Discussion Paper

for the

Alliancing Association of Australia

Alliance Insurance Outcomes

VfM versus BfP

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JARDINE LLOYD THOMPSON

Jardine Lloyd Thompson Pty Ltd
ABN 69 009 098 864   AFS Licence 226827
Level 3, 12 Creek Street
Brisbane QLD 4000

Written by;
Doug Wilson
Jardine Lloyd Thompson Pty. Ltd.
Brisbane, Queensland

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JARDINE LLOYD THOMPSON

Alliance Insurance Outcomes

(VfM) *Value for Money* versus (BfP) *Best for Project*

1. Introduction

VfM (Value for Money) and BfP (Best for Project) seem at first glance to be two diametrically opposed concepts. Surely the best outcome (or the Rolls Royce solution) comes at a much higher cost, so “value” has to mean more that just cost or premium. If this is the case, how should the complicated cost-value trade-off be made so that if an insurable loss event occurs, the final ITCE (Insurance Target Cost Estimate) and the policies purchased represent insurance VfM and achieve an insurance BfP outcome?

JLT (Jardine Lloyd Thompson Pty Ltd) has only recently joined the AAA (Alliancing Association of Australia) but we have been at the forefront of providing insurance solutions for infrastructure Alliance projects nationally. We recognise that insurance VfM and BfP are often very difficult to assess and are concepts which may be queried even after insurance has been purchased.

This article attempts to demystify Alliance insurance VfM and BfP using the lessons learnt from the author’s first hand involvement in more than twenty Queensland Alliance insurance placements over the past three years. JLT’s approach to the achieving and verifying insurance VfM and BfP has evolved during our journey as we became more familiar with key Alliance insurance drivers. Insurance VfM and BfP is hopefully of interest to AAA members and the wider construction community faced with purchasing insurance for their respective Alliance or in fact any other project.

Reference to D&C (Design & Construct) in this article is merely intended to be a generic reference to all non-Alliance project delivery models, where “off the shelf” insurance products are often used to meet the needs of principals and/or principal contractors.

2. ~~2.~~ Insurance Value for Money (VfM) & Best for Project (BfP)

Insurance is an intangible product. Cars on the other hand are tangible products and whilst you can choose to buy a compact car, an intermediate car, a saloon, a luxury saloon, a station wagon, a utility, a van, a sports car or an off-road vehicle, these generic model categories make it easier to commence the procurement process. The only complication you may have is the number of makes and models within your chosen category, but with all tangible products like cars, you can allow your emotions to enter your purchasing decision making process, especially as you start to covet the red, turbo-charged, convertible sports car sitting in the showroom.

Buying insurance on the other hand is an entirely different proposition and emotions can be more akin to frustration if you select the wrong insurance advisor, unlike the pleasurable experience of imagining cruising around in your new red convertible.

It is clearly wrong to assume every red convertible is of a similar performance & handling (BfP) or that every red convertible represents the best performance value (VfM). Equally it is quite wrong to assume that all insurance policies proffered to Alliances by various insurance advisors and/or insurers are tailor-made to suit individual Alliance risk profiles (BfP) and that all insurance policies represent VfM & BfP. The author is aware of several examples where Alliances have paid substantial premiums but have procured only very generic, inappropriate insurance policies that provide little contract certainty falling well short of the measurements of VfM or BfP when responding to a claim.

The intangible nature of insurance is a costly promise that if something fortuitous happens to your project [occurs by chance] the insurer will indemnify the policyholder and all other insured parties so as to put them into the same position they were in before the loss happened, providing the event or claim is not excluded under the policy. Before payment of the claim, the only 'tangible' aspect of insurance is the paper upon which the promise is printed, so the assessment of VfM and BfP has to start with the policy wording and the premium.

There is however more to insurance VfM and BfP than just assessing contract certainty, so it is paramount that a suitably experienced, professional insurance advisor be engaged to act on behalf of Alliances. Professional advice should not only be obtained in relation to the written promise (the insurance policy) but also to assess various "hard" and "soft" factors such as:

(i) the price (premium). *Unfortunately this by itself is quite often the only determinant of VfM,*

(ii) the deductibles, sub-limits, terms and conditions imposed by the insurer,

(iii) the financial strength of the insurer – will they remain in business and be able to pay claims (or meet their promises) ten years or more after the project has finished. This is particularly relevant to Legal Liability and SPPII (Specified Project Professional Indemnity Insurance) policies,

(iv) the insurer's claims reputation. Does the insurer have the tendency to be obstructive and litigious or is it more closely aligned with Alliance principles in they way it treats clients,

(v) the expertise of the insurer's claims staff to deal with complex construction claims and their ability to work with the insurance advisor and the Alliance to expedite claims settlement or payments,

(vi) the insurer's previous Alliance experience and knowledge of how a BfP culture can lead to many changes in the scope of works, design and/or methods of construction, even after the insurance is bound. In a D&C context such changes would almost certainly be used by insurers as material non-disclosure and proffered as a reason not to pay claims and/or to impose additional onerous terms and conditions to the prejudice of the insured submitting a claim.

By now it should be apparent that there are many potential traps for those new to Alliance insurance procurement, irrespective of whether they act for sponsor / owner participants, NOP's (Non-Owner Participants) or for that matter, insurance advisors, insurers or reinsurers.

Using conventional insurance policy offerings and approaches to procuring Alliance insurances without understanding what an Alliance is will not necessarily achieve insurance VfM nor result in BfP insurance outcomes. The Alliance's engagement of an experienced, professional insurance advisor is therefore paramount. The insurance advisor should be able to demonstrate that they have:

(i) a successful track record in working with Alliances and placing Alliance insurance,

(ii) an understanding of the differences between Alliances and other contract delivery models,

(iii) the ability to benchmark insurance from other Alliance projects before making final purchasing recommendations to the Alliance,

(iv) a sound knowledge of project design, construction methods, site conditions, project management and other project execution issues and their impact on insurance,

(v) a proven capability backed by an efficient process to profile the Alliance's risk and identify those risks which are insurable,

(vi) the experience to design and negotiate bespoke insurance products, and

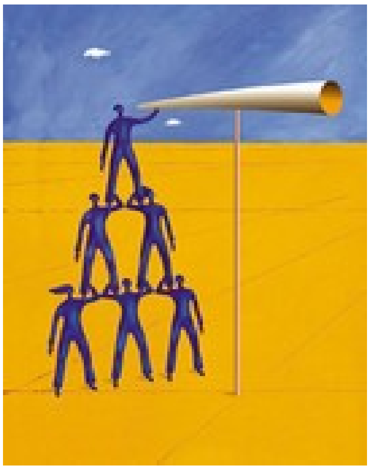
(vii) the conviction to recommend the solution that offers VfM and BfP to the Alliance,

The cause of many Alliance insurance issues invariably stems from a lack of understanding of the peculiarities and requirements of the Alliance delivery model and the failure to alter standard commercial insurance policies. There is significant variation in one insurance policies to another. Similarly, not all insurance advisors are equal or capable of providing Alliances with real VfM and BfP insurance outcomes.

In the remainder of this article I attempt to explain some of the common Alliance insurance procurement pitfalls. Comparisons are made with how D&C project insurance is typically placed as many readers will already be familiar with D&C insurance products.

3. Alliance Insurances

…the absence of typical PI insurance protection in a pure Alliance can place significant burden on the balance sheets of the owner participant and NOP's alike…



The required insurances to be effected by an Alliance are usually specified in the Insurance Provision Clauses (IPC's) within the IAA or PAA and in general, but with one notable exception, are similar to those specified in other construction delivery contracts whether they be Principal or Contractor Controlled. For example, there will usually be a requirement to insure the works against physical loss or damage and to take out a legal liability policy naming all parties involved in the project.

The IPC's will also specify what insurances the participant companies should also have in place such as insurance for their own employees working within the Alliance (Workers' Compensation) and for their own assets deployed on the project such as Construction Plant & Equipment. Other participant, purchased, non-alliance insurances can also include motor vehicle insurance, director & officers insurance, employee practices insurances, office assets insurance, office & property owner's legal liability insurance and the myriad of other insurance products normally purchased by the participants for their normal, non-construction related insurable risks.

The single most notable difference from non-Alliance IPC's is that they often specify a relatively new insurance product referred to as Specified Project Professional Indemnity Insurance (SPPII) which in itself has become a major BfP insurance outcome for many Alliances and their professional consultants and sponsors.

SPPII is now available in Australia for major projects delivered by 'pure Alliances', that is, Alliances predicated upon the "no blame" contractual, relationship principles. Traditional Professional Indemnity (PI) insurance policies respond to a 'legal liability' of the insured parties, and quite commonly, parties that are not insureds under the policy. In a 'pure Alliance', the very trigger that traditional PI policies require for a claim to be valid (i.e. a legal liability) is contractually waived (wilful default is typically an exception) between the Alliance participants. Hence, traditional PI policies will not respond to a loss caused by a participant (or collective of participants) to another participant or them collectively (inter-participant claims).

As Alliance participants typically share in risk (painshare) and reward (gainshare) the absence of typical PI insurance protection in a pure Alliance can place significant burden on the balance sheets of the owner participant and NOP's alike, in the event of any one of the parties making a professional error, act or omission. The creation of SPPII has been a welcome development in what many have seen as a significant drawback to the pure Alliance delivery model.

In addition to cover provided under traditional professional indemnity insurance, SPPII provides cover to the Alliance to rectify or reinstate the project works and resultant consequential loss caused by a breach of duty by any of the Alliance participants or their agents in providing professional services to the project.

Typically, the SPPII policy covers all eligible professional services involved in a single project however, in the case of a programme Alliance, the policy can be adapted to cover similar projects comprising a programme of works.

A SPPII policy covers both traditional PI insurance claims and claims unique to pure Alliances. The main points of differentiation of a SPPII compared with conventional professional indemnity policies, as regards inter-participant claims are:

(a) To respond to inter-participant claims, the policy must essentially have a 'first party' rather than a 'second' or 'third party' trigger. The policy responds to a loss by any Alliance participant or the Alliance collectively, with the mechanism of 'legal liability' arising out of a breach of professional duty replaced by the determination of a breach of professional duty by the insurer or an independent expert, depending on the policy's construction.

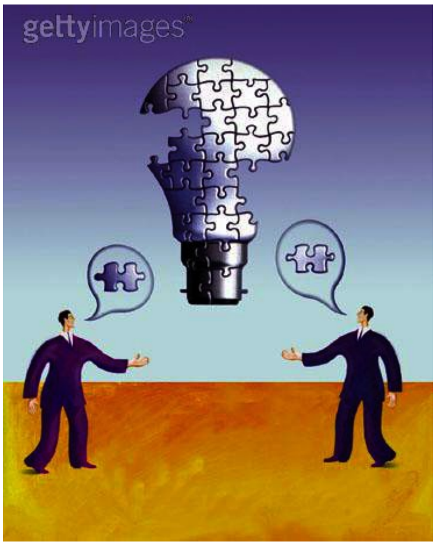
(b) Typically all of the Alliance participants are insureds, which includes all eligible professionals. The policy can also be extended to cover consultants engaged in a Sub-alliance agreement or further extended to cover independent professional consultants engaged by the Alliance under standard service agreements.

(c) another important difference is that the SPPII policy is set in place for an agreed period and does not need to be renewed annually. It is currently possible to buy cover up to 10 years after commencement of works and generally will continue after the Alliance is wound-up so the policy, if still in force, covers the sponsor / owner as the remaining policyholder.

Whilst the Alliance insurance advisor is primarily engaged to procure and advise on the insurances specified under the PAA IPC's the advisor should also ensure that all of the participants are adequately and cost effectively insured for all of their other transferable risks associated with the project.

4. Perspective One

Is the Alliance Sponsor / Owner still in D&C Mode?



Let us start at the top of the food chain with the project sponsors or owners. At first glance it may seem odd that a sponsor / owner would select the Alliance delivery model for a project and then act as though it was being delivered as a D&C contract, but the author is aware of at least one case where all NOP's had previous Alliance experience and were being frustrated by the sponsor / owner's lack of commitment to Alliance principles, at least with respect to the procurement of insurance.

Whilst there are a number of possible indicators that might lead NOP's to conclude that the sponsor / owner is not committed to an Alliance culture, there are perhaps only three indicators that might impact upon insurance VfM and BfP outcomes. These behaviours may not hinder the Alliance insurance procurement process but they may significantly impair achievement of VfM and BfP insurance outcomes.

1. *Who is the Policyholder and does it matter?*

Whilst the parties assuming responsibility for risk transfer of insurable risks under a D&C contract may be similar in an Alliance, the insurance requirements will ultimately be driven by the sponsor or owner and will be fully documented in the IPC's (Insurance Provision

Clauses) contained within the contract, or in the case of an Alliance, the IAA (Interim Alliance Agreement) or PAA (Project Alliance Agreement), as applicable.

There are two main procurement options for D&C insurance. IPC's either specify Principal or Principal Contractor responsibility for arranging and maintaining project insurance. Almost all of the insurance policies currently in use respond to this requirement by either naming the Principal or the Principal Contractor as the policyholder or named insured. This affords those particular entities the full benefits of the insurance policy and all of the other parties required to be covered are subsequently noted as 'other insureds' or 'additional insureds'. The Principal in a principal contractor policy or the Principal Contractor in a principal policy are usually one of the additional insureds, as will all other interested parties such as project manager, sub-contractors, consultants for site activities, suppliers for site activities, financiers and so forth, all for their insurable interests in the project works.

Given that all of the participants forming an Alliance are represented on the ALT (Alliance Leadership Team) and that the ALT decisions generally have to be carried unanimously, it is very important that each NOP participant all have the same status under the policy. This can readily be achieved by naming all participants as the policyholder or named insured, but this aspect has been overlooked on more than one occasion that the author is aware of. The result is that the other participants may not receive the same benefits under the policy despite the Alliance ideal of equality amongst participants:

(i) only the Named Insured has the obligation to pay premium,

(ii) all claims will be paid to the loss payee or named insured,

(iii) premium refunds will only be paid to Named Insured if the project finishes on time and under budget,

(iv) any "gain share" premium rebates due will only be paid to the Named Insured,

(v) only the Named Insured can request an extension or variation of coverage,

(vi) only the Named Insured can cancel the policy,

Some of these issues are significant enough to be of concern to all Alliance participants. For example, if the Owner / Sponsor insists on a Principal Contractor style policy then the Named Insured will be the Principal Contractor, so payment of premium is technically the Contractor participant's obligation but more importantly any premium refunds or gain share payments due will all be paid to the Contractor. If the Alliance has already wound up when these payments fall due then how are the return premiums to be shared?

Another issue is in the case of wilful default, usually a condition precedent to premature dissolution of an Alliance. Will this entitle the contractor participant to cancel the policy and collect any return premium due? What will then happen to insuring partially completed works given very few insurance markets are normally willing to commence insurance part way through the construction period or to provide cover on what has become a dormant, exposed risk.

2. *Does the IAA or PAA IPC's specify all applicable Alliance insurance?*

Generally, the ALT would procure insurance specified in the IPC's appearing in the IAA or PAA (as applicable). If the insurance procurement decision is made hastily or advice is given by an inexperienced advisor, insurance such as SPPII may be omitted from the list of Alliance compulsory insurance procurement.

The importance of a SPPII policy is sometimes not fully understood in the context of a contractor's or owner's residual risk. SPPI policies respond to claims both during and post project completion and their cover can overlap (but if designed properly no duplicate) traditional project policies such as material damage or legal liability insurance. Traditional project policies have limited application (generally damage or injury need to be present) and are constrained by policy's periods usually not exceeding 2 years post completion.

The main benefit of a SPPII policy is its potential to respond to losses where no damage or injury occurs (such as the need to rectify works which are not damaged but incorrectly designed), but of equal importance is the cover it can provide for latent defect discovered many years after project completion. Long term SPPII can therefore provide balance sheet protection to contractors with long tail exposures to rectify defects or to owners for latent defects many years after the Alliance has been dissolved.

Irrespective of whether the IPC's mention SPPII or other relevant insurance or not, it is ultimately the identification of significant risks in the Alliance IRP (Insurable Risk Profile) and an inability to mitigate these risks that should drive the purchase of insurance.

In some cases PAA's IPC's may only specify a minimum number of required insurances for the Alliance project assuming that the NOP policies will provide suitable and adequate cover, but sometimes, it is only after compiling the Alliance's risk profile that the need for other types of insurance is identified. In some cases Alliances have also had to procure policies for workers' compensation, motor fleet, plant & equipment and office property that was not specified in the PAA.

3. *Does the insurance arrangement equally apportion future costs?*

Ignoring the usual and any unique project risks that tend to remain with sponsors / owners (even under D&C projects) such as force majeure or similar events held to be outside of the control of the participants, the true spirit of an Alliance suggests (in theory at least) that no one participant and especially no NOP's should be prejudiced or exposed to possible future risks or possible future costs as a result of entering into an Alliance. From an insurance perspective this has at least one interesting twist, that of the cost impact on future insurances purchased by the NOP's when they decide to "bear" an Alliance's claims experience as part of their own claims history. It can especially be a problem when the Alliance has a large claim or a number of sizeable claims above policy deductibles and some time after, the insurance market hardens and policies with claims attract penalty loadings.

If the sponsor / owner requires one of the NOP's to be responsible for providing Alliance insurances by using its own policies then the sponsor / owner needs to be aware that if Alliance claims occur the NOP policies will "bear" the Alliance's claims history. In the short term this may not be a problem for the NOP's but when the policies renew the NOP's may have to pay a substantial and unexpected premium increase. This would seem to be contrary to Alliance principles and especially so if the sponsor / owner also has its own insurances but pushed the Alliance risks onto NOP policies, thereby quarantining their own policies from Alliance losses.

Under the D&C model, when project insurances are Principal Contractor arranged the sponsor / owner will not only charged for the actual cost of the insurance but generally will also be charged an extra amount to cover the Principal Contractor's overheads and margins. It would be unlikely that these margins include an additional consideration for the possibility of future premium increases based on adverse project claims. In D&C Mode this would just be the normal cost of doing business.

Despite the threat of "bearing" an Alliance's claims history, a principal contractor may still be happy to use its own insurances but they shouldn't forget that it may be inheriting a possible future financial impact on the cost of its insurances if the Alliance suffers substantial claims. The only reason this should not be treated as the normal cost of doing business is that

Alliances are about joint risk sharing, transparency and fairness so using NOP's insurance is inconsistent with Alliance values & principles. For example, it would be particularly unfair and contrary to Alliance principles if the Alliance delivery model was initially chosen because the project was extremely risky and technically challenging with a high probability or certainty of large and/or frequent claims despite best risk management practices.

Whilst somewhat controversial, placing Alliance insurances under NOP's polices at the specific direction of the sponsor / owner should "technically" attract an additional loading or cost, over and above normal overheads and margins as a contingency for potential future insurance cost increases in the NOP's on-going business. So, will the sponsor/owner accept this argument and be truly aligned with Alliance principles? An insurance advisor can assist the Alliance and the NOP's to assess realistic contingency loadings but at the end of the day, this exercise may end up being purely academic if the sponsor / owner is entrenched in a D&C approach to cheapest possible price.

Establishing an ITCE within the Alliance direct cost framework and quarantining any adverse claims experience in isolation away from NOP insurance would seem the most equitable and fairest way to procure Alliance insurance. However, it should be noted that it is often a matter of expediency for preliminary works (investigations, sampling, testing, measuring etc) and/or early works (typically site establishment and commencement of initial preparatory works for critical path items) to be insured under relevant NOP policies. Suffice to say that if an Alliance selects its insurance advisor early enough, even preliminary and early works insurances can be procured as Alliance insurances on behalf of all participants thereby quarantining participant parent companies from Alliance claims. Putting the theory aside however, preliminary and early works usually have a much lower risk profile than the main Alliance works so the question of an additional loading for preliminary and early works is perhaps academic. That is, unless such preliminary or early works has a high risk profile occurring for example in rail corridors or on busy highways where legal liability exposures may still be quite high and able to have a serious impact upon NOP policies.

At the end of the day all participants come into the Alliance fully aware of the risk landscape detailed in the IAA or PAA (as applicable), so if sponsors / owners are willing to pay more for insurance (to the extent of NOP loadings and margins) and if NOP's are willing to cover Alliance risks under their policies (irrespective of whether they receive appropriate compensation for doing so) then a sponsor / owner can stay in D&C Mode. All participants however should realise this approach may not result in a BfP outcome and may not provide VfM because the Alliance risk profile compared with the actual NOP policy may be incompatible. There can also be situations where using one NOP policy may not suit another NOP's, particularly if the other NOP is in the same business as a designer or contractor. For that matter, the policy may also not suit various non-Alliance sub-contractors in addition to the other participants.

Despite the sponsor / owner's decision to push insurances onto an NOP's policy it is worth mentioning that decisions relating to Alliance insurances should in theory be made not only by the sponsor / owner but unanimously by all ALT members in accordance with the IAA or PAA. .

In conclusion, if an NOP is comfortable assuming Alliance risk under its own policies and if this acceptable to all other participants and key non-participants then two important caveats must apply before deciding to use such policies. These are;

(i) does it represent VfM and provide a BfP insurance outcome, and

(ii) has the Alliance insurance advisor undertaken formal due diligence on the NOP policy so that all participants know that the non-Alliance insurance policy is appropriate for Alliance risks.

Summary

Sponsors / owners who espouse a D&C approach to insuring their Alliances should be prepared to make sure that all of the NOP's are adequately compensated for the risks that they assume on behalf of the Alliance.

No one NOP should unwittingly carry a higher risk to their insurance.

All Alliance participants should have an equal status in all of the insurance polices covering the project.

The decision to use non-Alliance insurances to cover preliminary works or early works and/or main project works should always be based upon the Alliance's risk profile and such policies should be subjected to due diligence and assessed by an experienced Insurance advisor before an ALT decision is made to pursue this option. Without review, there is a grave risk that the policies may not respond as expected by the Alliance.

Sponsor / owners should allow the ALT to investigate and decide whether to purchase SPPII if this insurance is not specified in the IPC's of the IAA or PAA as applicable. SPPII will generally be available to pure Alliances exhibiting Alliance principles but may not be available to Alliances exhibiting a D&C approach.

Alliances should always ensure that all insurable risks that are not specified in the PAA IPC's are satisfactorily insured under non-Alliance policies.

5. Perspective Two

Is the *Alliance Consultant* or *Principal Contractor* still in D&C Mode?

The behaviour of the principal contractor or consultant may also impair achievement of a VfM or BfP insurance outcome.

Again, the main behaviours that might indicate that a principal contractor or consultant is not helping to achieve an optimal insurance outcome are given below, but from the perspective of principal contractor or consultant.

1. Who arranges the insurance?

Some principal contractors and consultants zealously protect their right to arrange their insurance to protect their interests. In a D&C environment this behaviour is often driven by their familiarity with their insurance advisor, the knowledge (or sometimes perception) that their insurance will respond to all losses and a long term investment in insurer relationships. If insurance is proposed by another party (e.g. an Alliance selected advisor), then the principal contractor or consultant , will likely compare any project policies proposed to be in place with their own insurances. If gaps are found, the principal contractor may charge the sponsor / owner to bridge these gaps. Additional insurance costs resulting from 'filling gaps" will of course add to the ITCE (Insurance Target Cost Estimate) and so will not necessarily help to deliver VfM.

Often the principal contractor is justified in pointing out deficiencies in cover and wishing to pass on to the owner / sponsor any cost associated with additional risk or cost of insurance. However, the author has also seen many examples where the exercise is no more than a grab for additional money/contingency costs.

Having said this, there can be compelling cost and coverage benefits achieved by the principal contractor or consultant arranging insurance on behalf of an Alliance. In such circumstances, it should be recognised that NOP policies are not typically tailored for the Alliance works (as mentioned in s4.1). These policies are likely to only to name the Principal Contractor as the policyholder or named insured, thereby only affording the Principal Contractor with the full benefits of the policy. Cover for other Alliance participants may be non existent.

One crucial consideration for the Alliance is alteration of any policy to ensure that participants have the same policyholder status as the Principal Contractor (as discussed in s4.1). Significant amendment is therefore required to a Principal Contractor's policy to accommodate an Alliance's needs.

2. *Does the IAA or PAA IPC's specify all applicable Alliance insurance?*

Since the owner /sponsor typically drives the IAA / PAA the principal contractor or consultant generally has little influence over the IPC's. However, the question is more to do with whether the NOP's agree with and abide by these insurance requirements.

3. *Does the insurance arrangement equally apportion future costs?*

As already mentioned in s4.3, the true spirit of an Alliance suggests (in theory at least) that no one participant and especially no one NOP and/or their parent entity should be prejudiced or exposed to possible future risks or costs as a result of entering into an Alliance, just because of the way transferable or insurable risks are handled within the Alliance.

Since the sponsor / owner is responsible for the IPC's in the IAA or PAA (as applicable) the author assumes that informed sponsors / owners will already see the merits of Alliance arranged and maintained insurance and therefore will set clear boundaries as to the risks to be retained by the Alliance and will ensure all risks that should more appropriately be retained by the sponsor / owner will not be passed on to the Alliance.

However NOP insurance may be utilised for preliminary works (investigations, sampling, testing, surveying etc) and/or for early works (typically site establishment and commencement of initial preparatory works for critical path items). If this is the case, the sponsor / owner should recognise that the NOP will have to be compensated for possible future insurance costs as well as normal margins and overheads but arguably these initial project activities have lower risk profiles compared with the main project works so any additional loading for the future claims impact of parent insurances may be academic. That is unless such preliminary or early works are within high risk areas such as within railway corridors, at airports, on busy highways and the like where legal liability exposures may still be quite high and likely to have an serious claims impact upon NOP policies.

NOP insurance polices may not represent an BfP insurance outcome because these policies may not have been tailored to the type of work expected to be performed by the Alliance. It is therefore very important that an insurance advisor perform due diligence on any NOP policy before the ALT agrees to use such policies in lieu of Alliance insurances to ensure VfM and BfP insurance outcomes. The Alliance needs to know that it is not running the risk of having inappropriate or in some cases no insurance coverage and that policy coverage is the best match against the Alliance's IRP.

Establishing an ITCE within the Alliance direct cost framework and quarantining any adverse claims experience in isolation away from NOP insurances seems to be the most equitable and fairest way to procure Alliance insurances and any decision to insure using NOP parent insurances should be unanimously agreed between all ALT members.

Summary

Principal Contractors and/or Consultants who espouse a D&C approach to Alliances insurances should be prepared to offer their ’s policies for due diligence by an Alliance appointed and experienced insurance advisor before the ALT decides to use such insurance policies.

Sponsors / owners may decide to assume more risk to their own insurances without compensation from the Alliance NOP’s but they should always retain the usual and unique project risks such as force majeure or similar events held to be outside of the control of the participants.

All Alliance participants should have an equal status in all of the Alliance insurances covering the project.

The decision to use non Alliance arranged insurance to cover early works and/or main project works should always be based upon the Alliance’s risk profile and coverage should be subjected to due diligence by an experienced Insurance advisor before a decision is made to take up this option.

If the sponsor / owner and/or consultant requires the Alliance to purchase SPPII insurance then all participants need to recognise that any display of a D&C approach to any aspect of the project, including the placement of insurances may jeopardise the Alliance’s ability to purchase such insurance.

6. Perspective Three

Is the Alliance *Insurance Advisor* still in D&C Mode?

The reader should now be that there are quite a few challenges in obtaining VfM and BfP insurance outcomes when the sponsor / owner and/or principal contractor and/or consultant enters into an Alliance but retains a D&C approach to insurance. If the Alliance insurance advisor also has a D&C approach and/or is unfamiliar with Alliance insurance requirements or has little knowledge about Alliancing, then achieving VfM and BfP insurance outcomes significantly reduces.

Alliance insurance policies

The insurance advisor’s familiarity with conventional construction policies is a given, but so too is knowledge about what a SPPII policy is and how it differs from conventional professional indemnity insurance. Refer s4.1 and Appendix for SPPII information. Again, as a minimum, the IAA or PAA IPC's (as applicable) should make reference to the consideration of or need to purchase a SPPII policy and other Alliance insurance requirements.

However the author and his colleagues are aware of several cases where the insurance advisor has not fully understood the nature of Alliances and the need for unique insurance products, recommending the purchase of inferior or inappropriate policies and in particular, have unwittingly recommended purchasing a traditional PI policy instead of a SPPII policy. Too often the author has seen examples where little thought has been given to the construction of the policyholder or named insureds under Material Damage and Legal Liability policies and the implication of naming/not naming participants.

Other common shortcomings are the somewhat hit and miss approach used to ensure that the insurance program meets the Alliance's needs. Undertaking a formal Insurable Risk Profile is a sure way of determining that the insurance program is fit for purpose, yet many insurance advisors jump headlong into policy design without assessing the project's/Alliance's needs. The absence of any formalised needs analysis matching the Alliance IRP's with the insurance coverage, sums insured, sub-limits and deductibles can result in a poor risk transfer solution that doesn't represent VfM and are unlikely to be BfP. For Alliances adopting a hit and miss approach, it will be if or when they have claim that their insurance programme and its deficiencies will be found out.

Inadequate insurance could result in project delays, an inability to expediently fund repairs and at worst, project abandonment. Ultimately, all participants are exposed to the deficiencies of Alliance insurance, as they share in the project's risk, resulting in diminished gainshare, painshare, or far worse from an owner's perspective. Ensuring that the insurance regime meets the project's requirements is therefore of paramount importance.

Alliance insurance best practice

Some Alliances appoint two insurance advisors in an attempt to verify and achieve VfM and BfP insurance outcomes. One advisor is appointed to prepare the IRP, collate underwriting information approaching insurance markets, review pricing and options and finalise documentation and placement of the Alliance insurance. The second advisor is appointed to peer review the work performed by and recommendations of the first insurance advisor in a process more fully described in Appendix 1.

In theory this sounds best practice but there are pitfalls, particularly if the advisor appointed to the role of peer review was the unsuccessful party in the main insurance advisor role.

Perhaps a better approach is to engage participant legal teams experienced with Alliancing contracts to vet policy wordings and for the owner / sponsor to seek benchmark information from their other projects or projects performed by competitors or others within government or industry sectors. Professional insurance advisors are those who do have the capability to document relevant benchmarking information upon which VfM and BfP can be assessed.

Alliance insurance advisor remuneration

At some stage in this insurance VfM discussion the question of insurance advisor's remuneration and the appointment process should be no different to the appointment any other service provider. Alliance projects are usually quite large so traditional brokerage (commission payable by the Insurer to the insurance advisor as a percentage of premium paid by the Alliance) may generate substantial sums. Such arrangements are not unusual, but if not totally transparent, they may not necessarily drive behaviour that optimises VfM.

For example, standard brokerage on a $500,000,000 ITCE Alliance project might generate advisor remuneration around $300,000 or even higher. If the actual insurance premium achieved is much higher than the target price, the insurance advisor stands to gain by earning increased brokerage. Conversely, if actual premiums achieve a level well below the ITCE, remuneration by brokerage can act as a disincentive for the advisor's better than expected performance. For this reason, some argue that remuneration by brokerage is counter productive to a VfM outcome.

A better VfM outcome is therefore to set the insurance advisor's remuneration based upon a number or combination of the following criteria:

(a) brokerage capped to a maximum earning,

(b) a fee for service arrangement geared around a percentage of the project value,

(c) fee for service based on actual consulting hours,

(d) a remuneration range (brokerage or fee) subject to a gainshare or painshare formula, measured against agreed benchmarks (cover, cost and/or performance).

Attempts to create suitable performance based payments have themselves come under VfM scrutiny since the starting point in setting a realistic benchmark premium can in itself be difficult to establish. Notwithstanding, realistic benchmarks can be established through appropriate enquiry with independent insurance advisors and comparison with other similar projects. In any event, the Alliance needs to exercise considerable judgement to ensure that the remuneration arrangement is balanced to reward appropriate behaviour to arrive at a BfP and VfM outcome and not skewed to promote a too aggressive approach to achieve desired objectives.

Alliance insurance policy premiums

In the spirit of an Alliance, some insurers have also attempted to build gain / pain share elements into their premiums. For an Alliance and especially for the NOP's a gain / pain share premium component may sound attractive, but it does come with some challenges.

The first challenge is that insurers generally will not offer gain / pain share payments and especially gain (return premium) payments until their total claims obligation under each policy is known or can be reasonably estimated. Therefore insurers may close off their books for calculation of the pain / gain share premium component on a Material Damage policy at expiry of the defects liability period, not the end of the works. With respect to Legal Liability and SPPII policies the gain / pain share premium component might become due some three, five, seven or ten years after project completion. If the Alliance has been wound-up before the end of the defects liability period or the date the insurers determine their claims obligations are known, then the gainshare (return premium) payment might be paid just to the sponsor / owner, rather than being shared with the NOP's.

Perhaps more importantly is how all Alliance participants handle their mutual and arguably equal obligation to pay a pain share (extra premium) component after an Alliance has been wound-up. Two scenarios could exist. One where there are no reported claims but one or more participants have knowledge of circumstances that might result in a significant claim being presented to insurers in the future. There may also have been significant claims already advised to the insurers and this may ultimately effect the pain share component of the premium. Therefore, should an estimate of a possible future pain share premiums payable be included in the financial finalisation of the Alliance?

Given potential inequity amongst participants, insurers should perhaps just quote premiums without pain / gain share components but in doing so they may increase their premiums slightly because they no longer have the benefit of a pain share component if claims occur. So does this ultimately help to achieve VfM. This is a discussion that the ALT should have with their insurance advisor.

The second challenge pertains to the payment of what can be quite large policy deductibles on claims that occur after the Alliance is wound up. These claims will typically be made under the Legal Liability and SPPII policies rather than the Material Damage policy and ultimately these amounts would have to be paid by the sponsor / owner. Should an estimate of future deductible obligations be included in the finalisation or winding up of an Alliance, and if so, should this speculative amount be included in any TOC formula?

If the sponsor / owner stands to receive future gain share premiums if no claims are made after the Alliance is wound up but is also responsible for paying 100% of future deductibles and possible future pain share obligations, then perhaps these two possible outcomes balance each other out.

Summary

Selection of an Alliance insurance advisor should be made on the basis that the successful entity and the people in the service delivery team are very familiar and knowledgeable about:

(i) the Alliance project delivery model,

(ii) Alliance insurance policies, and

(iii) methods of construction being used or considered by the Alliance.

For substantial multi-billion dollar projects the appointment of an Alliance insurance advisor might also include the appointment of a peer review, second advisor that is also experienced and knowledgeable in Alliance insurance. This second advisor should be given the brief to conduct peer reviews of key aspects of the work performed by the Alliance insurance advisor with particular reference to achieving VfM and BfP insurance outcomes.

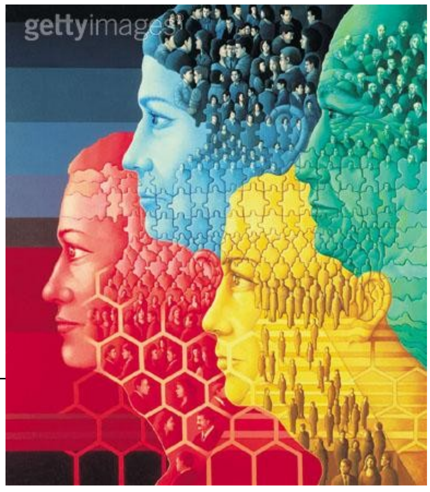
Insurance advisor remuneration should be transparent and commensurate with the services to be provided in order to achieve VfM. This should also apply to the peer review advisor.

Insurance advisor performance based remuneration should be structured carefully because if targets are set too aggressively they might have an unintended impact on final VfM and BfP insurance outcomes.

Insurer pain / gain share premiums should be carefully considered by all participants and especially how they might apply once the Alliance is wound up.

7. Perspective Four

Is the *Insurable Risk Profiler* still in D&C Mode?



The more advanced insurance advisors perform an Insurable Risk Profile (IRP) to link the insurance options and solutions to project risk. Sometimes this entails an integrated approach combining the identification, quantification and treatment of the project R&OP (Risk and Opportunity Profiling) that sponsors / owners typically perform as part of the overall Alliance formation process, with insurable risk. Other times is entails a process which builds upon outputs from the R&OP to create an IRP. An IRP can offer significant benefit to project or Alliance participants as it assists them a more thorough understanding of insurance solutions and provides them with an audit trail, tracking insurance solutions and decisions in the context of project risk.

The outputs of an IRP can also be used to ‘sell’ a project’s insurable risk to the insurance market, which in the infancy of SPPII, was a compulsory participative process of these insurers.

It is important for an Alliance to ascertain whether the insurance advisor’s risk profiler is actually part of the Alliance insurance advisor’s team as an employee, or hired as a consultant. Whilst independent risk profiler consultants are specialists who live or die by their expertise in the market place, the author has found from experience that risk profilers who are directly employed by Alliance insurance advisors have the benefit of an insurance “feedback” loop which is critical to continuous improvement and for benchmarking risk. Insurance advisor employees also receive feedback on insurance claims which build their risk experience/libraries. Insurers will often refer back to the risk profile when they are presented with a large claim, just to see if the claim scenario was identified in the IRP. Regrettably the feedback loop to independent consultants and consultants working for insurance advisors is often absent or at best is “hit and miss” as they have long before moved on to their next brief.

Unfortunately, almost all insurance advisors are likely to tell an Alliance that they can prepare an IRP but the message from an experienced practitioner is simple. Not all risk profilers are equal and the best approach in appointing a risk profiler is always to look at an individual risk profiler’s references and to talk to their referees, but just as important is the need to critically look at the calibre of the corporations that are being used as references. References from other Alliances previously involved in projects similar to the project about to be undertaken by an Alliance is obviously preferable.

The author has recently reviewed many of the IRP’s compiled by a wide variety of insurance advisors and independent risk profilers and unfortunately many of the profiles developed and paid for by Alliances do not achieve a minimum acceptable quality level in several key areas:

(i) There tends to be too much focus on risk categorisation and collection of similar risks and too little focus on developing individual assessments with subsequent discussion on commonalities, interrelationships and mitigation strategies.

(ii) All risk events are treated the same, even though they might have widely differing ratings and impacts upon the project.

(iii) Minimal effort is spent drilling down to identify all possible underlying causes and all of the contributing factors or risk events and the relationship between each underlying cause or contributing factor. It seems many profilers run out of steam before getting to this stage or perhaps consultants, who are working for a fee, stop work at this stage because the time taken to get to this point has already used up most of their fee income.

(iv) Assessment of risk events tend to be based upon a single undefined worst-case impact rather than a range of possible impacts or outcomes.

(v) Mitigation strategies tend to focus only on risk events rather than the underlying causes or contributing factors or just some of the incomplete list of underlying causes. This is often referred to as the iceberg effect with most of the underlying or root causes remaining below the surface or off the radar. Mitigation strategies are best applied to the more significant underlying causes as more generalised strategies at a higher level tend to be less focused and more likely to fail. The comment about the extra time required to undertake this level of analysis mentioned in point (iii) above might also apply here.

(vi) Mitigation strategies are not supported with cost-effective assessments. Almost invariably any analysis performed fails to recognise that even after mitigation treatment there is usually an inherent or residual risk. The reduction in risk or residual risk should be compared with the original risk when determining the cost-benefit of individual risk mitigation strategies. Finding the quick wins on risk events where residual risk can be reduced to almost zero for little expenditure on mitigation in terms of money and resources adds the most value. Residual risk, being the actual risk or threat to the Alliance if mitigation strategies are successfully implemented, is the true measure of risk to the project and will help prioritise risk mitigation strategies.

(vii) Many risk profilers do not thoroughly understand the "grey areas" or gaps between insurance coverage and uninsurable risks. The better risk profilers tend to be those who not only have had substantial project Risk & Opportunity risk profiling experience but have vast knowledge of insurance policy coverage. The best approach to insurable risk profiling is to capture all insurable risk events contained within the Risk and Opportunity risk profile and then to identify all possible missing risk events and then drilling down to find all possible underlying causes.

(viii) The IRP documents often sit on the shelf after being workshopped and/or published and are not revisited when project circumstances change materially, such as when:

(a) project delays push susceptible work such as bulk earthworks into recognised tropical cyclone periods,

(b) when methods of construction change and involve more (or less inherent risk),

(c) when the scope of works expand (or contract), or

(d) when more information becomes available such as geotechnical data which changes the risk profile.

The IRP can in fact be used as a trigger within the Alliance to make sure insurers are always advised when material changes occur in the project.

(ix) Developing the typical IRP will in most cases involve key Alliance people being tied up in workshops that might take as long as or even longer than the main project Risk and Opportunity workshops. This is a huge impost upon the Alliance. The author prefers developing the IRP with targeted knowledge transfer rather than untargeted and expensive workshops. There is plenty of scope for insurable risk profilers to work smarter.

Summary

The development of an IRP as a subset of the main project Risk and Opportunity profile can add value to the Alliance risk management programme.

The IRP process should be targeted and should not tie up key Alliance personnel unnecessarily. A full day workshop involving the majority of the Alliance team is probably not the most efficient way to achieve this.

The IRP should be thoroughly prepared, drilling down into the underlying causes of each risk event.

Mitigation strategies should be analysed for cost effectiveness and should also consider residual or inherent risk.

A good IRP can help the Alliance manage its material disclosure obligations to insurers.

In relation to VfM and BfP insurance outcomes, a well researched, fully documented and regularly updated IRP can help ‘sell’ an Alliance’s risk to insurers to achieve the best possible insurance premiums.

8. Determining BfP insurance whilst achieving VfM and managing the ITCE

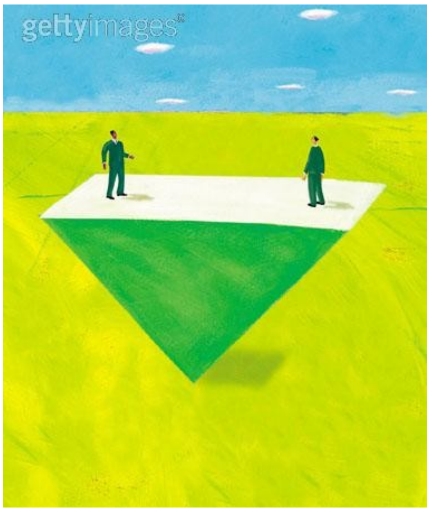
There is no magical solution to this dilemma. The ultimate answer will differ for each and every Alliance and for that matter for each and very Alliance participant, but within the one Alliance all participants have to reach a unanimous decision through the ALT. Appendix 1 suggests a frame work that might assist in achieving VfM and BfP insurance outcomes.

The starting point in designing an insurance program that is ‘fit for purpose’ should be to look at the IRP to design the key policy parameters, including policy limits, sub-limits, deductible levels, coverage extensions, acceptable policy endorsement limits, policy exclusion write-backs and the like. There is no replacement for an experienced insurance advisor to assist the Alliance throughout the process.

Upon receipt of insurer quotations, the insurance advisor should review all of the terms and conditions offered by each potential insurer and identify deviations or gaps in coverage and/or policy limits and other requirements from the risk prospectus. Non-conforming quotations should be identified and attempts should be made to bring quotations back to conforming quotations or as near as possible.

Once all of the quotations have been assessed for conformance and all gaps have been identified the review of insurer offerings can then move on to the next phase.

As mentioned in s2, there are many aspects other than a conforming quotation that should be fed into the mix to determine overall VfM when purchasing Alliance insurance. The equation should extend past the price (premium) and the extent of gaps in insurer offerings and should also include a number of “soft” and “hard” factors such as the financial strength of the Insurer, the Insurer’s claims staff expertise, the Insurer’s underwriting staff’s ability to provide service in a timely manner such as for issuing policy documents, certificates of currency, endorsements for changes to scope of works, extensions of periods, and for the policy to afford contract certainty with predictable outcomes.



The author has recently been involved in developing an ITCE VfM assessment model that takes into account key "soft" and "hard" factors to help Alliances choose the best insurance risk transfer solution. Before final recommendations are submitted to the Alliance, VfM should be benchmarked against ITCE's achieved on other similar Alliance delivered projects. Other important substantive measures include the proposed coverage and its compatibility with the IRP, that is ensuring that the insurance is also BfP.

Given that public authorities and government departments have for many years had in place very clear procurement guidelines to ensure transparency and VfM when spending public money, these same guidelines could also apply when insurance advisors are appointed to Alliances.

Summary

Insurance advisors should always underpin their marketing and placement activities with strong linkages to the Alliance IRP.

Insurance advisors should always endeavour to make insurers aware of all of the special policy requirements at the quotation stage rather than try to negotiate conformance after terms and conditions have been issued.

Insurance advisor recommendations should also include an assessment of insurer "hard" and "soft" VfM and BfP insurance outcome factors.

Details of the recommended Alliance VfM and BfP insurance process is summarised graphically in Appendix 1.

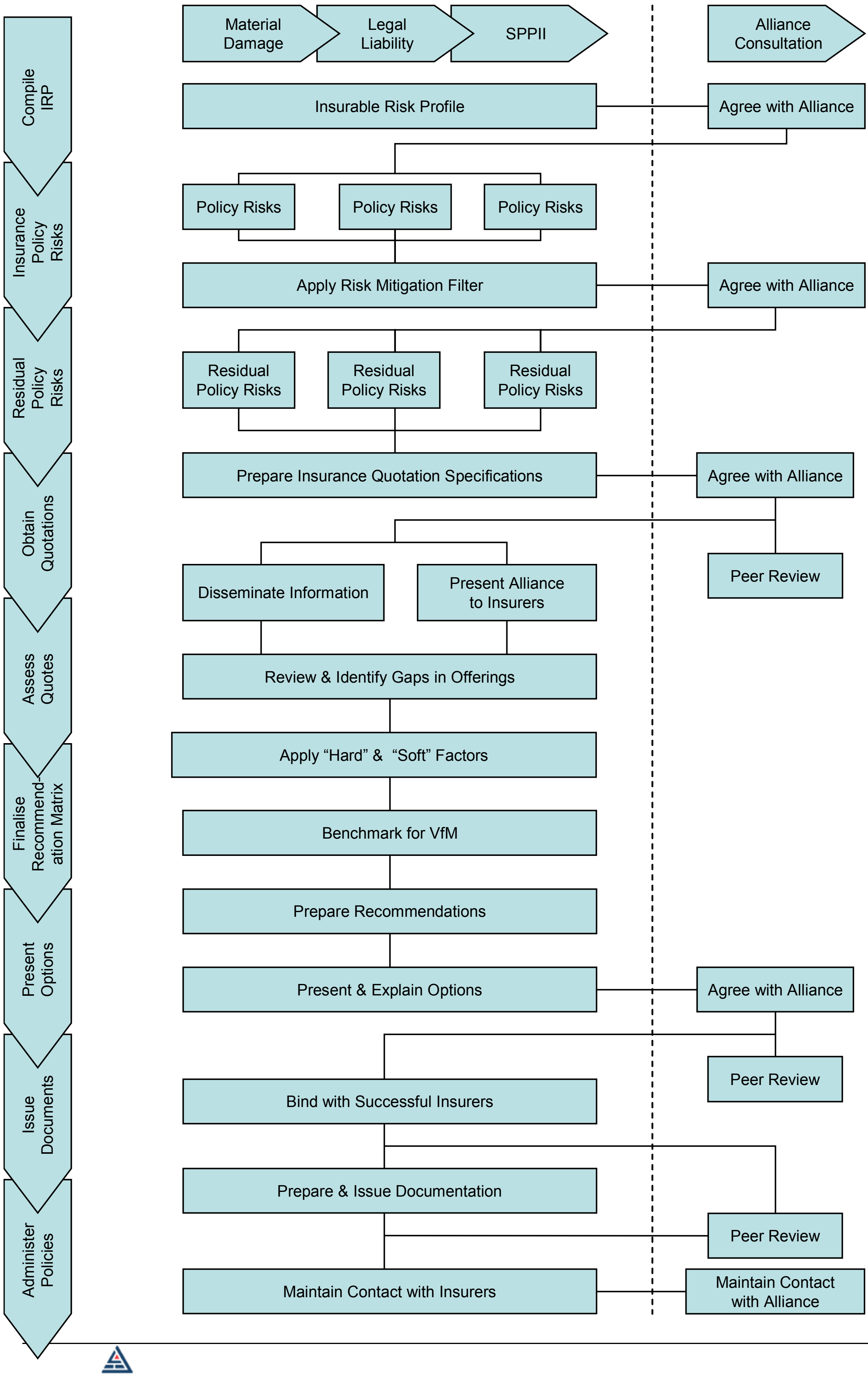
9. VfM & BfP insurance - Conclusions

All insurance polices are not created equal and unfortunately not all insurance advisors have an intimate knowledge of Alliance insurance requirements. There are at least two main recommendations that should help Alliances consistently achieve VfM and BfP insurance outcomes.

1. Always use an experienced insurance advisor who has an intimate knowledge of Alliancing and Alliance insurance requirements. Advisors that are generalists or who have some D&C insurance experience may not necessarily produce the best outcomes for Alliances.
2. Professional consultants such as designers are very used to their work being put through a peer review process. Insurance should be no different when it comes to ensuring VfM and BfP outcomes. When projects become large enough and the cost structure can afford it, it might be strategic to consider using an equally experienced and knowledgeable insurance advisor to review proposed Alliance insurances.

Appendix One

The Alliance insurance model



Appendix Two

Glossary of Terms

AAA	(Alliancing Association of Australia Ltd) ABN 18 118 230 238 The association entity promoting the use of the Alliance project delivery model in Australia.
Alliance insurances	The main insurances that the Alliance has to procure and referred to in the IPC's of the IAA or PAA tend to be Material Damage, Legal Liability and SPPII. However the IPC's will also mention which participants are responsible for statutory insurances such as Workers ' Compensation and Compulsory Third Party Liability as well as other relevant insurances such as motor vehicle and Construction Plant & Equipment.
ALT	(Alliance Leadership Team). The team of people who represent the various Alliance participants and who are charged with responsibilities in accordance with details specified in the IAA or PAA to manage and make key decisions during all phases of project as it is delivered by the Alliance.
BfP	(Best for Project) The guiding principle for creating alignment of participant objectives and decision making in relation to all key Alliance decisions, subject to other key Alliance performance criteria such as financial, time, compliance, legal etc. BfP is inextricably linked with VfM.
Contractor Arranged Policies	Insurance policies (typically for Material Damage and legal Liability) covering construction projects arranged in accordance with the contract IPC's which state that the Principal Contractor is responsible for purchasing and maintaining the project insurances.
D&C	(Design & Construct) For the purposes of this article all other non-Alliance project delivery models.
Early Works	Typically site establishment and commencement of initial preparatory works for critical path items. These works are more likely to insured under conventional project contract works Material Damage or Legal liability policies as this work is close to letting any D&C contract or signing the IAA or PAA. The Sponsor / Owners property owner's insurances may not respond to any claims but contractor policies would respond if the work was declared under their annual policies. As physical work is commencing on the site it is important that the Alliance is fully aware of the policy coverage for these works. And the insurances respond to the Alliance's risk profile.
GST	Good and Services Tax in accordance with A New Tax System (Goods & Services Tax) Act 1999 (Cth)

IAA	(Interim Alliance Agreement) The interim document that enshrines the initial agreement between all of the Alliance participants to enter into an Alliance for the delivery of a project.
Insurer	Various insurance companies that either individually or together provide Alliance insurances with or without reinsurance
Insurance Advisor	Various insurance brokers or intermediaries that have experience in acting as intermediaries between Alliances, insurers and Reinsurers. Advisors also provide Alliances with advice and recommendations as to insurance programmes that provide VfM and BfP outcomes and may also be able to offer the Alliance risk profiling services, either for the main risk and opportunity workshop or Insurable Risk Profiling.
IPC	(Insurance Provision Clauses) The clauses contained in the construction contract or IAA or PAA that specify all of the required insurance policies to be purchased and the minimum requirements for each policy.
IRP	(Insurable Risk Profile) The subset of project risks that can be transferred to insurance companies using various insurance policies that are either generic or tailor-made for Alliance projects.
ITCE	(Insurance Target Cost Estimate) Is the complete cost estimate for the provision of Alliance insurances as required by the IAA or PAA IPC's.
JLT	(Jardine Lloyd Thompson Pty Ltd) ABN 69 009 098 864. An Insurance advisor with substantial experience with Alliance insurances and working with many Alliances delivering infrastructure projects. JLT was also the first Insurance Advisor in Australia to develop the concept of Alliance SPPII insurance.
Legal Liability Policy	The policy that covers all entities working in connection with a project and compensates then for their respective legal liabilities in relation to damage to third party property or personal injury.
Material Damage Policy	A typical project policy that covers project works during the construction phase inclusive of any testing and commissioning and for construction related losses that occur during the defects liability period after works have been completed and handed over.
NOP	(Non-owner Participant) All of the participating entities forming part of the Alliance and named in the IAA and subsequently the PAA.
PAA	(Project Alliance Agreement). The final document that is the agreement between all of the participants to enter into an Alliance for the delivery of a project.
Principal Arranged Policies	Insurance policies (typically for Material Damage and Legal Liability) covering construction projects arranged in accordance with the contract IPC's which state that the Principal is responsible for purchasing and maintaining the project insurances.

Preliminary Works	Typically investigations, sampling, testing, measuring and the like such as those tasks performed by geotechnical engineers, environmental scientists, cultural heritage experts, land surveying etc. These works are not normally insured under conventional project contract works Material Damage or Legal liability policies as this work is generally well in advance of letting a D&C contract or signing the IAA or PAA. The Sponsor / Owners property owner's insurances would normally respond to any claims as would the policies covering the consultants and other parties performing this work. If Alliances assume responsibility for their sites during these preliminary investigatory stages then Alliance insurances do have to respond to the Alliance's risk profile.
Reinsurer	Various Reinsurance companies that provide financial capacity to Insurers so they are able to offer capacity to underwrite Alliance insurances.
Risk & Opportunity Profile	As part of the formation of an Alliance it is usual for the participants in conjunction with the Sponsor / Owner to identify all of the risks and opportunities that confront the Alliance in executing the project for the purposes of managing the Alliance and ensuring that it achieves its objectives, especially in the areas of key stakeholder management.
Risk Profiler	A consultant or insurance advisor employee who is skilled in working with organisations including the participants of an Alliance to identifying and document all project risks and their underlying causes. Risk Profilers may be involved in workshopping the main Alliance Risk and Opportunity Profile or preparing the Insurable Risk Profile which is a subset of the main Risk and Opportunity Profile.
SD	(Stamp Duty) Applied to insurance premiums after GST at applicable rates within respective states and types of insurance policies where the Alliance project works are being undertaken.
Sponsor / owner participant	The sponsor or ultimate owner of the subject works to be performed by the Alliance.
SPPII	(Specified Project Professional Indemnity Insurance) a relatively new insurance product available in Australia for major projects delivered by 'pure Alliances', that is, Alliances predicated upon the "no blame" contractual principles. Traditional Professional Indemnity (PI) insurance policies respond to a 'legal liability' of the insured parties, and third parties. In a 'pure Alliance', the very trigger that traditional PI policies require for a claim to be valid (i.e. a legal liability) is contractually waived (wilful default is typically an exception) between the Alliance participants. Hence, traditional PI policies will not respond to a loss caused by a participant (or collective of participants) to another participant or them collectively (inter-participant claims). As Alliance participants typically share in risk (painshare) and reward (gainshare) the absence of typical PI insurance protection in a pure Alliance can place significant burden on the balance sheets of the owner participant and NOP's alike, in the event of any one of the parties making a professional error, act or omission. The creation of

SPPII has been a welcome development in what many have seen as a significant drawback to the pure Alliance delivery model.

In addition to cover provided under traditional professional indemnity insurance, SPPII provides cover to the Alliance to rectify or reinstate the project works and resultant consequential loss caused by a breach of duty by any of the Alliance participants or their agents in providing professional services to the project.

Typically, the SPPII policy covers all eligible professional services involved in a single project however, in the case of a programme Alliance, the policy can be adapted to cover similar projects comprising a programme of works.

A SPPII policy covers both traditional PI insurance claims and claims unique to pure Alliances. The main points of differentiation of a SPPII compared with conventional professional indemnity policies, as regards inter-participant claims are:

i. To respond to inter-participant claims, the policy must essentially have a ‘first party’ rather than a ‘second’ or ‘third party’ trigger. The policy responds to a loss by any Alliance participant or the Alliance collectively, with the mechanism of ‘legal liability’ arising out of a breach of professional duty replaced by the determination of a breach of professional duty by the insurer or an independent expert, depending on the policy’s construction.

ii. Typically all of the Alliance participants are insureds, which includes all eligible professionals. The policy can also be extended to cover consultants engaged in a Sub-alliance agreement or further extended to cover independent professional consultants engaged by the Alliance under standard service agreements.

iii. another important difference is that the SPPII policy is set in place for an agreed period and does not need to be renewed annually. It is currently possible to buy cover up to 10 years after commencement of works and generally will continue after the Alliance is wound-up so the policy, if still in force, covers the sponsor / owner as the remaining policyholder.

VfM (Value for Money)

A set of principles for determining whether the final TOC and all its component costs represents value for money when compared with the expected final project outcomes. Typically part of the Alliance activities is the preparation of a VfM report for the Sponsor or Owner.