

Hospitality + Leisure Trend Watch

Mixed-Use: Assembling the Jigsaw

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Mixed-use buildings and estates are very much the norm these days; they were prevalent pre-COVID-19 and, as discussed in a [previous article](#) in this series, that trend has accelerated. Whilst traditionally a mixed-use scheme might comprise nothing more complex than a residential scheme above ground floor retail, they are becoming more and more sophisticated across multiple sectors. This is a result of property owners, driven by the requirements of potential occupiers (both residential and business occupiers), needing to diversify and offer more services from their sites — whether it be a speciality restaurant in a hotel, an office development with food and beverage, wellness and leisure facilities, or a live/work scheme combining residential with collaborative work space, business facilities and leisure provisions.

The combinations are myriad with almost endless possibilities as owners and developers compete to offer the most attractive schemes. However, managing and operating schemes with multiple components, each with its specific requirements, constraints and opportunities is challenging. Sometimes all components of a scheme will be managed by a single operator, particularly if there is one dominant use e.g. in a hotel-led scheme the

hotel manager may take responsibility for managing ancillary food and beverage, and leisure offerings. However, that will not always be desirable or even possible, and in many instances owners will want to bring in multiple operators, e.g. for higher-end schemes where specific brands are important to attract custom and each brand wants control of its own operations. This creates certain challenges as to the integration of components, apportionment of responsibilities, shared facilities and costs. In this article we will look in more detail about some of those challenges and how they might be addressed.

Shared Services Agreement

It is essential that from the outset the different roles and responsibilities of the parties are well-documented. This would typically take the form of an overarching shared services agreement between the owner and all the operators sitting above the individual agreements for each component/operator. Early consideration will need to be given as to whether there will be a lead operator appointed under the shared services agreement or whether each operator will be carrying out a different set of services for the others. *What happens if one operator exits the scheme and a replacement is needed? Should the agreement fall away? Can it continue, especially if the exiting operator is the lead operator? Should any replacement operator of a component be obligated to sign up to the same terms?*

The agreement should delineate which parties take responsibility for what elements and allow for the various operators to acknowledge that another operator may be responsible for providing services or facilities rather than the owner (though that will not relieve the owner of its responsibilities under any individual component management agreement). *If all components of the scheme are not going to be ready at the same time, will future operators be willing to accede to the agreement down the line?*

If possible, it is best to address all these issues up front as trying to slot in new pieces to the jigsaw when it is already complete will be very challenging.

Brand Management

The interplay between the different brands and operators in a mixed-use scheme needs to be considered by all parties at the outset. The tone of any scheme will be driven by the owner (led by their target consumer base) who will make the initial selection of target brands but the brands themselves will also have a strong view. Brands will want to be associated and located with those of a similar or higher standard. Having multiple food and beverage components could create a new hub and drive revenue but, conversely, operators may not want to be co-located with direct competitors. Owners should be cautioned against allowing any one operator to dictate the identity of other operators in a scheme. However, to attract certain brands they may be forced to agree blacklists prohibiting certain competitors; owners will want any such list to be as short as possible. Each operator will have their own brand standards and consideration needs to be given as to how these interlink e.g. at a communal reception/booking desk or on any centralised signage.

Collective marketing also needs to be contemplated, including the use of the intellectual property of the various operators (trademarks, logos etc). There needs to be consideration given to who is going to be responsible for the such central marketing and whether or not other operators will be restricted from carrying out individual marketing activities. Thought needs to be given as to whether rights to use such intellectual property need to be granted to whoever is ultimately responsible for the overall marketing and if any indemnities are to be given around the use of that intellectual property by or to its owner.

Employees

A key factor in any services delivery is the employees. Following the hotel model, owners need to be alive to the fact that they will likely be the employer of record for all employees in the scheme, even for employees of a component exclusivity managed by a third party, although there are some operators who will want to employ their own staff (either all staff or certain senior positions). Regardless

of who the employer is, each of the operators will be responsible for the day-to-day management of the employees for their area(s) — hiring, training, supervision, firing etc. Some operators will have their own HR functions and capabilities for this purpose. Those who do not, will look to the owner, who may or may not have either the capability or desire to undertake this role and who may therefore look to delegate this service to a lead operator under the shared services agreement. There may need to be a central employee handbook for the scheme to ensure consistency and a minimum level of standards, in addition to any component specific requirements. If so, who is responsible for producing that handbook? Is it a collaborative effort or mandated by the owner or lead operator?

Shared Facilities and Cost Apportionment

If multiple operators need to use shared facilities such as loading bays, lifts, staff canteen/welfare areas and other back-of-house areas, consideration needs to be given as to how and when each of the operators gets to use the areas, who controls that use and, importantly, how it is paid for.

The owner will be keen either to recover cost and expenses of such shared facilities or to ensure they are treated as deductible expenses for the appropriate component(s). Whether costs and expenses are allocated based on floor area, number of employees, revenue, profit, or some other metric will depend on the composition of each scheme but what is key is consistency between components and the shared services agreement will need to clearly set this out.

At a more practical level, it may be that different operators have access to certain facilities at different times — for example, it may not be possible for all operators to use the loading bay every Monday morning at 8 am. This can create secondary issues, *who gets priority if all operators want to use the loading bay at the same time? It is unlikely the owner will want to be involved in such matters so how are disputes resolved?*

It logically may make sense for the operator of the largest proportion of the development to be primarily responsible for these areas, but *does it therefore follow that they are also responsible for matters such as health and safety compliance, maintenance, etc?*

Licensing

An important legal consideration is the regulatory/licensing environment in the scheme's jurisdiction. *Is each operator responsible for its own licences or are they dealt with centrally?* Local law considerations will be key here. For example in many Middle East jurisdictions, restaurants in a mixed use scheme are required to rely upon the hotel's liquor license. As with shared facilities, cost apportionment needs to be addressed between components but more than that, centralised licensing creates risk for the operators.

Given each operator will have no control over day-to-day operations carried out by other operators in the scheme, *how are they protected in the event of breach of licensing conditions by the others?* Operationally, if one of the operators acts in a manner that could jeopardise the license for the overall scheme, that could have serious repercussions for all operators who may therefore require direct recourse to the defaulting operator which can be provided through the shared services agreement.

Indemnities

A thorny topic when considering these arrangements is around the indemnity provisions and who should be giving what indemnities to whom. If the question of indemnities between owners and operators is much negotiated, then indemnities between operators is even more controversial. In the context of an overarching services agreement, the individual operators will not be minded to give indemnities to other third party operators around how the services are carried out, especially when they would ordinarily be expecting to receive an indemnity from owner. However, as noted above in the context of licensing, there may be scenarios in which it is

appropriate. *Would it ever be reasonable for an owner to give an indemnity to all the operators in respect of the conduct or actions of the other operators to the agreement?* Certainly not from an owner perspective, but that may ultimately be what is required.

The attractions of a mixed-use scheme are obvious, the complexities of running one less so. The success of these schemes is measured not simply from the

viewpoint of the end-user but that of the owner and operators as well. Key to that success is careful forward planning, considering well in advance the different touchpoints and interactions of the various components. This will ensure the jigsaw pieces fit neatly together, allowing users to see the elegantly gliding swan whilst the shared services agreement does the hard work beneath the surface.

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