Summary and implications
The growth of smartphones has revitalised the potential of proximity marketing in shopping centres, exhibition spaces, concert and sports venues, and other public places. However, there are a number of things the owners and operators of these spaces need to bear in mind if they are thinking of taking advantage of this technology.

The first step to being able to balance risks and rewards effectively is ensuring that you are aware of potential difficulties so can address them in any negotiations.

Reasons for a potential proximity marketing renaissance?
Smartphones, with more processing power than desktop computers only 15 years ago, are finding their way into consumers’ pockets far more frequently. Industry analyst Gartner reported in November that sales of smartphones for Q3 2011 were up a further 42 per cent as against the record levels they had reached the previous November, and that more than one in five mobile phones sold globally was now a smartphone.

The impact of this is that more and more consumers can receive rich media experiences (such as audio and video alongside traditional voucher codes) through proximity marketing. This has led many advertisers to look again at proximity marketing technologies to deliver their messages to consumers.

The connection technologies built into smartphones open up new opportunities for proximity marketing alongside the often-used Bluetooth. Some of these technologies, such as Wi-Fi, have already been embraced by a number of proximity marketing providers, such as Waymedia and The Bright Place. Even newer technologies such as Near Field Communication (NFC) are just being introduced into handsets and have already been identified as having potential proximity marketing opportunities. See the box “What is NFC?” on the next page for information about how proximity marketing using NFC has lower risks for property owners. This note primarily relates to Bluetooth, WiFi and other systems.

By its very nature, proximity marketing depends on having marketing devices located near to the target audience. This is why “destination” locations such as shopping centres, exhibition spaces, concert and sports venues are ideal for proximity marketing.
venues, and other public spaces, are good targets for the roll-out of proximity marketing, and present an opportunity for property owners and their agents.

Use your own solution or a third party proximity marketer?

Operating your own proximity marketing system gives you full control of what messages are sent and how often. However, it also requires certain advertising skills and market knowledge, such as current advertising rates, appropriate levels of advertising and suitable periods and timings for campaigns. You also need to consider what regulatory requirements you may be subject to under the Data Protection Act (particularly if you have CCTV covering the areas where proximity marketing is active) and, depending on the type of services to be offered, give thought to how closely the contents and use of the services needs to be monitored.

Where these skills are not available in-house, or where other factors make outsourcing the preferred option, the solution is to engage a proximity marketing specialist to run and manage proximity marketing for you. There are a number of factors you need to bear in mind when looking at outsourcing proximity marketing, both in the placement of the hardware, and the operation of the system.

Considerations relating to hardware

There are various types of proximity marketing units available and one of the risk decisions to be made will be whether the units will be free-standing or whether they need to be fixed to the structure of the building.

If you are allowing the proximity marketer to fix units to the structure you may need consent of a third party, and will be concerned to make sure that if your requirements change you can remove the equipment. This means you may need to include “lift and shift” or “make good” provisions, and should make sure you avoid granting any lease of the space to be occupied and any security of tenure rights.

You will also need to consider whether the coverage must be prevented from reaching beyond the boundaries of the venue/centre and how this can be achieved.

The hardware will need to be powered. If it is not powered by batteries, then utilities connections will be needed, and you will have to consider and record who is to pay for electricity. In some cases, cable wayleaves may be needed to enable the proximity marketer to run cables to machines.

What is NFC?

NFC technology is the technology used to power contactless payment mechanisms, such as VISA payWave and Google Wallet, and is being integrated into a growing number of mobile phones.

Phones with NFC built-in can interact with unpowered RFID “Smart tags” in posters, books and other products by holding the handset close to the tag (usually within five centimetres). These will often tell the phone handset to open a specific internet page in its web browser.

Because they do not need cables to provide them with power or an internet connection, have little or no running cost and because of the user-initiated close proximity required, this form of proximity marketing is a lot less risky for property owners, though it is probably worth considering keeping rights to “vet” and remove advertising.
Considerations relating to the operation of the system

If you take the decision to outsource the running of proximity marketing, there are a number of practical factors which need to be considered.

Internet connections

Depending on the type of system involved, the marketing machines may need to connect to the Internet to allow for the advertising to be updated and data to be reported. In some cases, they also allow users to connect to the Internet in a similar manner to municipal Wi-Fi schemes.

The way in which machines do so can cause issues and you should consider whether proximity marketing machines have their own connection, or whether they should “piggy-back” on a connection already operated by you. The latter could cause difficulties if it is a limited connection or if your internet service provider has concerns about you being held strictly liable for all use of the Internet connection (including use by the proximity marketing machines) by your Internet Service Provider.

Equally the physical method of connection needs to be considered. If the marketer intends to connect the machines to the Internet connection using a Wi-Fi “mesh” network they will not need wires, but that may limit the number of other wireless networks which can be operated. If the machines are to connect through CAT5 cable or equivalent then, again, cable wayleaves may be required.

Restrictions on advertising

Two major concerns for those permitting proximity marketing in shopping centres in particular are ensuring that:

- a bad consumer experience is not forced on those at the venue/centre, and
- the advertising is sympathetic to the location and does not drive footfall to other locations.

You should carefully consider whether you need rights to be able to either “vet” advertising before it becomes live or to set out guidelines as to what is acceptable and unacceptable, with immediate termination rights for serious breaches of protocol.

Privacy/data protection

Most proximity marketing devices are able to log and retain information which can identify the phone and possibly its model. They can also retain details about usage by those phones and other potentially useful information.

Some of this may qualify as personal information, depending on what other information is available to the proximity marketer or anyone with whom they share the data. This needs to be considered as it will affect the regulatory requirements, including the level of consent required from individuals accessing the system and the amount of data security the marketer must implement around any such information.

Allowing a proximity marketer a free hand to solicit advertisements may generate more revenue, but could be detrimental to the core business.
Preparing for when things go wrong
Broken proximity marketing devices can, in some circumstances, become an annoyance to anyone with an appropriately equipped phone who wanders in range, with the device trying to bombard them with messages.

You should consider having a right to switch off equipment suspected to be faulty with maximum call-out times for the marketer to repair or replace the equipment to prevent any impression arising that systems are poorly maintained.

An alternative approach (if maximum call-out times are not practical) would be to couple the switch-off right with the ability to remove or cover any physical “call to arms” advertising of the system while the fault persists.

Who bears the costs and reaps the rewards?
Some types of proximity marketing require up-front capital investment in equipment. There are a number of potential funding models for the roll-out of Bluetooth marketing systems, often depending on the level of autonomy any involved proximity marketer has in the specification and operation of the system. Much will depend on the role in which you see proximity marketing,

- Is it a differentiator you proactively want to provide to give added value and services to occupiers/users?
- Is it a service that a proximity marketer is keen to provide, and that you are willing to accommodate?

In the first case you will likely want to have a greater degree of control, with any proximity marketer taking on more of a sub-contract role but you may be faced with funding the installation and operating expenses, offset with a degree of profit share on any advertising income from third parties.

If it is a more entrepreneurial business move by a proximity marketer, then they may be motivated to bear more of the set-up costs in return for greater freedom and a greater share of any income.

In either case you must bear in mind that your tenants and occupiers will not bear any costs associated with the system unless they are convinced of its benefits to their particular business. It would be unwise to rely upon existing contractual arrangements, e.g. the service charge regime, to recover costs but landlords setting up new leases may wish to consider future-proofing these by specifically including provisions allowing recharge of set-up and operational costs of proximity marketing systems.

New opportunities – new considerations
The renewed interest in proximity marketing brings with it new opportunities for property owners and managers. However, as with most opportunities, there are numerous things to bear in mind when looking at the roll-out of proximity marketing in public spaces, and when negotiating contracts for the installation and operation of systems. This note flags some of the main areas of general concern, although specific installations may bring with them additional specific issues.