importantly lawyers, who understand the intricacies of motel lease structures.
- 4** Our motels team is always available. We will provide same day response to enquiries whether during the purchase or sale transaction or while operating the business.

## Introduction

For more than a decade, **Hillhouse Burrough McKeown** has been a leading provider of specialist services to the Motel, Caravan Parks, Hotel and Management Rights industries, providing specialist advice to operators in Queensland and New South Wales.

Acting in the capacity of problem solvers, our objective is to achieve a commercial, rather than purely legal, resolution to our clients' problems. Many years of working with owners and managers in this industry has given us an unsurpassed commercial insight and understanding. That translates into tangible, commercially viable solutions.

A major development in the motel industry is the growth of leased motel businesses. **Hillhouse Burrough McKeown** has drafted the most widely used Plain English Motel Lease in the industry in Queensland and New South Wales.

Our motel team is equipped to handle every aspect of purchase and sale transactions and the ongoing operation of the business. The team has been assembled for that purpose with particular care.

We provide easy accessibility to specialists in the motel industry - real estate agents, bankers, accountants and most importantly lawyers, who understand the intricacies of the motel industry.

Our motel team is always available and we will endeavour to provide same day response to enquiries whether during the purchase or sale transaction or while operating the business.

The purchase of a motel is a substantial investment. We provide our clients with the necessary information they require both from a legal and commercial perspective. In addition to providing advice through the business purchase period, we strive to assist our clients with their needs after they have opened for business.

We believe that a motel is essentially a "people business". The secret to success is being a good manager of people. While often technical in nature, our business is essentially a people business also, so we understand.

If you are interested in purchasing a motel business you should read this publication. You will be able to get a good understanding of what is involved in a motel lease and you will be able to see potential pitfalls and how to avoid them.

*Why buy a*

# **leasehold motel?**



## Why buy a leasehold motel?

**T**his is a question which we are being asked more often by people in the industry and people considering joining the industry.

The commercial answer to the question is that the net return on a leasehold property is much higher than that on a "freehold going concern" and the entry cost is comparatively low.

There is potential for capital growth with respect to leasehold properties, particularly where a new owner is able to increase turnover and therefore net profit of an operation. Rents generally speaking are not related to turnover and therefore an increase in net profit is enjoyed by the proprietor of the motel rather than the landlord.

An increase in net profit means that on disposal of the property (note the industry average for turnover is about 2½ years for each owner of a motel) will result in the vendor of a business enjoying an increase in the value of the goodwill for which he is able to sell the property.

This is particularly so where there are still a good number of years left to run on the lease. Because of the higher return in respect of these properties as compared to freehold going concerns, one must consider the time honoured investment slogan "Risk equals return".

### Suited to a lifestyle

Purchase of a leasehold property is becoming increasingly popular with people (usually husband and wife teams) entering the industry for the first time. Before the decision is taken, intending moteliers need to think very carefully whether they are suited to a life in a particularly demanding service industry.

If consideration of those lifestyle questions is favourably resolved then many new entrants into the motel industry choose to buy a leasehold property.

As a purchaser of a lease you are purchasing the goodwill and chattels of the operation, not the real estate and buildings attached thereto. The cost of purchase of a leasehold business is approximately one third of a freehold going concern, yet the returns are considerably higher.

### Consult with experienced adviser

One of the most important keys to ensuring a safe investment in leasehold motel property is to engage consultants experienced in sale, purchase and operation of leasehold properties. It is also essential that the appropriate lease documentation, contract for purchase and industry formulas be applied to your transaction.

## tip

Remember that when you buy a motel lease, there are expenses, known in the industry as "ingoings". These include:

- bank fees
- solicitor's fees
- accountant's fees
- government stamp duty
- insurance.

Work out exactly what these expenses are and don't leave yourself short.

## **The *motel lease***

**T**he **Motel Lease** is an important asset which, if correctly structured, protects the value the tenant's business and the value of the landlord's freehold investment. However a Lease that does not reflect current industry standards will be a cross that both parties will have to bear for many years.

The purpose of the Lease is to set out the rules by which the tenant is able to occupy the motel. It will also set out the responsibilities of both the landlord and the tenant.

### **Understand the lease document**

It is important that potential Lessees understand that their occupation of the motel is controlled ultimately by the landlord through the Lease document. It is essential prior to purchase of the business, that the purchaser understands as much as possible about the Lease document and how it works.

Not only does this document affect his own activities in the motel business, but is also an important part of the asset which is sold when the motelier decides to move on to another property.

The Lease document on the sale of the motel will be carefully scrutinised by an incoming purchaser and his solicitor to ensure that the new buyer is adequately protected. It is essential

that the document be analysed by the purchaser and his consultants so that the motelier understands what costs he will be responsible for in relation to the property.

### **Term**

The length of a tenant's tenure and security will be derived from the Lease. This is extremely important in creating the maximum value in a motel business. Obviously a business which has 5 years left to run under its lease is of far less value than one with a lease which has 20 years left.

Where a lease has a few years left to run, a tenant should seek advice as to the details of the formula recognised in the industry which applies to negotiations for lease extensions. A tenant will in effect buy more years to add to the term of the lease.

Enforcing the idea that short leases are of greatly reduced value is the fact that should a purchaser wish to buy a leasehold motel, obtaining finance will be particularly difficult when the remaining tenure of the lease is short.

Leases generally run for an initial 10 year term with two or three options of five years each, capable of being exercised by the Lessee of the property. The Lease should provide for the purchase of the chattels of the business by the landlord on expiry of the Lease.



## **Rent**

The Lease will set out the amount of the rent and how it is to be paid to the landlord. It is essential that anyone considering purchasing a motel lease has experienced consultants to consider the rent compared with industry standards. This is important when assessing whether there is any room for improvement in the profitability of the business and whether the business is readily saleable.

Rent under the lease is paid calendar monthly in advance and usually there is provision in most new lease documents for an increase in rent pursuant to the Consumer Price Index on an annual basis.

## **Repairs and Maintenance**

An important subject for any motel lease is repairs and maintenance. It is a feature of most well drawn Leases that responsibility for maintenance and upkeep of the motel is clearly set out. It is important that the Lease clearly specify who is responsible for the replacement of the fixtures and fittings when they come to the end of their working life.

It is a feature of most Leases that responsibility for maintenance and upkeep of the motel is left to the tenant. The rationale behind this is that the motelier does not want his business suffering whilst he waits for a tardy landlord to effect repairs to the property. It is far more desirable that the motelier be in control of the maintenance of his own building so that his business is not adversely effected.

The results of the analysis of the Lease in terms of cost to the tenant could be conveyed to the purchaser's accountant prior to any Contract for the purchase of a property becoming unconditional.

## Landlord's consent?

**L**ike many businesses, the sale of a motel lease is not simply a transaction between a vendor and a purchaser. In any business where the premises are leased, a landlord must give permission before the lease can be transferred.

There are no set rules for obtaining the consent of the landlord. In some cases the landlord will wish to meet with the proposed purchaser, in others the landlord will simply want to see the references, resumes and financial information in respect of the proposed purchaser.

Any person looking at purchasing a motel leasehold business should ensure that they have their references and resumes ready to go. This will avoid any possible time delays during the transaction.

Generally the landlord will ask the proposed purchaser to provide the following documents:

- a resume from the purchaser (or if the purchaser is a company the directors of the purchaser) the resume should highlight the previous business experience of the purchaser and in particular any experience that will prove that the purchaser has the qualities necessary to operate a motel
- two personal references (ie someone who knows the purchaser on a social basis should provide a short written letter saying what a fine, outstanding member of the community the purchaser is)

- two business references (from two people who have known the purchaser on a business basis. These references should confirm in writing that the purchaser's dealings with them have been professional and that the purchaser has the qualities necessary to operate a motel)
- a statement of assets and liabilities (the landlord will want to be able to determine that the purchaser has some financial stability and will be able to continue to pay the rent)
- details of any borrowings by the purchaser (again the landlord will want to be able to determine that the purchaser will be able to continue to pay the rent. The landlord will also want to understand if there is anyone else (ie a bank) with an interest in the lease).

Generally a landlord will want to satisfy themselves that you do not have any criminal convictions, you have a good character, your financial standing is sound and you will be competent at your job.

A landlord is not able to unreasonably withhold his consent to the transfer of the lease.



*Rules*

**for purchaser**

## Where do I start?

**T**he rules of buying a motel business are fairly simple.

### *Rule 1*

#### **Work out what you are worth.**

This will determine how much you can borrow and what you can afford to buy. When you are working out what you are worth concentrate on liquidating assets (converting your assets to cash).

- How much will you get when you sell your home, pay off the mortgage and meet the costs of sale?
- How much superannuation do you have available?
- It's what's in the bank that counts when it comes to borrowing to purchase a motel business.

The amount of cash you have to invest in a motel business determines exactly what you can afford to buy because the banks have very clear guidelines about how much they will advance. Talk to a banker who has experience in motel leasehold lending.

*"First work out what you are worth. This will determine how much you can borrow and what you can afford to buy."*

### *Rule 2*

#### **Look for what you can afford.**

Once you know how much you can afford to spend, look at the real estate advertisements to see what and where you can afford to buy. You're wasting time looking at a business you cannot afford because you won't get the money from the bank to settle.

The specialist motel agents generally advertise in the major and local newspapers in the "Businesses For Sale" classifieds. The ad will give you a brief description of what's available and the asking price.

## tips

#### **Ask these questions**

- **When was the motel last refurbished?**
- **Is there any sign of concrete cancer?**
- **Are there problems with water leaking?**
- **Is the motel structure sound?**
- **What is the motel's AA star rating?**
- **Are there any plans to build a highway by-pass in the near future?**

*Dealing with the people who can*

**make it happen  
for you**

*Agents. Bankers. Accountants. Lawyers.  
You need advisors who understand the motel leases industry.*



## Dealing with *agents*

**I**n all probability you will buy your motel business through a real estate agent.

Probably one that specialises in motels, and there aren't many of these.

Remember, an agent's job is to get the best possible price for the motel business. The commission payable to the agent will usually be a percentage of the sale price. The higher the price paid, the higher the commission to the agent.

Although agents have a responsibility to be fair to both the buyer and the seller, agents act for the seller not the buyer. The seller pays the agent's commission.

### tip

As with all specialised areas, it is important to get in contact with the experts from the start.

We can refer you to specialist agents to help you find the best motel lease for you.

Call David Burrough on (07)  
3220 1144 for further details

### Smart questions to ask your agent

#### *How long does the lease have left to run?*

A motel lease has a definite beginning and a definite end. Usually they are set up for five or ten years with four or five options of five years each to the tenant. At the end of this time there is no requirement on the landlord to renew the lease.

#### *How much is the rent?*

When inspecting a motel business you should be aware of the amount of the rent. Does it increase each year? Does it take account of GST? Is it adjusted to "market" at the beginning of each option period? These are the questions to ask.

*"Know the smart questions to ask the agent so you can compare what's available and find what's right for you."*

## What you need from your *banker*

**A**n important factor to consider when purchasing a leasehold motel property is that because there is no freehold interest over which a lender can take security, the purchaser of a leasehold property requires a greater percentage of the purchase price from his own sources than in the case of purchasing a freehold property.

It is also essential to accurately assess with the assistance of your consultants and an experienced agent, the ingoing cost of the transaction including stamp duty on the Contract of Sale (and possibly on the Lease document if a new lease is being entered into, the first month's rent in advance, insurance, legal and accounting costs and borrowing costs).

It is important to deal with banks that know the motel industry. They will be able to say at the outset what they can and cannot do. Banks that don't know motels can inadvertently mislead you. Your application may be rejected by a higher authority in the bank at the eleventh hour or they may impose terms and conditions that are unacceptable. This can cost you dearly.

You will not have these problems from the banks that regularly lend for motels.

### Checklist

Checklist of information required by the bank to assess your application:

- Resume - show complete work history for all applicants
- A copy of the contract
- A copy of the lease
- A copy of your latest taxation returns - personal and business
- If applicable, financial records for any companies or trusts you operate
- A report by a bank-approved accountant familiar with the industry on the previous twelve months' figures for the business being purchased
- Your projected monthly cash flow for twelve months covering all income and expenditure (including your financing costs)
- A signed statement of assets and liabilities
- A signed credit check form to allow completion of the necessary credit checks.

## Mortgages and *deeds of consent*

**I**n most leasehold motel acquisitions the purchasers offer their interest in the lease to a financier as security. Generally a mortgagee will require, as a condition of their finance approval, that the mortgagee the tenant and the landlord enter to an agreement (usually called a Deed of Consent or Right of Entry Agreement) to ensure all parties recognise the other's rights.

The effect of a deed of consent is:

- the landlord acknowledges that the financier is entitled to step in on the tenant's default under either the loan; or the lease
- the financier may step into the tenant's shoes for the purposes of rectifying any default or just to run the motel generally and transferring the business to a new operator
- the landlord promises not to terminate the motel lease in the event that financier takes any action against the tenant
- to require the landlord to give notice of any default to the financier prior to terminating the lease

- to require the landlord to notify the financier in the event that the lease is replaced or varied in certain respects.

Ideally, the financier will be placed in no higher or better position than the tenant. The financier is given the opportunity to protect its security. It will meet costs and ensure that the landlord is satisfied with the performance of the tenant's obligations under the lease. The biggest risk that faces a leasehold mortgagee is that the lease may be forfeited by the landlord due to a default of the tenant. A deed of consent attempts to overcome this concern and so enable financiers to continue to lend on the security of a lease.

A deed of consent will be required by financiers in almost all circumstances where the financier does not have the security of real property. These agreements are commonplace in the motel industry. Whilst the interests of the landlord, the lessee, the freehold mortgagee and the freehold mortgagee may conflict the parties should be able to resolve the issues in the deed of consent.



## Liquor licence

**A** lot of motel businesses have a liquor licence which will need to be transferred to the purchaser at settlement. In both Queensland and New South Wales it is necessary for intending purchasers to complete a course before being entitled to a transfer of the liquor licence.

### Queensland

In October 2003, the Queensland Parliament passed new laws requiring applicants for liquor licences to undertake a mandatory training course. This training scheme commenced on 1 January 2004 and requires all new licensees to undertake a two-day training course which will focus on the liquor laws and best practices in venue management.

Applicants will have to attend the licensee's training course if they either:

- have not held a licence before
- have not been a licensee or nominee for 3 years.

The liquor licence transfer will not be able to be approved until training is undertaken, although there may be some exceptions to this rule.

It is possible for anyone to enrol in this course, so it is not necessary that you have signed a contract to purchase a licensed premises.

### New South Wales

In New South Wales the transfer of a liquor licence must be approved by the Licencing Court of New South Wales. Usually a provisional transfer will be granted prior to settlement, with the final transfer being granted approximately 3 months later (after the court has prepared a probity report).

An application for the transfer of a liquor licence will not be accepted without a certificate of completion of an approved course or an application for exemption from undertaking the approved course.

The course which must be completed is a five day, Restaurant/Motel Licensees Course (which includes a responsible service of alcohol module).

From **1 January 2004**, all licensees and permanent staff members who are involved in the sale, supply or service of alcohol must hold a recognised Responsible Service of Alcohol certificate.

From **1 July 2004**, all casual staff members who are involved in the sale, supply or service of alcohol must hold a recognised Responsible Service of Alcohol certificate.

## What you need from your *accountant*

**A**ccountants play an important role both in the purchase of a motel business and ongoing support to you once you have bought your business.

An accountant's report should be done early in the conveyancing process and provided to your bank to assist with your application for finance. It is important, therefore, that the due diligence report be done by an accountant who will be acceptable to your bank.

Once the purchase has been completed the accountant has an ongoing role that includes:

- preparation of your trading statements and income tax returns for your business

- assisting you with setting up books and records for the trust account and general account
- attending to registration with the Taxation Office for group tax and GST, and
- assistance with workers compensation, superannuation and other statutory regulations.

The purpose of such enquiries is to enable the purchaser to explore the financial viability of the business. Generally this will be required to be provided to the purchaser's financier in order to secure finance for the purchase.

### we can refer you to -

- financiers experienced in motels, and
- specialist accountants to verify the figures.

Ring us on  
(07) 3220 1144 to get in touch  
with the experts.

## What your lawyer does *for you*

**T**he steps to owning a motel business. Your solicitor's job is to help you get what you bargained for... a good business and a home.

It's important to remember you are buying a business first and a home second. Not everyone understands how these businesses work. At **Hillhouse Burrough McKeown** we have made this one of our particular areas of expertise. This is the process that will guide you through and show you how we help protect your interests.

### *Step 1*

#### **Structuring your purchase**

We advise you on the most tax effective way to buy your business. A telephone call before you purchase may save you paying unnecessary tax.

### *Step 2*

#### **Going to contract**

How to sign a contract without delay while still protecting your interests. We will suggest some specific clauses to include in the contract.

### *Step 3*

#### **Obtaining finance**

How to apply for finance and ensure your banker has all the information they need for a quick assessment.

### *Step 4*

#### **Your accountant's report**

You will want an experienced accountant to verify the books and records of the business to confirm the income stream.

### *Step 5*

#### **Due diligence of the lease**

This is one of the most important things we do for you. We closely examine the motel lease to make sure there are no technical legal problems. If there are, then we tell you how to fix these before you part with settlement money.

### *Step 6*

#### **Landlord's consent**

The landlord must consent to the transfer of the motel lease. There are formal steps to be taken to ensure this approval is obtained. We liaise with all parties to obtain this consent.

### *Step 7*

#### **Transfer of the Liquor licence**

We assist you in preparing the necessary forms for the transfer of the liquor licence and provide assistance in finding the appropriate course to be undertaken.



## *Step 8*

### **The conveyance**

We undertake all necessary searches to protect your interest under the contract of sale.

## *Step 9*

### **Settlement planning**

Save time and effort by getting organised before settlement. We help you have everything in place.

## *Step 10*

### **Settlement**

You'll be on site learning about your business so we will make all the arrangements necessary for settlement. We attend to adjusting settlement figures, and make sure your money is in place and all the correct documents are available for the settlement meeting, which we attend on your behalf.

## **The A-Z**

### *of practical matters to consider for settlement*

The weeks and days leading up to settlement can be extremely busy for a purchaser. There will be removalists to arrange, packing to be done and a hundred other things to attend to. We have put together a list of some of the key things that a purchaser should ensure are checked off their list prior to settlement.

#### **Advance bookings**

An adjustment will need to be made for any advance bookings on the date of settlement. This is usually attended to on-site between the parties. It is necessary to determine what monies the Vendor has received in advance for future bookings. This amount needs to be paid to the purchaser by the vendor.

#### **Bank accounts and merchant facilities**

Prior to the settlement day you should ensure that a general account for the business has been opened (usually your financier will attend to this) and that all merchant facilities have been arranged and are able to be installed as near to the settlement date as possible. In most cases the merchant facilities will not have been installed prior to settlement and you will need to ensure that you are familiar in operating manual facilities.

#### **Booking system**

Familiarise yourself with the booking system and plan for any changes you may want to make to it.

#### **Brochures**

Check that there are plenty of brochures on hand and if necessary order new ones.

#### **Business cards**

You should ensure that you order your business cards ready for use after settlement.

#### **Cleaners, maintenance and linen**

Ask the vendor to provide a list of trades people and suppliers of goods needed in the business from time to time.

#### **Electricity**

You should ensure that the electricity company is contacted and the account transferred into your name.

#### **Insurance**

You will need to ensure that all of the appropriate insurances are in place prior to settlement. Generally this will be a requirement of both the landlord and your financier. You should ensure that any interested party is noted on the insurance policy. The purchaser will generally need to ensure that they have arranged for contents insurance, public risk, workcover, business interruption and any other insurance required by the lease.

### **Keys**

Familiarise yourself with the key system and make sure that there are sufficient numbers of keys and that they are properly marked.

### **Plant and equipment (inventory)**

On the morning of settlement you should check the inventory from the contract and determine, that it is all accounted for and that it is in good working order and condition.

### **Stock**

Under the terms of the contract, usually the purchaser must pay the vendor an additional amount for the stock. A stocktake should be conducted on the evening prior to or the morning of settlement. In most cases, the contract will contain a stock limit. If the value of the stock is greater than this limit then you are entitled to reject items of the stock to

reduce the value to the stock limit. Once the stocktake has been completed and the value ascertained, the Purchaser needs to pay the vendor this amount. This is usually done on-site by way of personal cheque. In most cases the purchaser will deduct from the stock amount the amount that the vendor owes the purchaser for the advance bookings.

### **Telephone**

You should contact the telephone company to ensure that the telephone account is transferred into your name.

### **Wholesale bookings**

Obtain details from the Vendor of all wholesale programmes in which the business is involved.

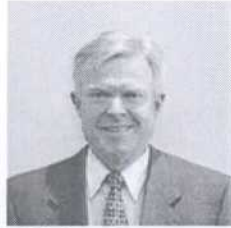


## Our motel team

### David Burrough

#### Partner

David is a solicitor of over 20 years standing admitted to practice in Queensland and New South Wales. He specialises in the tourist accommodation industry, particularly motels, caravan parks, hotels and management rights.



David has regularly contributed to accommodation industry journals and provided seminars on legal issues in the industry. He takes particular care to ensure that his clients' problems are resolved.

## What you can expect from

### *Hillhouse Burrough McKeown*

- You know exactly how much to budget for legals because we provide an estimate of fees to complete your motel lease purchase, prior to commencing work on your behalf.
- You are fully informed of the progress of your purchase.
- Each step in the conveyance is fully explained to you as the matter progresses.
- After settlement we provide a folder containing contracts, search results and relevant documentation to assist you and your accountant prepare future tax returns.
- You have telephone access to your solicitor after the completion of your purchase.

### Three things we ask of you -

- if you have any concerns about our service, or don't understand something, that you let us know so we can set things right for you
- that you pay your bills on time, and
- if you are happy with our service, that you refer other people to Hillhouse Burrough McKeown.

*We wish you well as you look for the business that suits you.*

Hillhouse  
Burrough McKeown

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Lawyers

**Telephone: (07) 3220 1144 Facsimile: (07) 3220 3434**

**Email: [email@hillhouse.com.au](mailto:email@hillhouse.com.au)**



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## Hillhouse Burrough McKeown

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Level 7, Grant Thornton House  
102 Adelaide Street, Brisbane, Qld 4000

Postal Address:  
GPO Box 1709, Brisbane, Qld 4001

Tel: (07) 3220 1144 Fax: (07) 3220 3434

Email: [email@hillhouse.com.au](mailto:email@hillhouse.com.au)  
[www.hillhouse.com.au](http://www.hillhouse.com.au)