Government of Victoria

# Policy and Instructions

for the purchase, compulsory acquisition and sale of land

August 2000

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Government Land Monitor
Department of Infrastructure
August 2000

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# Foreword

Our community vests significant trust in a democratically elected government. To ensure financial responsibility by government, it is imperative to have checks and balances in place.

The Government Land Monitor has a fundamental role in assisting the Government to achieve appropriate, accountable and transparent transactions in the sale, purchase and compulsory acquisition of land. It does this by overseeing all sales, purchases and compulsory acquisitions of land by the Victorian Government.

The *Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land* is a policy that all government agencies and authorities must use in employing a consistent best-practice approach to their property transactions.

Regardless of the value of land, Ministers, Departmental Secretaries and Chief Executives must ensure that all property transactions in which they are involved are carried out in accordance with the policy.

By adhering to the policy, the Victorian community can have confidence in the conduct of government business.

John Thwaites

Hon. John Thwaites MP
Minister for Planning

# Contents

# Definitions and abbreviations

| | |
|---|---|
| Agency | all 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 |
| Compensation | includes offers of compensation under both the *Land Acquisition and Compensation Act 1986* and the *Planning and Environment Act 1987* |
| Consultant | a person or organisation whose business is to provide expert advice and/or service |
| Council | a municipal council |
| EPA | Environment Protection Authority |
| GLM | Government Land Monitor |
| Land | Includes crown land covered by the *Land Act 1958* and the *Crown Land (Reserves) Act 1978*, all interests in land (including leasehold) and all improvements on land |
| Minister | the Minister responsible for the Government Land Monitor |
| Valuer-General valuation | • a valuation made by the Valuer-General, or<br>• a valuation obtained from the Valuer-General which has been made by a valuer who is a member of the Valuer-General's Panel of Valuers, and the Valuer-General certifies in writing that the valuation has been properly made and based |
| Valuer-General's Panel of Valuers | the Panel of endorsed valuers established by the Valuer-General for the purpose of providing valuations on behalf of the Valuer-General for the purchase, compulsory acquisition, sale, lease or financial management of land by agencies |
| Whole-of-government Panel of Valuers | the Panel of Valuers established by the Valuer-General to provide valuations which are of a low sensitivity and below $250,000 for the purchase, compulsory acquisition, sale, lease or financial management of land by agencies |

# 1 Application of this policy and instructions

The policy and instructions for the purchase, compulsory acquisition and sale of land contained in this document apply to all agencies and all transactions irrespective of the value of the land.

# 2 The Government Land Monitor (GLM)

## 2.1 The role of the GLM

The primary role of the GLM is to provide government with an assurance of accountability and integrity in land transactions. It must ensure that transactions are legal, are in the public interest and provide best results for government. To achieve this outcome, agencies are required to obtain GLM approval to conduct transactions.

GLM responsibilities include:

- administration, review and maintenance of this policy and instructions;
- promotion of best practice in land transactions;
- ensuring that land is sold either by public process or by a process approved by the GLM;
- provision of authoritative advice about the purchase, compulsory acquisition and sale of land;
- provision of advice on land-related matters to the Minister;
- promotion of, and participation in, improvements to legislation affecting land transactions or compensation;
- provision of assistance in mediation and litigation;
- maintaining a public register of crown land sold by private treaty;
- provision of assistance in project facilitation;
- establishment and maintenance of a sales bulletin.

## 2.2 Transactions that require the approval of the GLM

When an agency proposes to purchase, compulsorily acquire or sell land or to grant or take an option over land, GLM approval must be obtained:

- Where the amount of the transaction is $250,000 or more;
- Where the land is part of a project or where the land being offered for sale or being purchased or compulsorily acquired, comprises two or more properties parcels/allotments/titles amounting in total to $250,000 or more;
- In circumstances of compulsory acquisition of land where the compensation is $250,000 or more;
- In circumstances of compensation payable pursuant to the *Planning and Environment Act 1987* where the compensation is $250,000 or more;
- In circumstances of a transaction conducted under the *Land Act 1958* where the consideration is $250,000 or more;
- Where it is proposed to grant or take an option over land which has a market value of $250,000 or more;
- Where directed by the Minister;
- Where there is a proposed change to a previous approval of the GLM;
- Where land is proposed to be sold by private treaty, the sale requires the approval of the Minister irrespective of value, refer to section 4.4;
- For trade sales, sales of infrastructure assets and State-owned enterprises involving land in accordance with section 6.6.

*Unless special arrangements have been made with the GLM, there must be no unconditional commitment or agreement, including without prejudice offers, before approval for a transaction is obtained from the GLM. In disputed matters which are before a court or tribunal or the subject of mediation or arbitration, an agency may make an offer conditional upon obtaining GLM approval to that offer.*

## 2.3 When are submissions required to be made to the GLM?

- When a decision is made to purchase or sell land.
- When a Notice of Intention to Acquire has been issued.
- When valuer/s have been instructed.
- When all professional advice has been received and prior to offers being made.

- Prior to conferences of professional consultants.
- Prior to the date of the auction or the close of tender.
- When there is a proposed change to a previously approved amount.
- When an agency requires GLM assistance or considers it appropriate to inform the GLM of the present state of the transaction.
- When requested by the GLM or Minister.
- Notification of withdrawal from negotiations.
- A final submission upon settlement of the transaction.

*The GLM encourages agencies to liaise with the GLM to develop an agreed position in respect of the timing of submissions, for the benefit of both parties.*

### 2.4 How to make a submission for GLM approval

When an agency or consultant proposes to purchase, compulsorily acquire or sell land, a submission must be made to the GLM. The initial submission must be made on the Form Ml (see appendix). Subsequent submissions can be made in the form of a letter.

All information referred to on the form must be provided, and the submission must be accompanied by all files and relevant documents relating to the transaction. The legislative authority for the transaction must be clearly defined in the submission, which must be signed by a duly authorised officer of the agency conducting the transaction.

It is preferable that the GLM be briefed immediately a decision to conduct a transaction is made. This will help the subsequent formal submission to be processed expeditiously and provide time to attend to any concerns.

### 2.5 If GLM approval is denied

Where approval has been denied or withheld by the GLM, representatives of the agency may confer with the Director of the GLM. If the matter remains unresolved, it will be determined by the Minister after taking all of the circumstances of the transaction into consideration. The Minister may confer with the Minister responsible for the agency.

Following consultation with the GLM, the Minister may approve transactions that do not accord with this policy provided circumstances are established that justify such approval.

### 2.6 Access to documents and files

Access to all documents and files relevant to any transaction must be made available to officers of the GLM, who shall have the right to consult agency staff, valuers and consultants following consultation with the duly authorised officer of the agency.

### 2.7 Changes to legislation

Where it is proposed to amend legislation which affects land transactions or compensation, such matters must be dealt with in consultation with the GLM.

## 3 Valuations of land

**Note: A Valuer-General's valuation is:**

- a valuation made by the Valuer-General, or
- a valuation obtained from the Valuer-General which has been made by a valuer who is a member of the Valuer-General's Panel of Valuers and the Valuer-General certifies in writing that the valuation has been properly made and based.

Information in respect of the Valuer-General's Panel of Valuers should be sought from the Valuer-General.

### 3.1 Valuations required for the purchase, compulsory acquisition and sale of land

Where the market value of the land or the combined value of two or more properties/parcels/allotments/titles is:

- **Less than $250,000**
  It is mandatory to obtain one valuation. The valuation must be made by the Valuer-General or a valuer who is a member of the Whole-of-government Panel of Valuers. Agencies may elect to obtain a check valuation. It is recommended that where there are elements of risk, complexity or unusual circumstances, a Valuer-General's valuation should be obtained.
- **Between $250,000 and $500,000**
  It is mandatory to obtain a valuation from the Valuer-General. Agencies may use discretion in respect to a second valuation. The second valuation, if obtained, must be made by a valuer who is a member of the Valuer-General's Panel of Valuers.
- **Greater than $500,000**
  It is mandatory to obtain two valuations. One of the valuations must be obtained from the Valuer-General. The second valuation must be made by a valuer who is a member of the Valuer General's Panel of Valuers

A second valuation is not mandatory where the transaction involves another State government agency (refer also to 4.3 and 5.2).

It is mandatory to obtain a Valuer-General's valuation in respect to the following transactions irrespective of value:

- private treaty sales approved by the Minister.
- private treaty sales to residential tenants.
- sales of railway leaseholds to tenants.
- sales to and purchases from agencies, council or the Commonwealth.

Refer to Part 4 of this policy for specific instructions.

Valuations must be formal. Estimates of value or letters of advice must not be used for the purchase, compulsory acquisition or sale of land unless the Valuer-General and/or the valuer provides written advice that the transaction may proceed on that basis and GLM approval is obtained.

## 3.2 Policy in respect of use of valuation advice

Land must not be purchased for an amount above the Valuer-General's valuation or sold at an amount which is less than the Valuer-General's valuation unless authorised by the Valuer-General and approved by the GLM. In instances where this policy does not require the Valuer-General to provide a valuation, the valuation obtained from a qualified valuer who is a member of the Whole-of-government Panel of Valuers is to be used for purchase, compulsory acquisition or sale of land in the same manner as the Valuer-General's valuation.

## 3.3 Qualifications of valuers

Valuers must have qualifications equivalent to those referred to under Section 13DA (lA) of the *Valuation of Land Act 1960*. Those in the private sector must provide evidence of adequate professional indemnity insurance.

## 3.4 Instructions to valuers

Valuers, including the Valuer-General, must be given instructions which reflect the terms and conditions of purchase, compulsory acquisition or sale and all information which may affect the valuation of the land. Where more than one valuer is engaged, they must each be given identical instructions.

Where valuers require consultancy advice, it must be obtained and provided by the instructing agency.

Where the terms and conditions of purchase or sale change during the course of negotiations, the revised terms and conditions must be referred to the valuers for a review of the valuation before proceeding with negotiations.

Where more than one property is to be purchased or sold under one contract of sale, the valuer must be requested to take into account the bulk nature of the transaction.

## 3.5 Confidentiality

Valuations and other professional advice remain the property of the instructing agency and must not be conveyed or disclosed to any party unless authorised by the agency. Valuation instructions should stipulate that the valuation is to remain confidential.

It is particularly important not to disclose any valuation to a vendor or the vendor's representative where an agency is a purchaser, or to a purchaser or possible purchaser where an agency is a vendor during the transaction. Selling agents must not have access to valuation advice. Where an agency wishes to disclose a valuation or its contents to another party, the reasons should be discussed with the GLM prior to any disclosure. Disclosure should be restricted to valuation conferences (refer to section 3.6)

## 3.6 Valuation conferences and other meetings

Where a transaction is subject to GLM approval, the GLM must be invited to all valuation conferences and meetings of consultants and legal advisers where the value of the land is under consideration or where offers of compensation are likely to be affected.

Valuation conferences are to be formally conducted and are to be attended by representatives of the agency and the providers of the valuations or advice. The agency may authorise the attendance of other parties after consultation with the valuers and the GLM (where applicable). Where the Valuer-General has provided the valuation, the Valuer-General will convene the conference.

Informal discussions or meetings between valuers concerning the amount of the valuations or the basis of the valuation or the contents of the valuation reports, is not permitted.

Conferences are generally required when there is a difference of 10 per cent or more between valuations, where there is a substantial difference in valuation methodology or where there is genuine concern as to whether the valuations have been properly based. Valuation conferences may also assist in resolving problems which arise in connection with a transaction. The GLM may direct that a conference be held or that other valuation or consultant advice be obtained.

Where agreement cannot be reached at a formal conference of valuers, the GLM may propose a course of action to resolve the issues. The GLM may consider recommendations from the agency and/or the valuers.

## 3.7 Currency of valuation advice

All property transactions are to be conducted in accordance with current valuation advice. Any uncertainty about the currency of a valuation should be referred to the Valuer-General for consideration.

# 4 Sale of land

## 4.1 Sale of land by public process

**ALL LAND MUST BE SOLD BY PUBLIC AUCTION OR TENDER OR OTHER PUBLIC PROCESS UNLESS:**

- exceptional circumstances have been established and approved by the Minister;
- the provisions of the *Land Act 1958* apply;
- otherwise provided for under this policy;
- written approval for sale by some other method is granted by the GLM.

In addition:

- Land must not be sold for less than market value.
- Where a valuation is obtained or is required to be obtained from the Valuer-General, land must not be sold for less than that valuation without the approval of the Minister or the GLM, as the case may require.
- Sale of land should be conducted through a licensed real estate agent unless other arrangements have been approved by the GLM.
- Sales of a number of parcels of land must be conducted in an orderly manner to ensure maximum return to the selling agency.
- Refer to section 6.6 of this document for policy in respect of sale of State-owned enterprises.

## 4.2 Zoning

The most appropriate zoning for the land must be established and put in place before the sale to ensure that the highest possible return is achieved. An agency must not offer land for sale where the land is zoned for a public purpose under a planning scheme or where land is inappropriately zoned unless approval is obtained from the GLM.

Agencies must not create any expectation with prospective purchasers that they will be able to utilise the land for a purpose other than that which is permitted under the appropriate zone.

It is recognised that there may be instances where rezoning is impractical or uneconomic. These circumstances can be discussed with the GLM for resolution.

## 4.3 Sale of land (first right of refusal)

1. First right of refusal to purchase land no longer required by an agency must be offered to another agency which identifies the land as being required for its purposes.
2. The land may then be offered to the council of the municipality in which the land is located where the council requires the land for public purposes. The sale must be conditional upon the land being used for that purpose. Council should undertake to rezone the land in accordance with the conditions of sale. Where the land is required for any other purpose, the sale is subject to the Minister's approval.
3. The land may then be offered to the Commonwealth.

Sales to other State government agencies are to be conducted at market value assessed by the Valuer-General. Sales to councils and the Commonwealth are to be conducted at not less than market value assessed by the Valuer-General *without the need for an additional valuation*. However, depending on the circumstances, it may be prudent to obtain a second valuation from a valuer selected from the Valuer-General's Panel of Valuers. Sales are generally expected to be on a cash basis. If terms are proposed, the valuation must take the terms into account. All offers should be accepted or rejected within 30 days.

## 4.4 Private treaty sales

Where exceptional circumstances can be demonstrated and the sale of land is proposed to be conducted by means other than public auction, tender or other public process, the specific approval of the Minister is required irrespective of the value of the land.

This approval is not required where a decision to sell by private treaty has been approved by Cabinet or where land is to be sold under the provisions of the *Land Act 1958*.

Private treaty sales which are subject to the Minister's approval are to be negotiated for a sum not less than market value assessed by the Valuer-General unless the Minister approves otherwise.

Details of the exceptional circumstances are to be submitted to the GLM. Submissions of this nature must be adequate to enable the preparation of a ministerial briefing and must contain full details supporting the proposal.

There must not be any commitment to sell before the Minister's decision. The GLM will advise the agency of the Minister's decision.

## 4.5 Sale of leased land

Land which is subject to a lease or other tenancy agreement which confers no prior right to purchase by the lessee or tenant, is to be sold by public process, subject to the lease or tenancy agreement.

Leases must be drawn in commercial terms and conditions to ensure that the full market value of the land is realised.

Sale of leased crown land is subject to the provisions of the *Land Act 1958*. Separate stipulations apply to railway leaseholds and the sale of tenanted houses (see sections 4.7 and 4.8).

Exceptions to the process outlined in this section require the approval of the Minister, irrespective of the value of the land.

## 4.6 Land exchanges

Agencies are permitted to exchange land with other agencies or with the private sector where:

- legislation permits, or where the exchange forms part of a settlement in connection with an acquisition of land under the *Land Acquisition and Compensation Act 1986*; and
- the land is exchanged at market value and monetary adjustments are made to establish equality of exchange.

In addition, exchanges between agencies are subject to the stipulations in section 4.3.

## 4.7 Sale of surplus railway leasehold land

Notwithstanding section 4.1, surplus railway leasehold land, which is no longer required by the Public Transport Corporation, its successors (including VicTrack) or government, must first be offered for sale to the tenant. All sales to railway tenants must be negotiated at an amount not less than the Valuer-General's valuation.

The sale procedure is as follows:

- The tenant must be given first right of refusal.
- If interested in buying the land, the tenant must give written 'in principle' commitment to purchase at the Valuer-General's valuation.
- The valuation must exclude the added value of tenant's improvements unless the lease provides otherwise. The valuation must not take into account any right that the lessee may have to a new 15-year lease as provided for under this section.
- The tenant is given 30 days to accept the offer.
- If the amount of the valuation is in dispute, the tenant may make a counter offer based on valuation advice for consideration by the Valuer-General. A conference of valuers may be convened to resolve valuation disputes.
- The tenant is given 30 days to accept the revised offer.
- If the tenant accepts the offer to purchase, the terms of sale should be cash payable in 60 to 90 days. Where terms are approved, the valuation must be made on that basis.

Should sale to a tenant not proceed, and if the existing lease has expired or has less than 15 years remaining, a new lease of up to 15 years may be offered to the tenant. The new lease must be drawn in commercial terms and conditions and provide for improvements to revert to the lessor where appropriate. The tenant must accept or reject the offer of a new lease within 30 days. If the offer is not accepted, the land may be offered for sale by public process, subject to any existing lease.

## 4.8 Sale of tenanted houses

A tenanted residence may be offered for sale to the occupying tenant, provided the tenant has occupied the residence for a considerable period.

# 5 Purchase of land

## 5.1 Purchase, compulsory acquisition or compensation payments

Land must not be purchased or acquired for an amount which is in excess of valuation. Where a valuation is obtained or is required to be obtained from the Valuer-General, land must not be purchased or acquired for an amount in excess of that valuation unless approved by the GLM.

All agencies must obtain the approval of the GLM for purchase, compulsory acquisition or compensation payments in accordance with the threshold levels described in section 2.2.

Where an interest in land is to be purchased by an agency, either by negotiation or compulsory process, the agency may only purchase land where permitted by legislation and in accordance with the principles and procedures contained in the *Land Acquisition and Compensation Act 1986* where that Act is applicable.

It is usually preferable that a property or a group of properties required for a project be compulsorily acquired. This ensures that the owner of the interest in land receives proper and equitable compensation and the agency obtains possession when required.

The legislation under which the land is being purchased or compulsorily acquired must be quoted in each submission to the GLM as evidence that the proposed purchase is legal.

The *Planning and Environment Act 1987* provides for the payment of financial loss and loss on sale compensation where land is subject to a Public Acquisition Overlay or a proposed Public Acquisition Overlay.

The subject of compensation and compulsory acquisition is often complex, particularly where there is a business involved or where reinstatement applies. The GLM will provide assistance where required.

## 5.2 Purchases from agencies, councils or the Commonwealth

- Purchases/Acquisitions of land from a council or the Commonwealth are to be made at not greater than market value assessed by the Valuer-General.
- Purchases from State government agencies are to be made at the Valuer-General's valuation.
- Where the value of the land is $500,000 or more, it may be prudent to obtain valuations from both the Valuer-General and a second valuer selected from the Valuer-General's Panel of Valuers.

## 5.3 Litigation

Where a dispute over the value of land is the subject of litigation or appeal before a court or tribunal, the land component must not be submitted to the court or tribunal at a value which is in excess of the relevant valuation.

Where the Valuer-General has provided a valuation, offers into the court or tribunal shall not exceed the Valuer-General's valuation. However, in exceptional circumstances, the GLM may approve an offer which is based on a valuation made by a valuer other than the Valuer-General.

The GLM is to be advised of litigation where it concerns land which has been the subject of GLM approval.

# 6 Administrative procedures and instructions

## 6.1 Preparation of land for sale

Agencies must ensure that land is offered for sale in a manner that will ensure the maximum price is achieved while protecting both the government and the public interest. Land zoned for public purposes must be appropriately rezoned prior to public sale (see section 4.2).

Some examples of matters which should be addressed before offering land for sale include:

- Presentation of the land to expose its best attributes: considerations include repairs, cleaning, clearing of vegetation, painting, pegging of boundaries and associated works.
- The optimum development potential of the land should be considered: a town planning consultant's report may be required for the use of the agency.
- Preparation of an agreement under either section 173 of the *Planning and Environment Act 1987* or other means may be necessary where an agency wishes to control the future use of the land.
- Town planning permits should be obtained where appropriate.
- Would subdivision be appropriate?
- Structural and engineering reports may be required.
- An environmental report should be obtained where there is possible contamination and must be taken into account where rezoning is proposed.
- Where an agency proposes to offer a lease on the land before selling it, or where it offers a leaseback, the lease must be drawn in commercial terms and conditions to ensure the full market value of the land is realised.
- Section 32 statements, where applicable, must contain full and proper disclosure of all relevant matters.
- Land must be offered for sale with disclosure of relevant information to enable a full and proper due diligence enquiry.
- Consideration can be given to a sale on terms, however it is preferable that land be sold on a cash basis.

As each sale is different, the above examples are only a few of the numerous matters that should be addressed before offering land for sale. In all cases, the preparation of land for the purposes of sale must be cost-effective.

## 6.2 Appointment of consultants and real estate agents

Consultants engaged in connection with the purchase, compulsory acquisition and sale of land are to be engaged in accordance with the *Victorian Government Purchasing Board Supply Policies* issued under the *Financial Management Act 1994* or relevant purchasing policies applicable to each agency.

Consultants must be independent and not have any personal or pecuniary interest in the transaction. A written declaration in this regard is essential.

A consultant must not be appointed as valuer and selling agent for the same land.

Careful selection of consultants will ensure best results are achieved. Consultants should be fully briefed on the scope of their engagement. When seeking quotes, only those consultants who are qualified, skilled and experienced should be invited to tender for the services to be performed. This will generally enable acceptance of the lowest quote. Consultants must provide evidence of professional indemnity insurance.

Real estate agents must provide a report which covers advertising, marketing, expected selling price and details of any works required to be undertaken. Where the sale is by auction, the agent must nominate the auctioneer prior to the appointment.

## 6.3 Sale by public auction

Sale before auction is not permitted except with the approval of the GLM.

Sale of land by public auction should be conducted in the following manner:

- After the selection and appointment of a real estate agent, the date of auction is determined, allowing approximately six weeks for an advertising campaign. This period may need to be varied depending on the type of land. The agent must submit a summary to the instructing agency of the marketing campaign, enquiry rate and anticipated result approximately two weeks before the auction.
- The advertising campaign must be conducted in a manner that adequately exposes the land to the market.
- Valuer(s) must provide valuations to the instructing agency two to three weeks before the auction date. This will allow sufficient time to arrange a conference of valuers, or to confer with the valuer(s) if there is any concern about the valuations provided.

- When the valuation(s) and the selling agent's report have been received, the agency will determine a proposed reserve price. Where a Valuer-General's valuation is obtained, the reserve price must be not less than that valuation. Reserve prices must be set before auction.
- If a conference of valuers is required before setting a reserve price, the decision to hold the conference must be made in consultation with the GLM.
- Approval of the reserve price must be obtained from the GLM before the auction.
- Security must be maintained over documentation relating to the reserve price. Documents such as valuations, agent's reports and related correspondence should be provided on a confidential basis and only to the agency representatives responsible for the transaction.
- The reserve price or valuation advice should not be disclosed, particularly to the selling agent, before the auction.
- If the land fails to sell at auction, it is to be passed in for negotiation with the highest bidder and offered for sale to that person at not less than the reserve price.
- If the land remains unsold following negotiations after auction, it should be left on the market for private sale at not less than the reserve price. If it is still unsold after three months, the matter should be reviewed in consultation with the GLM.
- If an offer is received which is lower than the Valuer-General's valuation and acceptance of the offer is being considered, it must be submitted in writing to the Valuer-General for consideration.
- Where the Valuer-General is not required to provide a valuation under this policy, the offer under consideration must be referred to the valuer who provided the valuation which was adopted as the reserve price.
- If the Valuer-General or the valuer as referred to above considers that the offer is reasonable, the land may be sold.
- If the reserve price was approved by the GLM, the proposed sale price (where lower than the reserve price) must be approved by the GLM prior to the acceptance of the offer.

## 6.4 Sale by public tender

**Sale before close of tenders is not permitted except with the approval of the GLM.**

Most procedures outlined in section 6.3 apply to sale by public tender, and they should be read in conjunction with this section.

Sale of land by public tender should be conducted in the following manner:

- The reserve price must be set before the close of tenders and must not be disclosed. Tenders are not to be opened until the reserve price is set and, where required by this policy, approved by the GLM.
- Tenders are to be lodged with the agency or its legal representative. Tenders must not be lodged with the selling agent. Tenders submitted by facsimile are unacceptable.
- Tenders are to be opened by a formally appointed panel comprising representatives of the agency, and may include its legal representative and a representative of the GLM.
- The highest conforming tender at or above the reserve price should be accepted. If no conforming tenders are received at or above the reserve price, negotiations should begin with the highest tenderer in an endeavour to achieve a sale at or above the reserve price. If the highest tenderer fails to make an acceptable offer, then other tenderers may be given the same opportunity. Negotiations may continue within the time allowed in the tender document. If the land remains unsold, it should be formally passed in and all tenderers must be advised. The land should continue to be marketed.
- If an offer is received which is lower than the Valuer-General's valuation and acceptance of the offer is being considered, it must be submitted in writing to the Valuer-General for consideration.
- Where the Valuer-General is not required to provide a valuation under this policy, the offer under consideration must be referred to the valuer who provided the valuation which was adopted as the reserve price.
- If the Valuer-General or the valuer as referred to above considers that the offer is reasonable, the land may be sold.
- If the reserve price was approved by the GLM, the proposed sale price (where lower than the reserve price) must be approved by the GLM prior to the acceptance of the offer.
- Where there are no acceptable tenders, the GLM must be advised.

## 6.5 Sale by public registration or expression of interest

This method of sale is useful where an agency wishes to expose land to the market without the assistance of an agent. It is often used as a public marketing process that is an alternative to an auction or tender.

This method of sale is also appropriate in circumstances where, in addition to selling the land, an agency wishes to control the future use or development of the land. Potential purchasers are invited to provide details of a design concept or to make a commitment to enter into an agreement to develop the land in accordance with an agency's brief. Interested parties may also be required to provide details of their ability to perform and of their history of achievements.

Registration or expressions of interest may or may not be binding on either party.

The reserve price for the land must be fixed before receipt of offers and must not be disclosed to any potential purchaser before sale. The reserve price must be approved by the GLM as required under section 2.2. Marketing of the land is to be conducted in the same manner as sales by auction or tender, therefore sections 6.3 and 6.4 must be read in conjunction with this section. If an agency has a desired development outcome for the land, any advertising campaign must include details of the proposal. Valuation(s) must take the proposal into account.

If the land fails to sell, the matter should be discussed with the GLM.

## 6.6 Sale of State-owned enterprises

Government businesses and companies may be sold by publicly advertised trade sales.

Where a trade sale includes land which has a market value of $250,000 or more, the GLM must be advised of the proposed sale when the decision to sell has been made.

The GLM and the selling agency, and, where necessary, the Minister and/or Treasurer, will together determine whether or not the sale is subject to GLM approval.

## 6.7 Application of Goods and Services Tax

All negotiations for the sale, purchase and compulsory acquisition of land, and the payment of compensation under the Planning and Environment Act, shall take into consideration the effect of the A New Tax System (Goods and Services Tax) Act. Wherever possible, transactions shall be conducted on a cost-neutral basis. Agencies should be mindful of the provisions of this legislation, including the definition of taxable supply, the use of tax invoices and the availability of input tax credits.

# 7 Native title

Government agencies must consider the effect of their proposed actions on native title rights and interests, which may exist in land or waters held by the Crown or government agencies. This is particularly important with proposals to sell land or to use land held by the Crown or a government agency for public purposes (that is, public infrastructure).

## 7.1 Application of Native Title Act

The determination of whether native title exists and its relationship with other interests will often be difficult. The issue will involve a detailed factual analysis of the historical use of the geographical area.

The *Native Title Act 1993* (Cwlth) (NTA) contains provisions that may have the effect of invalidating acts undertaken by government and its agencies where they are performed contrary to the requirements of the NTA. In general terms the NTA provides that :

- native title may exist in crown land or land held by an agency and may include public reserves, parks, beaches and rivers. It will exist if the indigenous people have maintained a traditional connection with that particular area. However, native title will not be deemed to exist if, as a matter of history, it has been wholly extinguished.
- past acts may have brought about valid extinguishment of native title (that is, changes to or legislation made prior to 1 July 1993 or acts carried out prior to 23 December 1996).
- a future acts regime protects existing native title rights. It also sets out procedural requirements and

allows for rights to compensation. The act proposed to be undertaken will affect native title if it extinguishes native title rights or if the act is otherwise wholly or partly inconsistent with the continued existence, enjoyment or exercise of those rights. An act includes the making, amendment or repeal of any legislation. It also includes a sale of the area or the use of the area for the construction of public infrastructure.

- if an act is carried out, about which indigenous people have a right to be consulted, comment or negotiate under the NTA and the correct procedures have not been followed, the act will be invalid to the extent that it affects native title.
- a process is established by which native title and compensation can be determined. The NTA provides for particular steps to be undertaken depending on the proposed future act. This may require that notification be provided to indigenous representative bodies. The NTA establishes the National Native Title Tribunal (NNTT) and it has an important role in assisting parties with the requirements for notification of interested parties, the formulation of agreements and negotiation/mediation processes. It should be noted that the NNTT maintains a register of native title applications, determinations and agreements.

### 7.2 Compliance requirements

- It shall be necessary for agencies involved with the construction of public infrastructure to comply with the requirements of the NTA when those works involve crown land or land held by a government agency. These requirements will need to be dealt with during the planning phase, including the planning reservation/overlay process, that is followed.
- Similarly, with proposals to sell crown land or land held by agencies, if it is not apparent that native title has been wholly and validly extinguished, then agencies will need to follow the notification requirements of the NTA.
- The above aspects have been set out in order to provide agencies with an awareness of the general requirements of the NTA. The area of native title rights involves many complicated factual and legal issues. It is an important and continually evolving area of the law. The Victorian Government is mindful of the sensitive and complex issues involved. It will be necessary for all agencies to be aware of the lead role being undertaken by the Native Title Unit, Department of Justice. The Unit is in the course of developing a 'whole-of-government' approach and guidelines. All agencies shall be required to follow the requirements detailed in that documentation.

## 8 Contaminated land

When the purchase, compulsory acquisition and sale of land is being considered, an agency should be aware that the land may be contaminated and of the implications that this may have for the Government.

The purchase and sale of contaminated land is subject to Parts 4 and 5 of this document.

### 8.1 Responsibility for contaminated land

Under section 62A of the *Environment Protection Act 1970*, if land is found to be polluted (or contaminated in a way likely to cause a health or environmental impact), the Environment Protection Authority (EPA) may serve a notice requiring the land to be cleaned up to a specified standard. A clean-up notice may be served on:

- the current occupier of the site. This could involve an agency which may be required to clean up any contaminants in the soil or groundwater on the site regardless of whether or not it has caused or contributed to that contamination. It would then be the responsibility of the agency to consider action against the party it believes caused the contamination in order to recover the cost of the clean-up. This may not always be possible.
- any person or body who has caused, permitted or contributed to the contamination on the site during its occupation. Again, this could involve an agency, despite the fact that it no longer occupies or owns the land.

## 8.2 Documentation

To be more aware of the requirements relating to contaminated land, agencies should obtain the following documents:

- EPA guidelines and bulletins on contaminated land, the transport and disposal of contaminated soil, the role of environmental auditors and other relevant information. It may also be useful to contact the EPA for further advice, including details of what options are available.
- *Minister's Direction No. 1: Potentially Contaminated Land*, issued by the then Minister for Planning and Housing, 14 May 1992. This directive deals with proposals introducing a sensitive use (defined as residential use, a child-care centre, a preschool centre or a primary school) or for agriculture or public open-space purposes on potentially contaminated land and the requirements planning authorities must follow. As the directive at this stage is restricted to rezoning or amendments to planning schemes, regard must also be had to the fact that potentially contaminated sites may have already been zoned residential but have attracted nonconforming or existing use rights.

## 8.3 General procedures

It is the responsibility of each agency to make sufficient enquiry about the nature of present and past uses to which the land may have been put and to initiate the following actions.

1. An historical review and site inspection should be carried out. This may be effected by reference to title searches, local council planning, engineering and rating records and other historical data sources including the EPA Priority Sites Register (Landata). The review may be limited in nature or more detailed, depending on the land in question. For example, it may be necessary for a site contamination assessment, incorporating soil sampling and laboratory analysis, to be carried out by an expert where:

- the result of the historic data review reveals that the site has been used, or is currently used, for any of the purposes listed in section 8.6 of this document;
- the site inspection reveals visible contamination or odour which may indicate contamination; or
- there is evidence of the presence of underground fuel tanks or potentially contaminated fill material.

The assessment should evaluate whether any contamination present on the land may prevent the continuation of existing or intended uses on the land.

Environmental consultants should be engaged to undertake site assessments. Consultants must be appropriately qualified, experienced, accredited and have professional indemnity insurance.

2. If the initial contamination assessment report does not reveal contamination, the transaction may proceed without further assessment of the site unless it is required by the Minister's Direction No. 1. If, however, contamination is found, a more detailed site assessment may be required in order to identify the extent and nature of the contamination.

3. Any contamination assessment reports and Certificates or Statements of Environmental Audit prepared before the sale of land must be made available to prospective purchasers.

## 8.4 Options if a site is contaminated

If an agency is selling land that is contaminated, it will need to make a decision on whether to clean up the site or sell it in its contaminated condition. Where purchase is contemplated for public purposes, the nature of the end use will determine whether the purchase should be abandoned or further legal and appropriate technical advice be obtained to determine the options available to contain or remove the contaminants.

The decision will be influenced by a range of commercial and legal considerations. Major factors will be the intended or likely use of the land after purchase. The degree of acceptable contamination will depend upon the intended use of the site and, possibly, even the layout of any proposed development. Uses which are more likely to give rise to prolonged human exposure to contaminants, particularly where young children are involved, will require more stringent clean-up standards than, for example, industrial uses.

Accordingly, without exposing the community or the environment to adverse effects from the contamination, a decision needs to be made with regard to the objectives of:

- maximising the return from the sale (bearing in mind both sale price and clean-up cost); and
- minimising potential exposure to legal liability for the clean-up (or further clean-up) of the site in the future and other possible claims (for example, personal injury, economic loss, etc.).

Within these constraints, there is a wide range of options open to a vendor of land. These include:

- fully cleaning up the site before sale and obtaining a Certificate of Environmental Audit that the land is suitable for all purposes; or
- conducting a limited clean-up and obtaining a Statement of Environmental Audit that the land is suitable for certain specified uses (for example, industrial);
- conducting a site contamination assessment with or without site clean-up and without a certificate or statement of environmental audit if not required by Minister's Direction No. 1; or
- selling without undertaking any clean-up.

## 8.5 Summary

There can be no general rule as to which approach is the best. Each has positive and negative aspects and must be considered in the context of the proposed transaction, including a careful consideration of the contractual conditions in the sale and legislative requirements. The following special conditions may be included in the contract of sale:

- a limitation on the vendor's liability;
- the granting of warranties and indemnities absolutely or conditional upon certain matters occurring or not occurring, or certain circumstances continuing;
- clauses dealing with possible changes in the law, planning controls, or the use of the site; and
- clauses allocating liability for potential clean-up and other costs among the parties involved.

Naturally, the approach adopted and the terms and conditions negotiated will be reflected in the sale price.

It should be noted that, in some cases, it is mandatory to undertake an Environmental Audit. For example, if an audit is required by the Minister's Direction No. I or if a clean-up notice requiring an Environmental Audit has been issued by the EPA, or if it is intended to remove the site from the EPA's Priority Sites Register.

The environmental state of the property must be included in the instructions to the valuer(s), as any contamination present on the land may affect its market value.

## 8.6 Types of potentially contaminated land

Land that is being used or has ever been used for any of the following activities is likely to be contaminated. These uses may therefore give rise to potentially significant liabilities and caution should be exercised whenever dealing with such land. Obviously, the list is not an exhaustive review of uses which present contamination risks.

- Acid/alkali plant and formulation
- Agricultural fertiliser manufacture
- Airports
- Asbestos production or manufacture and disposal
- Battery manufacture or recycling
- Chemical manufacture or formulation
- Storage of hazardous chemicals (being chemicals designated as dangerous goods under the Australian Code for the Transport of Dangerous Goods by Road and Rail)
- Commercial waste storage or treatment
- Defence establishments and training areas
- Drum reconditioning works
- Dry-cleaning establishments
- Electrical manufacturing plants
- Electroplating and heat treatment premises
- Explosives production or storage
- Fuel depots and storage areas
- Galvanisers
- Gas works
- Gun, pistol or rifle clubs
- Landfill sites
- Industrial cleaners
- Lime-burners
- Metal foundries
- Metal sprayers
- Metal treaters and picklers
- Mining and extractive industries
- Paint manufacture or formulation
- Pest control works (that is, areas where pest control chemicals are stored or vehicles and tanks used in connection with pest control are washed)
- Pesticide and herbicide manufacture or formulation
- Petroleum or petrochemical industries
- Pharmaceutical manufacture or formulation
- Plastics and pigment manufacture
- Power-stations
- Printers
- Railway yards
- Sanitary landfill sites
- Scrap yards
- Service stations
- Sheep and cattle dips
- Smelting and refining
- Tannery, fellmongery and hide-curing works
- Waste disposal, storage and treatment
- Wood treatment/preservation sites.

# Appendix: Form M1

## Infrastructure

### Government Land Monitor

Level 19, 80 Collins Street, Melbourne 3000 (ph) 9655 6520 (fax) 9655 6596

## Form M1

**Government policy requires that Land Monitoring approval must be obtained prior to entering into any contract or agreement either conditionally or unconditionally.**

**All files, documents and consultants reports relating to this transaction must accompany this submission**

Department/ Agency making submission:

Address:

Officer responsible for transaction: File Ref:

Phone: Fax:

Land Monitoring Approval Requested for: ( If detailed refer to the final section of the form)

I certify that all files, documents and consultant reports are included with this submission.

Dated: Signature:.

Name: Position: Delegation:

**Property Details:**

Unit/Street no:

Street, Road:

Town or Sub:

Postcode:

Area:

Municipality:

Parish:

Title/Lot No:

Sect/Portion:

Plan No:

Zoning :

Has an Environmental Assessment Report been obtained:

**Vendor:**

Vendors Agent: (Business/Company name).

Suburb:

Contact:

**Purchaser:**

Purchasers Agent: (Business/Company name).

Suburb:

Contact:

Transaction type: :

Transaction method: :

Sum Submitted for approval: $

Terms:

Auction date: Tender closing date: N.O.Acq. Date:

Relevant date for claim made under Planning & Environment Act:

Claim/ Asking price: :$

Legislation Authorising transaction:

**VALUATIONS:** Refer to the Government Policy & Instructions on the Purchase, Compulsory Acquisition and Sale of Land.

**Valuer-General's Valuation**

Company :

Valuers name :

Valuation :$

Date of Valuation:

**Second Valuation**

Company :

Valuers name :

Valuation :$

Date of Valuation:

**PLEASE PROVIDE COMMENTS IN SUPPORT OF SUBMISSION:**

PA8DOI942 7/00