

# Victorian Government Land Transactions Policy and Guidelines

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# Victorian Government Land Transactions Policy

## 1 Purpose

- (a) The purpose of the *Victorian Government Land Transactions Policy* is to:
  - (i) provide a framework to achieve integrity, impartiality, accountability and transparency in land transactions; and
  - (ii) ensure land transactions are conducted in accordance with the highest standards of probity, relevant legislation and Victorian Government policy.

## 2 Policy

- (a) Victorian Government agencies must ensure all land transactions are conducted to achieve accountability and transparency in accordance with relevant legislation.
- (b) Prior to the disposal, acquisition or lease of land, Victorian Government agencies must conduct an appropriate level of due diligence to ensure they are fully informed of the status and attributes of the land.
- (c) Unless an exemption applies as detailed at section(d), Victorian Government agencies:
  - (i) must not sell (grant a lease or an interest in) any land at a price which is less than the current market (or rental) value of the land as determined by Valuer-General Victoria (VGV);
  - (ii) must not purchase (acquire a lease or an interest in land) any land at a price which is greater than the current market (or rental) value of the land as determined by VGV;
  - (iii) must not sell any land without a public process (except through the first right of refusal process outlined in the *Victorian Government Landholding Policy and Guidelines*);
  - (iv) prior to offering land for sale by a public process, must have in place the most appropriate zoning (and other relevant planning provisions) so that the land can be sold on the basis of its highest and best use;
  - (v) must not grant a lease of land (except to a government agency) which contains an option to purchase; and

- (vi) must obtain approval from the Victorian Government Land Monitor (VGLM) to ensure that the following transactions are conducted in accordance with the highest standards of probity, relevant legislation and Victorian Government policy:
  - A. for any sale or purchase of land (or an interest of land) where the value of the land or transaction is \$750,000 (exc. GST) or more;
  - B. if land forms part of a group of related transactions by the same buyer or seller involving interests in land, air rights etc. including land which is part of a group of adjoining parcels proposed for disposal or acquisition, where the total value of the related land or related transactions is \$750,000 (exc. GST) or more;
  - C. for an offer of compensation under the *Land Acquisition and Compensation Act 1986* (Vic) of \$750,000 (exc. GST) or more; and
  - D. for a compensation claim under the *Planning and Environment Act 1987* (Vic) where the value of the compensation is \$750,000 (exc. GST) or more.
  
- (d) Exemptions to the land transactions requirements detailed in section (c) include where:
  - (i) a sales process and / or the terms of a transaction have been approved by Cabinet or a Committee of Cabinet;
  - (ii) a sales process and / or the terms of a transaction have been approved by the Minister for Planning on the advice of the VGLM;
  - (iii) the land can be sold with its public purpose zoning in place, with the approval of the Minister for Planning on the advice of the VGLM;
  - (iv) with the approval of the landholding Minister, land is sold or transferred for a public or community purpose and the terms of sale include a restriction on title that reflects the public or community purpose so that any future change in the use of the land requires the State's consent;
  - (v) the terms of a lease (which does not contain an option to purchase) have been approved by the acquiring or landholding Minister;
  - (vi) the provisions of an Act expressly provide for Ministerial discretion or authorised officer action in relation to a sales process and / or the terms of a transaction, including the *Land Act 1958* (Vic), *Transport Integration Act 2010* (Vic) and *Housing Act 1983* (Vic);
  - (vii) the land is subject to a lease which includes an option to purchase and is to be sold to the beneficiary of that option;
  - (viii) the land is a tenanted residence and is to be sold to the tenant in accordance with a policy of the landholding agency;
  - (ix) a transaction is a commitment recorded in a Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010* (Vic);
  - (x) surplus railway leasehold land is offered to the tenant for purchase at not less than the current market value of the land as determined by VGV valuation; or
  - (xi) specified in section 10.2 of the *Victorian Government Land Transactions Guidelines* in respect to the grant of a leasehold interest in land; or

- (xii) the transaction relates to a purchase, acquisition of land (or an interest in land) or payment of compensation for an amount in excess of the VGV valuation and the VGLM has approved the transaction.

### **3 Application**

- (a) This Policy applies to all land transactions performed by Victorian Government agencies. Exemptions to this Policy may apply as detailed in the *Victorian Government Land Transactions Guidelines*.
- (b) The Policy does not include licensing transactions by Victorian Government agencies.

### **4 Supporting and related documents**

- (a) This Policy is supported by the *Victorian Government Land Transactions Guidelines*.
- (b) Other policies that are relevant to this Policy include the *Victorian Government Landholding Policy* and *Victorian Government Strategic Crown Land Assessment Policy*.

### **5 Responsibilities**

- (a) This Policy is administered by the Department of Environment, Land, Water and Planning.
- (b) The Minister for Planning is responsible for approving the *Victorian Government Land Transactions Policy and Guidelines* with the agreement of the Minister for Finance and the Special Minister of State.
- (c) The Policy will be reviewed in 2020.



# Victorian Government Land Transactions Guidelines

## 1 Introduction

The *Victorian Government Landholding Policy and Guidelines*, together with the *Victorian Government Land Transactions Policy and Guidelines* and the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*, provide the overall framework for the management of land assets by Victorian Government agencies.



**Figure 1 Victorian Government Land Management Framework**

The *Victorian Government Land Transactions Policy* (the Policy) establishes strict requirements for Victorian Government agencies when dealing with the **sale, acquisition or leasing of land**. The Policy identifies the roles and responsibilities of landholding Ministers and government agencies in undertaking land transactions.

The purpose of the *Victorian Government Land Transactions Guidelines* (the Guidelines) is to provide information and guidance to assist Victorian Government agencies to comply with the requirements of the Policy.

The Guidelines detail the key compliance requirements with respect to:

- assurance (section 2);
- due diligence (section 3);
- Victorian Government Land Monitor (section 4);
- valuation requirements (section 5);
- government to government transactions (section 6);
- sale of land (section 7);
- acquisition of land (section 8);
- leasing of land (section 9); and
- exemptions (section 10).

The Guidelines does not include licensing transactions by Victorian Government agencies. The Guidelines will be reviewed in 2020.

## **2 Assurance**

*Victorian Government agencies must ensure all land transactions are conducted to achieve accountability and transparency in accordance with relevant legislation. Refer to section 4 of the Guidelines in respect to assurance requirements for matters requiring Victorian Government Land Monitor approval.*

### **2.1 Accountability**

In relation to land transactions, agencies must ensure that:

- the agency has the legislative power to undertake the transaction;
- the agency has obtained all necessary approvals to proceed with the transaction including (where relevant) approval of the:
  - landholding Minister;
  - Treasurer;
  - Secretary;
  - Chief Executive Officer / Board;
  - Authorities created under legislation; and / or
  - Director of Housing.
- appropriate delegation is in place where it is proposed an authorised officer of the agency approve and execute a transaction; and
- roles, responsibilities, authority and accountability of agency officers involved in the transaction are clearly articulated and well understood.

### **2.2 Transparency**

All land transactions undertaken by agencies must be conducted in a transparent manner and with a level of probity that is appropriate given the nature, value and complexity of a transaction. In particular, agencies must ensure that:

- land transactions are supported by processes that evidence:
  - transparency of actions;
  - equity in dealings;
  - confidentiality;
  - probity assurance; and
  - management of conflicts of interest, whether actual or perceived.
- dealings are conducted ethically and professionally; and
- purchasing or leasing transactions comply with applicable procurement policies and agency specific procurement policies.

### **2.3 Legislation**

All land transactions must comply with Victorian legislation. Different legislation will apply to different transactions and potentially the same transactions across different agencies. Agencies must inform themselves of legislation relevant to each land transaction they perform to ensure the agency has the legislative power to transact and that the transaction is performed in accordance with all legislative requirements. The Policy and Guidelines do not replace any legislative requirements but rather support implementation of government objectives.

### **3 Due diligence**

*Prior to the disposal, acquisition or lease of land, Victorian Government agencies must conduct an appropriate level of due diligence to ensure they are fully informed of the status and attributes of the land.*

Property matters can be both complex and detailed and it is important to obtain appropriate advice in advance of making decisions that could have financial implications to the State. There are a number of site conditions that should be assessed as part of a due diligence process. Site conditions can vary from transaction to transaction and the depth of due diligence required depends on the individual site.

#### **3.1 Legal review**

There are certain legal risks associated with land transactions. To mitigate this risk, legal due diligence is necessary to verify ownership and encumbrances when acquiring and disposing of land. This includes underground essential service infrastructure.

Agencies must ensure the parties they are dealing with have sufficient authority, are the legal owner (in the case of acquisition) and are legal persons. In the event that a purchaser is a proprietary company, then the proper completion and execution of a Guarantee by each of the company directors and any ultimate holding company of that company must be obtained, unless legal advice is that a Guarantee is not necessary.

#### **3.2 Public land values**

For Crown land proposed to be transacted, an assessment of inherent public land values is required as prescribed by the *Victorian Government Landholding Policy and Guidelines* and undertaken in accordance with the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*.

#### **3.3 Survey**

Prior to the sale, acquisition or leasing of land, agencies must ensure that the land is as described and survey issues such as encroachments (either on or from the land), access, encumbrances, etc. have been investigated and addressed. This will ensure that true property boundaries of the land and any rights and restrictions are accurately recorded in the title documents and / or any material discrepancies are disclosed in the sale contract.

For the sale of Crown land, a Plan of Crown Allotment followed by a Title Plan for Crown Grant purposes should be prepared, whereas for freehold land a Certificate of Title is necessary. For leases, a detailed lease plan will be required for identification of the leased area and for valuation purposes, though this is generally not necessary in the case of a residential lease.

For most cases, it is recommended that a re-establishment survey of the land be undertaken to mark the boundaries on the ground and determine their relationship to the appurtenant occupation and / or fencing.

The Office of Surveyor-General Victoria can provide assistance and advice to agencies in relation to the status of land and the plan and survey requirements for its sale, acquisition or lease.

#### **3.4 Planning**

Prior to offering land for sale by a public process, agencies must have in place the most appropriate planning provisions (including zoning) so that the land can be sold on the basis of its highest and best use. An agency must not offer land for sale to a private purchaser that is zoned for a public purpose under a planning scheme unless an exemption is obtained under section 2(d) of the Policy.

When offering land for sale by a public process, agencies must ensure the greatest possible clarity is given with respect to the potential uses of the land. Agencies, or agents acting on their behalf, must not provide advice that could lead to unreasonable expectations that the land will be able to be used for a purpose other than that which is permitted under the zoning which applies at the time it is offered.

If an agency considers that putting in place the most appropriate zoning is not required prior to offering land for sale by public process, it must obtain an exemption in accordance with section 2(d) of the Policy. If an exemption is obtained, the agency may conduct the sale based on the existing zoning, however the valuation must reflect the appropriate zoning taking into account the planning risk being transferred to the purchaser. In this instance, the Contract of Sale should include appropriate conditions reflecting the transfer of this risk to the purchaser under the existing planning regime.

The Planning Group of the Department of Environment, Land, Water and Planning (DELWP) can be contacted for further information and advice regarding changes to planning provisions (including zoning) of government land.

### **3.5 Contamination**

Contamination refers to situations where a substance exists in the soil, surface water or groundwater at concentrations exceeding acceptable or natural levels. Where present contaminating substances may have a material impact on the value of the land and potential land use options. Prior to selling or acquiring land, agencies must consider, and adequately assess, the contamination status of the land.

Where an agency (as the seller or acquirer) suspects land to be contaminated, it must complete an initial review of the land's past and present uses, as well as surrounding land uses to qualitatively assess the potential for contamination to be present, in accordance with the Potentially Contaminated Land Planning Practice Note (DSE 2005) and Ministerial Direction No1, Potentially Contaminated Land.

Where it is deemed that there is potential for contamination to be present, the responsible agency must engage a suitably qualified expert to undertake, at a minimum, a preliminary environmental site assessment, in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) to formalise and document the contamination status of the land.

If the evidence does not support a conclusion that the land is contaminated or potentially contaminated, the land transaction may progress. However, where there is evidence indicating that the land is or may have been contaminated, further detailed site investigations may be required. This may include quantitative assessment of contamination within soil, groundwater, surface water or any other medium deemed relevant to the ongoing use of the land.

Contamination assessments or environmental audits may subsequently recommend implementation of remediation works or risk mitigation measures to remove, reduce or manage the contamination.

When selling land, agencies must consider any potential legal risk associated with an ongoing contamination liability. Such risks may be satisfactorily mitigated by incorporating special conditions in the contract of sale, such as identification of ongoing or future liability, subject to legal advice. However, where it is deemed that the transfer of the ongoing liability and legal risk is unacceptable, remediation of the land prior to sale should be considered.

The Land and Property Group in the Department of Treasury and Finance (DTF) and / or the Environment Protection Authority should be consulted for further information and advice regarding contamination.

### **3.6 Pollution**

In certain circumstances the contamination of land may present an unacceptable risk to human health, surrounding lands or the contiguous environment. In these cases, the land is considered to be polluted. Agencies must not sell or purchase polluted land. Where an agency occupies land that is polluted, it may be required to address the pollution in accordance with the requirements of the *Environment Protection Act 1970* (Vic).

Agencies should be aware that the Environment Protection Authority may issue a statutory notice (e.g. Clean Up Notice or Pollution Abatement Notice) in respect of any contaminated land which it considers as presenting a threat to human health or the environment. Where such a notice is served, the responsible agency must remedy the contamination in accordance with the requirements of the notice.

The Land and Property Group in DTF should be consulted for further information and advice regarding pollution.

### **3.7 Cultural heritage**

Agencies are responsible for the ongoing care and conservation of cultural heritage assets (historic and aboriginal) that are under their control. Prior to the sale or acquisition of land, agencies must assess cultural heritage and consider whether there is any potential impact of cultural heritage assets on the future use and development potential of land.

Agencies must be aware of the controls that may apply to cultural heritage assets in accordance with the *Heritage Act 1995* (Vic), the *Planning and Environment Act 1987* (Vic) and the *Aboriginal Heritage Act 2006* (Vic). Agencies should also consider Heritage Victoria's publication *Victorian Government Cultural Heritage Asset Management Principles* for additional guidance. For Crown land, cultural heritage values and their significance are assessed under the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*.

Heritage Victoria can be contacted for further information and advice regarding the protection of State significant cultural assets.

### **3.8 Native Title and Traditional Owner Rights**

When contemplating the sale of Crown land, agencies must have regard to native title rights under the *Native Title Act 1993* (Cth) and traditional owner rights under the *Traditional Owner Settlement Act 2010* (Vic). Native Title rights and interests are assessed under the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*.

If native title rights and interests exist and there is a recognised traditional owner corporation, an agreement with the corporation will be required in order to sell the property. The conduct of negotiations with the corporation and the terms of the agreement should be within the parameters approved by government.

If native title rights and interests exist but there is no recognised traditional owner corporation, the Native Title Unit in the Department of Justice and Regulation (DJR) and the Victorian Government Solicitor's Office should be consulted for advice on how to proceed.

The Native Title Unit in the DJR should be consulted for further information and advice regarding native title and traditional owner rights.

## 4 Victorian Government Land Monitor

### 4.1 Role of the Victorian Government Land Monitor

The role of the Victorian Government Land Monitor (VGLM) is to provide government with an assurance of integrity, impartiality and accountability in land transactions. The VGLM analyses each transaction within defined thresholds prior to contracting, by reviewing the agency's submission and files, to verify that the transaction is legal, transparent and is conducted in accordance with the highest standards of probity, relevant legislation and Victorian Government policy. The VGLM thresholds are defined at Table 1.

The VGLM provides advice and assistance to agencies engaged in land transactions to assist them to meet the requirements of government policy and standards of probity. The VGLM also provides advice and assistance in mediation and litigation in relation to disputed compulsory acquisition matters. The land monitoring function enables a consistent approach to be taken to land transactions across all government agencies and thereby enhance government's confidence that the purchase of land with public funds and the sale of surplus government land assets are subject to appropriate checks and balances.

For each transaction submitted, the VGLM will assess whether or not:

- an appropriate level of due diligence has been conducted;
- the agency has the appropriate authority to conduct the transaction;
- the most appropriate zoning is in place;
- the transaction of land is supported by assessment of the current market value of the land by Valuer-General Victoria (VGV);
- the transaction of land accords with relevant legislation; and
- any exemption to the requirements of the Policy is supported by the relevant approval.

***Victorian Government Land Transactions Policy section 2(c)(vi).***

Agencies must obtain approval from the VGLM to ensure that the transactions are conducted in accordance with the highest standards of probity, relevant legislation and Victorian Government policy:

- for any sale or purchase of land (or an interest of land) where the value of the land or transaction is \$750,000 (exc. GST) or more;
- if land forms part of a group of related transactions by the same buyer or seller involving interests in land, air rights etc. including land which is part of a group of adjoining parcels proposed for disposal or acquisition, where the total value of the related land or related transactions is \$750,000 (exc. GST) or more;
- for an offer of compensation under the *Land Acquisition and Compensation Act 1986* (Vic) of \$750,000 (exc. GST) or more; and
- for a compensation claim under the *Planning and Environment Act 1987* (Vic) where the value of the compensation is \$750,000 (exc. GST) or more.

**Table 1 Victorian Government Land Monitor thresholds**

## **4.2 Seeking approval**

For each transaction that requires VGLM approval, the transacting agency must submit its transacting file along with all relevant approvals, valuations and consultation reports and appropriate due diligence. A signed statement of assurance in a form and in such detail as may reasonably be required by the VGLM must also be submitted.

Agency submissions to the VGLM must be made in the following cases well in advance of the date by which the submitting agency requires approval:

- prior to auction or close of tender date; and
- prior to making an offer in respect of compensation for compulsory acquisition or in respect of a negotiated purchase.

The VGLM can approve an agency purchasing, acquiring land (or an interest in land) or paying compensation for an amount in excess of the VGV valuation. In considering such requests, the VGLM must take into account the availability of alternative sites, VGV valuation, and the highest standards of probity, relevant legislation and Victorian Government policy and may also consider resource implications, timeliness and other material factors.

Where the proposed transaction is complex, for example involving an Expression of Interest (EOI) process or a program of compulsory acquisitions, the VGLM should be informed at the outset of the transaction and kept informed at critical points throughout to ensure an efficient authorisation process. The VGLM's response will be provided in writing to the agency within 10 business days of receipt of a complete submission.

Transactions that do not require a submission to the VGLM must still comply with all relevant parts of the Policy. In particular, agencies must ensure appropriate agency and ministerial approval is obtained, proper records are kept and appropriately rigorous contract terms employed.

## **4.3 Exemptions**

The Minister for Planning is able to grant exemptions to the land transaction requirements detailed in section 2(c) of the Policy and described in section 2(d) of the Policy where an agency requests:

- an alternative sales process and / or terms of a transaction; or
- that the land can be sold with its public purpose zoning in place.

For each request submitted, the VGLM will assess whether or not any exemption to the requirements of the Policy is supported by the relevant approval. The VGLM will provide a recommendation to the Minister for Planning.

***In considering exemptions to the public sales process (exemption 2(d)(ii)), the Minister for Planning, with advice of the VGLM, will consider:***

- logical – the transaction is logical and the proposed use of the land is the most appropriate use (e.g. the subject land is landlocked, there is a single adjoining owner, or there is only one logical alternative owner);
- no advantage – the purchaser will not gain an unfair financial advantage from the transaction; taxpayer funds will not be misused;
- equitable – that if other potential purchasers exist (e.g. adjoining landowners) it is clear from recorded inquiries that they have no interest in purchasing the subject land;
- declared Policy – the transaction will facilitate a declared and publically acknowledged government policy outcome (e.g. sale of land in a declared Urban Growth Zone); and
- transparent – that all dealings with external parties in relation to the transaction have been open and transparent and properly recorded, and no favouritism has been exhibited or can be implied from the transaction.

**Table 2 Exemptions to the public sales process**

#### **4.4 If VGLM approval is not granted**

If the VGLM is not satisfied that a transaction is consistent with the Policy, VGLM approval will not be granted. If approval is not granted, the VGLM will provide the agency with written reasons for its decision and invite the agency to discuss the matter.

The agency may provide additional information in support of the proposed transaction addressing the reasons given for not granting approval. If the additional information fails to satisfy the VGLM and approval is still not granted, the agency, via its relevant Minister, may then request that the matter be sent for review by the Minister for Planning.

#### **4.5 Annual reporting by VGLM**

The VGLM is to provide an annual report to the Minister for Planning. This report will outline the details, including number, value and agencies that have had transactions considered by the VGLM in a 12 month period, and the outcome of that consideration.

## 5 Valuation requirements

### 5.1 Requirement for valuation

Agencies must obtain and use valuations from VGV when seeking to:

- sell an interest in land;
- purchase an interest in land;
- address compensation claims or offers pursuant to the *Planning and Environment Act 1987* (Vic) or the *Land Acquisition and Compensation Act 1986* (Vic); or
- grant or acquire a leasehold interest in land (subject to exemptions in section 10.2 of the Guidelines).

A VGV valuation may be a valuation made by VGV or carried out by a valuer who is a member of the Valuation Services Panel (VSP) in accordance with the *Valuation of Land Act 1960* (Vic). Where valuation advice has been made by a panel member, VGV must confirm in writing that the valuation has been properly made based on an appropriate methodology and provide a certified formal valuation.

Agencies may seek an ‘estimate of value’ directly from the VSP to inform its decision making with respect to a particular land transaction. An ‘estimate of value’, as opposed to a certified formal valuation, must not be used for the sale, purchase or compulsory acquisition of land. It is an estimate only and may not be relied upon by the VGV in the preparation of a certified formal valuation.

An agency may be required to obtain a ‘check’ valuation to inform the valuation process. An independent ‘check’ valuation is a second valuation designed to provide further assurance that the VGV valuation is sound and properly made.

If a ‘check’ valuation is required, VGV will commission both this valuation and the certified formal valuation using identical instructions. The ‘check’ valuation is made by a valuer who is a member of the VSP, but will report directly to the agency requiring the second valuation.

Table 1 below outlines the circumstances in which a ‘check’ valuation will be required.

Transaction Type	Valuation Required
Inter-agency transactions and inter-government transactions.	It is mandatory to obtain one VGV valuation.
Non-government transactions of land with a likely value of less than \$750,000 (exc. GST).	It is mandatory to obtain one VGV valuation.
Non-government transactions of land with a likely value that is equal to or greater than \$750,000 (exc. GST).	It is mandatory to obtain two valuations, being: <ul style="list-style-type: none"> <li>● one VGV valuation; and</li> <li>● one ‘check’ valuation from a member of the VSP, instructed by VGV but reporting directly to the agency.</li> </ul>

**Table 3 – Valuation requirements by valuation type**

## **5.2 Instructions**

In seeking a valuation, an agency must provide VGV with all relevant information regarding a proposed transaction including as much detail as possible. In particular, the key terms and conditions of a transaction (and any variations that may be contemplated) should be thoroughly considered and reflected in the valuation instructions.

Information that is relevant to a valuation may include environmental or heritage assessment reports, business assessment reports, planning reports and hypothetical subdivision analysis.

The terms and conditions of a transaction can have a material impact on a valuation. Valuation advice will be based on the terms and conditions that are presented to VGV. If an offer is made on the basis of a VGV valuation, the offer must reflect not only the value determined by VGV but also the terms and conditions on which that value was derived.

In seeking a valuation, agencies should use the request for valuation template which can be found on the VGV website. Under the *Valuation of Land Act 1960 (Vic)*, VGV cannot accept instructions to value from anyone who is not properly authorised in accordance with section 3 of that Act. An agency requesting a valuation will be responsible for costs associated with the valuation. Where joint instructions are proposed by agencies, costs will be borne equally.

Where an agency is seeking a valuation through the first right of refusal process and where the future owner will restrict the future use of the land, a valuation will be prepared that provides:

- highest and best use (as required by the *Valuation of Land Act 1960 (Vic)*); and
- restricted use (based on how the land is to be used by the future purchaser where a restriction will be placed on the title reflecting this restricted use in accordance with the *Victorian Government Landholding Policy and Guidelines*).

## **5.3 Confidentiality**

Valuation advice remains the property of the instructing agency (or agencies where joint instructions are issued) and must not be disclosed to any third party unless authorised by the agency(ies).

Valuation instructions must require that the valuation advice is to remain confidential.

Agencies must only disclose valuation advice to an agent or legal representative appointed to act on its behalf where it is part of setting a reserve for a public sales process (section 7.2). Under no other circumstances is valuation advice to be disclosed to external parties, unless legally directed to do so.

Informal discussions or meetings between valuers, between an agency and valuers or between an agency and a non-government party concerning valuation advice must not occur under any circumstances.

## **5.4 Valuation conferences**

Valuation conferences are meetings between valuers, convened by VGV, where there is a material difference of opinion or approach between a VGV valuation and a 'check' valuation as reflected in the valuation advice received by an agency.

Where a VGV valuation and a 'check' valuation vary by more than 10 per cent (using VGV's valuation as the measure) or have been conducted using significantly different methodology, an agency must inform VGV. After considering the two valuations, VGV will determine whether a valuation conference is required. VGV may also convene a valuation conference acting independently or at the request of the VGLM.

Valuation conferences are to be attended by VGV, the appointed valuers, representatives of the agency and the VGLM. Following a conference, VGV will confirm the valuation advice in writing to the agency. The role of the VGLM in valuation conferences is as an observer and to provide probity.

For acquisitions under the *Land Acquisition and Compensation Act 1986* (Vic), or compensation claims under the *Planning and Environment Act 1987* (Vic), the Supreme Court or Victorian Civil and Administrative Tribunal (VCAT) may direct that valuers meet / attend compulsory mediation. It is expected that the VGLM will attend such meetings.

Informal discussions or meetings between valuers or between an agency and valuers concerning valuation advice must not occur under any circumstances.

### **5.5 Presentations**

If a non-government entity or private party is involved in a transaction with an agency that holds a different view on the value of the subject land, VGV may at its discretion agree to a presentation by the other party's valuer.

Presentations are to be attended by VGV, the appointed panel valuer (if applicable), the non-government party valuer, representatives of the agency and the non-government party, and the VGLM. Following a presentation, VGV will confirm the valuation advice in writing to the agency.

### **5.6 Currency of valuation advice**

All property transactions are to be conducted in accordance with current valuation advice.

A valuation report must include a date of valuation and period of currency. The currency of a valuation report is usually three months after the date of valuation but may vary depending on conditions in the prevailing property market.

VGV must be consulted prior to an offer being made on the basis of valuation advice that is outside the period of currency. On request, VGV will determine if the valuation advice is still current or a review and update of the valuation advice is necessary.

## **6 Government to government transactions**

*Other State, Commonwealth and local government agencies have a first option to purchase land that has been declared surplus to the requirements of a Victorian Government agency. This first right of refusal process is set out in the Victorian Government Landholding Policy and Guidelines.*

### **6.1 Inter-agency transactions**

Transactions between Victorian Government agencies are to be conducted on the basis of the current market value based on the highest and best use of the land as determined by VGV.

In seeking advice from VGV on the current market value of land, the parties to the transaction are to agree on the key terms and conditions of the transaction prior to issuing instructions. The valuation instructions are to be jointly signed by all / both parties.

Transactions between agencies must be documented either in the form of a contract of sale, a memorandum of understanding, or an exchange of letters which sets out the terms and conditions of the transaction, in addition to any requirements under the *Transfer of Land Act 1958* (Vic) or the *Land Act 1958* (Vic) in the case of Crown land. Entities created under the *Transport Integration Act 2010* (Vic) are able to transfer land to another entity created under this Act for nominal consideration.

An inter-agency transaction of \$750,000 (exc. GST) or more must be approved by the VGLM before a letter of exchange or Contract of Sale is entered into. A submission to the VGLM is to be jointly made by the parties to the transaction. Where there is a dispute between two agencies on the terms of the transaction and value of the transaction is less than \$750,000 (exc. GST), the VGLM can be invited to facilitate an outcome that meets the policy intent of the *Victorian Government Land Transactions Policy and Guidelines*.

### **6.2 Inter-government transactions**

Transactions with Commonwealth or local government agencies are to be conducted on the basis of the current market value based on the highest and best use of the land as determined by VGV. Unless an exemption is granted under section 2(d) of the Policy, the land must have in place the most appropriate planning provisions (including zoning) prior to transfer.

An offer to sell land to a Commonwealth or local government agency at less than the current market value of the land on a restricted use basis as determined by VGV, may only be made with the approval of the landholding Minister.

In considering whether to approve a restricted use sale to a Commonwealth or local government agency, landholding Ministers will have regard to the estimated loss of revenue to the State and the public or community benefit arising from the restricted use sale. Landholding Ministers will evaluate the proposed transaction against the criteria in the *Victorian Government Landholding Policy and Guidelines*. Land sold for a public or community purpose will have a restricted condition included on the title, which will run with the land. Should the land be sold in the future and its full market value realised, the landowning agency must pay the relative change in value as defined by VGV to the State.

Any offer to sell land to a Commonwealth or local government agency with a value of \$750,000 (exc. GST) or more must be approved by the VGLM before it is made.

## **7 Sale of land**

***Victorian Government agencies must only sell land using a public process such as a public auction, public tender or public Expression of Interest or Registration of Interest. Private treaty sales must only be conducted if approved by the Minister for Planning on the advice of the VGLM.***

Government to government transactions are exempted from this public process when conducted through the first right of refusal process outlined in the *Victorian Government Landholding Policy and Guidelines*, however agencies must ensure that all inter-agency or inter-government transactions comply with the Guidelines in all other respects. Refer to section 6 – Government to government transactions.

When selling land by a public process, agencies must adhere to the procedures set out below.

### **7.1 Licensed real estate agent**

A licensed real estate agent must conduct the sale of land by public auction or tender:

- unless an exemption from the *Estate Agents Act 1980* (Vic) applies;
- or where the sale of land is the core business of the agency.

### **7.2 Reserve price**

The reserve price for the sale of land by public auction or tender must be set prior to the day of auction or close of tender. This does not include an EOI or ROI process.

The reserve price must not be less than the current market value of the land as determined by VGV.

In the case of an auction, the reserve price must not be revealed to the appointed real estate agent prior to the day of auction and should be revealed at the latest practicable time.

In the case of a tender, the reserve price must not be revealed to the appointed real estate agent prior to the close of tender.

### **7.3 Sale prior**

The sale of land prior to auction or the close of tender is not permitted.

### **7.4 Tender lodgement / opening**

Tenders are to be lodged with the agency or its legal representative. Tenders must not be lodged with the appointed real estate agent.

Tenders are to be opened by a formally appointed tender panel comprising representatives of the agency and the agency's legal representative (if appropriate).

### **7.5 Sales terms**

The preferred terms of sale will be on a cash basis in the case of:

- an auction, a 10 per cent deposit and balance payable within 30, 60 or 90 days; or
- a tender, a 10 per cent deposit (one per cent payable on tender lodgement and nine per cent payable on tender acceptance) and balance payable within 30, 60 or 90 days.

If market conditions or agency requirements dictate, alternative terms may be considered appropriate. Alternate terms must be discussed with the VGV as sales terms can have a material impact on the valuation.

## **7.6 Reserve not met**

If the reserve price is not met at auction or the close of the tender, the agency may negotiate with the highest bidder in an attempt to meet the reserve price.

If negotiation with the highest bidder fails to meet the reserve price, the land may remain on the market and be sold by private treaty either:

- at a price which is not less than the reserve price and on terms and conditions no more favourable to the purchaser than those offered at auction or tender; or
- at a price and on terms and conditions that are supported by VGV and subject to VGLM approval, having regard to prevailing market conditions and any other relevant considerations.

In the case of Crown land, if a private sale is supported by VGV at a price less than the reserve price or on terms and conditions more favourable to the purchaser than those offered at auction or tender, the sale must be approved by the Governor in Council.

## **7.7 Appointment of licensed real estate agents and consultants**

Licensed real estate agents and consultants engaged in connection with the sale or acquisition of land must be appointed in accordance with applicable procurement policies and agency specific procurement policies.

Licensed real estate agents and consultants must be independent and have no conflict of interest and / or personal or pecuniary interest in relation to the transaction to which they are appointed. A written declaration to this effect must be provided to the agency by the real estate agent or consultant prior to any appointment. A consultant or firm that has been appointed as agent must not also be appointed as valuer and agent for the same transaction as this may create an immediate conflict of interest.

Consultants should be requested to provide evidence of insurance coverage as part of an engagement. Coverage should include at least professional indemnity insurance of an amount that reflects the nature of the engagement.

## **7.8 Sale by expression of interest or registration of interest**

A sale which is undertaken by public Expression of Interest (EOI) or Registration of Interest (ROI) constitutes a sale by public process and may be used:

- for the sale of large or strategically located land which has significant development potential or significant development barriers;
- where an agency is seeking to expose land to the market to determine potential development options; or
- where an agency is seeking to achieve a specific development outcome or policy objective in relation to the sale of the land.

For large or complex transactions, agencies must engage a probity advisor and / or a probity auditor to provide independent assurance that the EOI or ROI process is appropriate and has been executed satisfactorily. Probity advisors can be sourced from the Probity Practitioner Services Panel administered by DTF.

Prior to entering a sale contract following an EOI or ROI process or entering into discussions with any potential purchasers, agencies must obtain the current market value of the land as determined by VGV. This valuation will provide a benchmark to agencies that can prevent manipulation of the return to government and enable offers to be confidently assessed on merit.

To ensure the approvals process is timely and transparent, it is important that agencies discuss a proposal to sell land, with a value \$750,000 (exc. GST) or more, through an EOI or ROI process with the VGLM and VGV at the earliest possible stage and prior to critical milestones during the process (e.g. instructing and obtaining valuations, releasing an EOI or ROI, shortlisting respondents, awarding contracts, signing variations to contracts).

### **7.9 Market-led proposals and Integrated Development Opportunities**

If a proposal is received from a private entity that requests an agency to treat privately in relation to the sale of land on the basis that that party will build infrastructure or provide services to benefit the State, the agency can advise the proponent to submit a proposal in accordance with the Market-led Proposal Guidelines administered by DTF.

DTF can offer the same advice to a proponent for an Integrated Development Opportunity (IDO) where property development will be on existing or newly created land parcels occurring over or adjacent to the infrastructure as part of the delivery of the core infrastructure works.

A Market-led or Integrated Development Opportunity proposal will only be pursued where:

- there is a need and appetite for the project that is consistent with government policy objectives and is in the public interest;
- the project is financially, economically and socially feasible and capable of being delivered in a timely fashion;
- the project has a degree of uniqueness that means it could not reasonably be delivered by another private party or achieve the same value for money outcome through a competitive process within acceptable timeframes; and
- the project represents value for money and provides benefits to government.

### **7.10 Crown land**

Unless specifically set aside for defined purposes, Crown land is of unreserved status. Unreserved Crown land can be sold to the private market. Once it is sold it becomes freehold land.

Under the *Crown Land (Reserves) Act 1978* (Vic), Crown land can be:

- reserved temporarily; or
- reserved permanently.

Reserved land cannot be sold without the land's reservation being revoked prior to sale, unless the sale is clearly authorised by another Act. The statutory power to revoke a crown land reservation rests with the Minister administering the relevant section of the *Crown Land (Reserves) Act 1978* (Vic), which in most cases will be the Minister for Environment, Climate Change and Water.

If the land is temporarily reserved, revocation requires publication of an Order of the Governor in Council in the Government Gazette, though this may also be achieved through an Act of Parliament. If the land is permanently reserved, revocation generally requires an Act of Parliament.

Once the Crown land reservation (either temporary or permanent) has been revoked, the land reverts to unreserved Crown land and can be sold under provisions of the *Land Act 1958* (Vic).

### **7.11 Sale of surplus railway leasehold land**

Section 2(d) of the Policy provides an exemption to surplus railway leasehold land owned by Victorian Rail Track (VicTrack) which is deemed no longer required for public transport purposes in accordance with *Transport Integration Act 2010* (Vic) may be offered to the existing tenant prior to being subject to a public process.

All sales to railway tenants must be negotiated at an amount not less than the VGV valuation. The tenant must be given 30 days to accept the offer and advice should be sought from VGV where there is a valuation dispute. Terms for any sale must comply with these Guidelines. In the event the tenant does not agree within the 30 day period the property may be offered to the market via a public process.

## **8 Acquisition of land**

### **8.1 Purchase**

Agencies may purchase land (or purchase an interest in land) only where they have the legal power to do so. Land may be purchased by public process or private negotiation.

Agencies must not purchase land (or an interest in land) at a price which is greater than the current market value of the land as determined by VGV, unless an exemption applies as set out in the Policy or Guidelines. This also applies to circumstances where agencies are buying at an auction where a staff member or buyers advocate is involved.

An offer to purchase land (or purchase an interest in land) where the value of that land is \$750,000 (exc. GST) or more must be approved by the VGLM before it is made.

Note that purchasing an interest in land relates to transactions such as purchase options and leases with purchase rights. Interests in land, for example easements, should be registered on title by the agency where appropriate.

In special circumstances, where the purchase of land is strategically important but the compulsory acquisition process is not used or available, agencies should discuss the auction process with the VLGM and VGV prior to the auction. The VGV and VGLM may consider if a higher reserve price is warranted given the circumstances.

### **8.2 Compulsory acquisition**

Agencies may compulsorily acquire land only where they have the legal power to do so. The head of power for a Minister to compulsorily acquire land on behalf of an agency is found in various Victorian Acts. The process for compulsory acquisition is in all cases set out in the *Land Acquisition and Compensation Act 1986* (Vic), subject to variations to the *Land Acquisition and Compensation Act 1986* (Vic) as set out in any special Act under which an agency derives its acquisition powers.

An agency empowered under a special act to compulsorily acquire land is required to comply with the *Land Acquisition and Compensation Act 1986* (Vic) when acquiring that interest whether or not the acquisition is by agreement or by a compulsory process. In these circumstances, Part 2 of the *Land Acquisition and Compensation Act 1986* (Vic) describes the procedural requirements for such an acquisition.

In most cases, compulsory acquisition requires land to be reserved for a public purpose by a public acquisition overlay. This can be a lengthy process and agencies should allow sufficient time if considering compulsory acquisition. The Minister for the *Land Acquisition and Compensation Act 1986* (Vic) may grant an exemption to the reservation requirement by the Minister responsible for the *Land Acquisition and Compensation Act 1986* (Vic) in certain circumstances. It is recommended that early discussions be held with the LAC Act Minister's department.

An offer of compensation under the *Land Acquisition and Compensation Act 1986* (Vic) must be made within 14 days of publication of a notice of acquisition and be based on a 'fair and reasonable' assessment of what the party whose interest in the land has been acquired is entitled to under the Act. The offer must include the current market value of the land as determined by VGV and be supported by a Certificate of Valuation. The *Land Acquisition and Compensation Act 1986* (Vic) also provides for other elements of compensation to be assessed and paid.

An offer of compensation inclusive of land value, solatium, disturbance and reasonable costs (including subsequent offers in relation to the same acquisition) under the *Land Acquisition and Compensation Act 1986* (Vic) of \$750,000 (exc. GST) or more, must be approved by the VGLM before it is made.

Compensation may also be payable under the *Planning and Environment Act 1987* (Vic) where a loss is made by the owner of land, when the land is sold as a result of the imposition of a public acquisition overlay (loss on sale) or where a planning application is refused on grounds that the land is required for a public purpose (financial loss). The owner is responsible for making a claim for compensation, to which the agency has to respond.

Where compensation for a loss on sale or financial loss claim under the *Planning and Environment Act 1987* (Vic) is approved of \$750,000 (exc. GST) or more, approval by the VGLM is required before an offer is made.

### **8.3 Disputed claims**

Where the compulsory acquisition of land becomes known as a disputed claim under the *Land Acquisition and Compensation Act 1986* (Vic), the matter may be referred to VCAT or Supreme Court of Victoria.

The market value component of an offer to settle a disputed claim must not exceed the current market value of the land as assessed by VGV. Where a transaction is the subject of litigation, or the VGLM is satisfied that litigation is imminent, the VGLM may in exceptional circumstances approve an offer based on other considerations than the VGV valuation. The VGLM may, in providing approval, consider expert assessments provided by any witness in the proceedings including a witness engaged by another party. Agencies should avoid using client professional privilege to give instructions to valuers outside of the VGV / VSP arrangements.

If a disputed claim has been referred and VGLM approval was required in relation to the matter, or if it is likely that settlement during the course of litigation will result in compensation payable of \$750,000 (exc. GST) or more, the VGLM should be advised of the referral as soon as possible.

An offer to settle a disputed claim (including a without prejudice offer) of \$750,000 (exc. GST) or more must be approved by the VGLM before it is made. In considering whether to approve an offer to settle a disputed claim (including a without prejudice offer), the VGLM will have regard to the range of awards which a court or tribunal may make in determining the matter as well as the costs of litigation.

## **9 Leasing of land**

### **9.1 As lessor**

Agencies may only grant leases where they have the legal power to do so. Unless an exemption applies, agencies must not grant a lease (or agree to renew or extend a lease) to any land:

- at a price which is less than the current market rental value of the land as determined by VGV; and
- which contains an option to purchase, except to a government agency.

#### *Low-value commercial lease*

Where agencies have a number of low value leases transactions for similar land types, it is possible to develop a schedule of lease uses types and values. The schedule can be reviewed and if appropriate, approved by the VGV in lieu of individual valuations.

#### *Low-value non- commercial leases*

An offer to lease land at a rental rate below the current market rental value of the land as determined by VGV may only be made with the approval of the landholding Minister unless delegated to a agency Secretary / Chief Executive Officer, or Director of Housing. The delegation may form a schedule of lease uses, types and values. The value of a lease for an individual land parcel cannot exceed \$10,000 (exc. GST) total in a 12 month period.

In considering whether to approve a non-commercial lease, a landholding Minister, agency Secretary / Chief Executive Officer, or Director of Housing will have regard to the estimated loss of revenue to the State and the public or community benefit arising from the non-commercial lease.

VGLM approval is not required for the grant of a lease provided it does not form part of a sales transaction.

### **9.2 As lessee**

Agencies may only lease land where they have the legal power to do so. The Government Shared Services Provider will lease land on behalf of agencies that do not have the power to do so.

Unless an exemption applies as set out in the Policy or Guidelines, agencies must not acquire a lease to any land at a price that is greater than the current market rental value of the land as determined by VGV.

VGLM approval is not required for the acquisition of a lease provided it does not form part of a land sales transaction.

### **9.3 Exemptions**

An exemption to section 2(c)(i) of the Policy has been applied in respect of the grant of a leasehold interest of land in certain circumstances. Please refer to section 10 of these guidelines for further detail.

## 10 Exemptions

### 10.1 Exemptions contained in the Policy

Section 2(d) of the Policy details examples of exemptions to the land transactions requirements contained in section 2(c) of the Policy.

Where an agency relies on an exemption contained in section 2(d) of the Policy it must retain details of the basis of the exemption on file and, where relevant, the approval on which the exemption is granted.

Agencies must ensure when seeking an exemption that the relevant decision maker is informed of the potential loss of revenue created by the exemption and why the proposed exemption justifies the potential loss of revenue.

If an exemption applies or has been granted with respect to one or more land transactions requirements, it is still necessary to comply with all of the other requirements.

If a transaction requires the approval of the VGLM and is exempt from one or more land transaction requirements, the VGLM will, for probity purposes, confirm the exemption exists rather than examine the merits of the exemption being granted. The VGLM can request to review an agency's exemption file.

### 10.2 Exemptions to the leasehold policy

Exemptions to section 2(c)(i) of the Policy apply in respect of the grant of a leasehold interest in land in the following cases:

Agency	Exemption
Department of Education and Training (DET)	Land that forms part of the teacher housing portfolio, where it is used by a teacher employed by DET.
Department of Environment, Land, Water and Planning (DELWP)	In relation to Crown land reserved under various acts being the direct responsibility of DEWLP, its committees of management and Parks Victoria, including permanent reserves or land deemed to be permanently reserved through various legislation, including the <i>Crown Land (Reserves) Act 1978</i> (Vic), <i>Forests Act 1958</i> (Vic), <i>National Parks Act 1975</i> (Vic), and the <i>Wildlife Act 1975</i> (Vic).
Department of Health and Human Services (DHHS)	Land that is leased to service providers, where the service provided is related to the core functions of DHHS.  Land that is leased as part of a Public Private Partnership project.
DHHS Health Services as defined in Schedules 1 to 6 in the <i>Health Services Act 1988</i> (Vic)	Land that is leased to service providers, where the service provided is related to the core functions of DHHS Health Services.  Land that is leased as part of a Public Private Partnership project.
Department of Health Human and Services (DHHS)	Residential properties (public and community housing) leased to tenants that meet the Director of Housing eligibility requirements under the <i>Housing Act 1983</i> (Vic); and  Residential properties leased to Registered Housing Agencies and Community Service Organisations for the purpose of providing accommodation to tenants that meet the Director of Housing eligibility requirements or social housing.
Department of Justice and Regulation (DJR)	Land that is used by the DJR for Police housing, where it is used by a DJR employee for police purposes.
Entities created under the <i>Transport Integration Act 2010</i> (Vic)	Are able to lease land to another entity created under the Act for nominal consideration.

Agency	Exemption
All agencies	Where land is held for strategic purposes (i.e. future service delivery outcomes) and leased to the private sector, the agency must receive market value rent which is determined by an assessment of value set by an independent licensed estate agent.
All agencies	<p>Where the lease is for commercial office space and the transaction is facilitated by the Shared Service Provider:</p> <ul style="list-style-type: none"> <li>● where the State is the lessee, the exemption does not apply; and</li> <li>● where the State is the lessor, the threshold for a VGV valuation is gross rent pa of \$20,000 (exc. GST).</li> </ul>
All agencies	The offer to lease land at a non-commercial rate, below the market rental value of the land as determined by VGV where the landholding Minister has given approval or delegate. The value of the lease is not to be greater than \$10,000 (exc. GST) per annum.

**Table 4 – Exemptions from obtaining VGV valuation for leasing purposes.**

## **Glossary**

### **Expression of interest (EOI)**

An offer made by an interested party for the purchase of land. The purpose is to determine whether the market has an interest in developing or purchasing a particular parcel of land.

### **Land**

The physical land and fixtures attached to the land, including all things that are a natural part of the land such as trees and minerals and all things that are attached to land such as buildings and improvements on the land.

### **Landholding Minister**

The Minister who is the owner of the land or is responsible for the agency or statutory authority that owns the land.

### **Market value**

Market value as defined in section 5A of the *Valuation of Land Act 1960* (Vic) and section 40 of the *Land Acquisition and Compensation Act 1986* (Vic).

### **Ministerial approval**

Where the explicit approval of the landholding Minister is sought and granted. Where approval of the landholding Minister is required for the purpose of the Policy and Guidelines, this may be delegated to statutory roles.

### **Non-commercial transaction**

A land transaction involving a not-for-profit, community organisation or service delivery body that delivers government policy priorities for less than commercial terms.

### **Recognised traditional owner corporation**

A corporation that is a registered native title body corporate under the *Native Title Act 1993* (Cth) and / or a traditional owner group entity that has entered into a Land Use Activity Agreement under the *Traditional Owner Settlement Act 2010* (Vic), or a corporation nominated by a traditional owner group which the government has accepted meets Threshold Guidelines.

### **Registration of interest (ROI)**

Similar to an EOI in that it is used to identify parties who may be interested in, and capable of, delivering an outcome on a parcel of land. Interested parties are asked to provide information on their capability to deliver an outcome.

### **Victorian Government agencies**

All Victorian Government departments, public statutory authorities and any legal entity which is established under State legislation for a purpose of the State (including those independent of government control) along with companies in which the State has an interest and any organisation, other than a council, which requires statutory authorisation and / or ministerial approval, especially where public funds are involved in a land transaction.

## Appendix 1 – Due Diligence Checklist

*Prior to the disposal, acquisition or lease of land Victorian Government agencies must conduct an appropriate level of due diligence to ensure they are fully informed of the status and attributes of the land. The following questions may help an agency in understanding its due diligence responsibilities.*

### **Legal Review**

- Do you know who the owner of the land is? Have you carried out a Title Search?
- Are you dealing with the legal owner of the land? If not, make sure that appropriate delegations or authorisations are in place.

### **Public land values**

- Is the land Crown land? If yes, an assessment of the public land values is required in accordance with the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*.

*For further information contact the Land, Fire and Environment Group in the Department of Environment, Land, Water and Planning (DELWP).*

### **Survey**

- Have you confirmed the status of the land?
- Have you checked the title to ensure that any encroachments, access issues or encumbrances have been described?
- Have you undertaken a re-establishment survey?

*For further information contact the Office of Surveyor-General Victoria.*

### **Planning**

- Have you checked the planning scheme provisions for the land? Does the agency understand the land zoning and any other overlays or schedules that apply?
- If the site is to be sold, does it have the appropriate planning provisions in place (e.g. zoning)? Land zoned for public purpose in the planning scheme cannot be sold unless approved by the Minister for Planning.

*For further information contact the Planning Group in DELWP.*

### **Contamination and pollution**

- Have you completed an initial review of the land's past and present uses?
- Do you have concern that there may be contamination of the land? If yes, a preliminary environmental assessment must be completed to formally review and document the contamination status of the land.
- Have you considered the potential risk associated with an ongoing contamination liability?

*For further information contact the Land and Property Group in the Department of Treasury and Finance.*

### **Cultural heritage**

- Have you assessed the cultural (historic and aboriginal) heritage and considered whether there is any potential impact on cultural heritage assets on the future use and development potential of the land?
- Is an independent heritage assessment needed?

*For further information contact Heritage Victoria.*

### **Native title and traditional owner rights**

- For all Crown land, an assessment of native title and traditional owner status is required in accordance with the *Victorian Government Strategic Crown Land Assessment Policy and Guidelines*.

*For further information contact the Native Title Unit in the Department of Justice and Regulation.*

## Appendix 2 – Victorian Government Land Monitor Checklist

*The role of the Victorian Government Land Monitor (VGLM) is to provide the Victorian Government with an assurance of integrity, impartiality and accountability in land transactions. The following information is prepared to assist government agencies in deciding when to seek approval or assistance from the VGLM. The VGLM Checklist should be read in conjunction with the Victorian Government Land Transactions Policy and Guidelines.*

### **When do you need to get VGLM approval of a land transaction?**

- for any sale of land (or an interest of land) where the value of the land or transaction is \$750,000 (exc. GST) or more;
- for any purchase of land (or an interest of land) where the value of the land or transaction is \$750,000 (exc. GST) or more;
- for any inter-agency transaction of \$750,000 (exc. GST) or more; and
- for any offer to sell land to a Commonwealth or local government agency with a value of \$750,000 (exc. GST) or more.
- if an agency want to purchase, acquire land (or an interest in land) or pay compensation for an amount in excess of the VGV valuation.

### **When do you need to get VGLM approval in compensation matters?**

- for an offer of compensation under the *Land Acquisition and Compensation Act 1986* (Vic) of \$750,000 (exc. GST) or more;
- for a compensation claim under the *Planning and Environment Act 1987* (Vic) where the value of the compensation is \$750,000 (exc. GST) or more; and
- where a transaction is the subject of litigation, or the VGLM is satisfied that litigation is imminent, the VGLM may in exceptional circumstances approve an offer based on other considerations other than the Valuer-General Victoria valuation.

### **Will the VGLM attend valuation conference and presentations?**

The VGLM will attend valuation conferences and presentations where there is dispute of valuations. The VGLM's role in these meetings is as an observer to understand the factors influencing the valuations and for probity purposes. Agencies should invite the VGLM to all conferences where the benchmark levels (as above) mandate the VGLM be involved.

### **When can you apply for an exemption for 'exceptional circumstances'?**

From time to time, a government agency may seek an exemption to the public sales process (exemption 2(d)(ii)). The Minister for Planning, with the advice of the VGLM, can grant exemptions in exceptional circumstances.

### **When else should you involve the VGLM?**

Agencies should consider involving the VGLM in other land transactions especially where:

- guidance is needed regarding government requirements and probity standards;
- there is a dispute that is likely to lead to litigation or mediation; or
- the agency is unsure about usual practice.

### **Further information**

For further information, contact the VGLM and discuss your transaction requirements directly. It is recommended that landholding departments speak early to the VGLM if undertaking the following complex land transactions:

- an Expression of Interest or Registration of Interest process;
- a market led or value capture process; and
- compensation claims that are subject to a claim in Victorian Civil and Administrative Tribunal or the Supreme Court.

