



# Transaction solutions



## Claims and policy examples<sup>1</sup>

### Restrictive covenant

**Insured value:**  
\$28,500,000

**Premium:**  
\$5,985

### Background

The insured had acquired land being used for student accommodation purposes. This use breached a restrictive covenant recorded on title.

At the time of acquisition, the insured purchased a policy from DUAL to protect it if any third party sought to enforce the terms of the covenant.

After completion, a beneficiary of the covenant contacted the insured threatening to enforce the terms of the covenant.

### Outcome

The matter was swiftly settled for \$285,000 in exchange for a full release of the covenant. Operations continued at the property, without disruption.

**Incurred loss:** \$322,500

**Settlement cost:** \$285,000

**Insured's legal Fees:** \$37,500

**Excess:** Nil

### Encroachment / adverse possession

**Insured value:** \$399,000

**Premium:**  
\$1,330

### Background

The insured had acquired a small industrial warehouse.

A small portion of the physical boundaries of the property encroached onto adjoining land. DUAL provided a policy which protected the insured against claims by the adjoining landowner regarding the encroachment.

The adjoining owner planned to sell their property and the issue was identified by a prospective purchaser, following which a claim was made against the insured.

### Outcome

DUAL engaged quickly with the claimant and settled the matter for \$5,900. DUAL also covered the surveying and legal costs associated with transferring title to the land in question.

DUAL also covered legal fees incurred in preparing the deed of easement and the settlement deed.

**Incurred loss:** \$12,000

**Settlement cost:** \$5,900

**Insured's Legal Fees:** AU\$6,100

**Excess:** Nil

## Access

**Insured value:**  
\$2,470,000

**Premium:**  
\$3,950

## Background

The insured had purchased a plot of regional land that had the benefit of development consent.

Access to the development site required contractors to traverse a portion of land owned by neighbours.

During development, the neighbours raised a claim seeking to prevent access after contractors caused parking issues in the surrounding area, as well as leaving debris all over the road.

## Outcome

DUAL engaged with the neighbours and a settlement was reached. An easement was granted in exchange for the developer agreeing to (i) repair any damage caused to the road and (ii) to contribute to a sinking fund for ongoing repair and maintenance of the road.

The settlement costs were covered but the repair costs and sinking fund contribution fell outside the scope of the policy.

DUAL also covered legal fees incurred in preparing the deed of easement and the settlement deed.

**Incurred loss:** \$116,000

**Settlement cost:** \$114,000

**Insured's Legal Fees:** \$2,000

**Excess:** Nil

# Other specific risk examples<sup>1</sup>

## Planning defect

**Insured value:**  
\$55,000,000

**Premium:**  
\$61,500

## Background

A private equity investor was looking to acquire a portfolio of warehouses.

Due to missing and incomplete planning documentation, the buyer's lawyers were not able to verify that correct planning consents existed for one of the properties. Consequently, use of that property was potentially unlawful and may be subject to enforcement action by the local authority.

## Outcome

As the property had been used for three years without issue (among other reasons), DUAL was able to offer cover.

The policy provides protection against enforcement action from the local authority arising from the potentially unlawful use.

The policy would, in the first instance, seek to regularise the legal position to ensure continuity of operations for the investor. If that was not possible, the policy would cover any loss in value sustained.

## Encroachment /adverse possession

**Insured value:**  
\$123,000,000

**Premium:**  
\$286,000

## Background

A real estate fund was acquiring a portfolio of properties.

Prior to signing the contract, the seller disclosed the presence of an unregistered strip of land (Subject Land) enclosed within the physical boundaries of one of the properties. The Subject Land had been built over, and it was not clear who the true legal owner of the Subject Land was.

A policy was required to cover the potential risk of the true legal owner of the

Subject Land coming forward at some point after completion and asserting its ownership rights.

## Outcome

As the property had been in operation for over eight years without incident, DUAL was comfortable providing cover for the risk.

The policy provides protection for the insured against any third-party claiming ownership of the Subject Land and/or seeking to insist on the demolition of that part of the building built over the Subject Land.

## Judicial review

**Insured value:**  
\$175,000,000

**Premium:**  
\$260,000

## Background

A real estate fund was looking to purchase a newly built industrial property.

The property benefited from a building permit which was potentially subject to challenge on technical legal grounds. The grounds existed as a result of the decision-making authority (arguably) having not followed proper administrative decision-making process.

If a third-party challenge was successful, the permit would be invalidated.

## Outcome

Having analysed the technical elements of the risk, along with the broader context of the property and the development, DUAL was comfortable issuing a policy.

The policy covered the risk of the building permit being challenged or invalidated, or a judgment being issued with the effect that the property may not be used for the existing use (wholly or partially).

The policy covers legal costs associated with defending any action, costs associated with taking steps to regularise the permit situation, costs of any required demolition and reinstatement and/or any diminution in property value should it not be possible to regularise the permit situation.

## Missing title deeds

**Insured value:**  
\$68,000,000

**Premium:**  
\$136,000

## Background

A real estate fund was acquiring a commercial property.

The vendor had owned the property for a long time but had misplaced the original title deeds, meaning title could not be verified.

## Outcome

DUAL analysed the risk and was ultimately comfortable issuing a policy covering the risks of (i) third parties claiming an ownership or security interest in the

property and/or (ii) discrepancies existing between the actual title deeds and the copies of documents that were made available during due diligence.

This policy ensured that the real estate fund and its investors were safeguarded, providing peace of mind that their capital was protected.

<sup>1</sup> Please note that certain financial details have been varied to remove identifying features and, where relevant, have been converted to AUD (correct as at 20 June 2024).

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