

# Property management and governance guidelines

Procedural framework for public sector health  
entities considering the acquisition, divestment  
and leasing of land





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## Introduction

These *Property management and governance guidelines* outline the basic legislative, policy and procedural framework for the acquisition, divestment, leasing and licensing of land by or on behalf of the Minister for Health, the Secretary to the Department of Health and Human Services ('the department') and public health services and cemetery trusts.

Its purpose is to assist public entities in the health portfolio in understanding how the provision of real estate services (public construction, leasing, sale, acquisition and management of land) is to be applied within the health portfolio.

Part 1 guides officers through the accountability and administration requirements when transacting real property.

The process for acquiring and divesting land is set out in Parts 2 and 3.

Land tenures for occupying and using land for delivering government funded services and the requirements for leasing and licensing are set out in Parts 4 and 5.

Part 6 outlines maintenance obligations, including where property is obsolete or surplus to requirements.

This manual is for general guidance and officers should consult and comply with the requirements of all relevant legislation, ministerial directions and government policy and practices to ensure that proper procedures are followed for each project or task.

This manual details the transactional process for the acquisition, divestment and leasing of land. Any acquisition, divestment and leasing of land should align with service planning and master planning processes and only occur once the project has been approved. In relation to cemetery trusts, this manual should be employed once a full business case has been endorsed by the department's Cemeteries and Crematoria Unit.

Where specific or more comprehensive advice is required, the matter should be referred to the Manager, Property within the department's Property team. [Email the Property team at <vhba.property@health.vic.gov.au>](mailto:vhba.property@health.vic.gov.au).

## Supporting and related documents

Table 1 lists the key policies underpinning property transactional processes.

**Table 1: Key policies**

Policy	Administration
<p>Victorian Government land transactions policy and guidelines</p> <p>See <a href="https://www.propertyandlandtitles.vic.gov.au/vglm">Victorian Government Land Monitor page</a> &lt;<a href="https://www.propertyandlandtitles.vic.gov.au/vglm">https://www.propertyandlandtitles.vic.gov.au/vglm</a>&gt;</p>	Administered by the Department of Environment, Land, Water and Planning
<p><a href="https://www.planning.vic.gov.au/policy-and-strategy/government-land-planning-service/victorian-government-landholding-policy-and-guidelines">Victorian Government landholding policy and guidelines</a> &lt;<a href="https://www.planning.vic.gov.au/policy-and-strategy/government-land-planning-service/victorian-government-landholding-policy-and-guidelines">https://www.planning.vic.gov.au/policy-and-strategy/government-land-planning-service/victorian-government-landholding-policy-and-guidelines</a>&gt;</p>	Administered by the Department of Treasury and Finance
<ul style="list-style-type: none"> <li>Leasing policy for Crown land in Victoria 2010</li> <li>Crown land leasing guidelines leasing legislation, May 2012</li> </ul> <p>See <a href="https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits">Crown land leases, licences and permits</a> &lt;<a href="https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits">https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits</a>&gt;</p>	Administered by the Department of Environment, Land, Water and Planning
<p><a href="https://www2.delwp.vic.gov.au/boards-and-governance/committees-of-management">Committees of management responsibilities and good practice guidelines</a>, 1 November 2015 &lt;<a href="https://www2.delwp.vic.gov.au/boards-and-governance/committees-of-management">https://www2.delwp.vic.gov.au/boards-and-governance/committees-of-management</a>&gt;</p>	Administered by the Department of Environment, Land, Water and Planning
<p>Victoria Government <a href="https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework">Asset management accountability framework</a>, February 2016 &lt;<a href="https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework">https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework</a>&gt;</p>	Administered by the Department of Treasury and Finance
<p><a href="https://www.dhhs.vic.gov.au/publications/policy-and-funding-guidelines-health-and-human-services">Victorian policy and funding guidelines for health and human services</a> &lt;<a href="https://www.dhhs.vic.gov.au/publications/policy-and-funding-guidelines-health-and-human-services">https://www.dhhs.vic.gov.au/publications/policy-and-funding-guidelines-health-and-human-services</a>&gt;</p>	Administered by the former Department of Health and Human Services and updated annually

Policies and guidelines can be accessed on the responsible department's websites. The Property team can provide further information and support to ensure property activities are well planned, executed and follow proper processes.

For assistance, please [email](mailto:vhba.property@health.vic.gov.au) the Manager, Property <vhba.property@health.vic.gov.au>.

A list of key legislation is provided at Appendix 1, with a brief description of its relevance.

This guideline and all associated forms and links are available on the [Property management page](http://www.capital.health.vic.gov.au/Property_Management) of the Department of Health's Infrastructure Planning and Delivery website  
<[http://www.capital.health.vic.gov.au/Property\\_Management](http://www.capital.health.vic.gov.au/Property_Management)>.

# Part 1: Accountability and administration

It is incumbent on all boards, chief executives, trusts and secretaries responsible for health portfolio public entities to ensure that all property transactions in which they are involved are carried out in line with whole-of-Victorian Government and Victorian Department of Health policies, procedures and guidelines.

## Health portfolio public entities

The department funds public health services under annual *Statements of priorities* or health service agreements to deliver services from property owned or controlled by either the department or by the entity. The department also supports the administration of non-funded public entities, such as cemetery trusts, to meet legislative requirements and to deliver services expected of the health portfolio.

The public entities in the health portfolio comprise corporate bodies established under the following Victorian legislation:

- **Secretary to the (former) Department of Health and Human Services** established under the *Public Health and Wellbeing Act 2008* (Vic)
- **Public health services** established under the *Health Services Act 1988* (Vic)
- **Ambulance Victoria** established under the *Ambulance Services Act 1986* (Vic)
- Forensicare (Victorian Institute of Forensic Mental Health) established under the *Mental Health Act 2014* (Vic)
- **cemetery trusts** established under the *Cemeteries and Crematoria Act 2003* (Vic).

As corporate bodies, health portfolio public entities may occupy and manage Crown land and may purchase, lease or license and sell freehold land subject to any restrictions in their enabling legislation, procedural guidelines and government funding.

## Role of the Property team

The Property team is a business unit within the Victorian Health Building Authority reporting to the Director, Technical Advisory. The Property team provides expertise in the areas of property acquisitions, divestments, leasing, licensing, town planning, strategic advice, project facilitation, property management and advisory services.

## Professional services

A number of professional service providers including other government departments and private sector providers are required in order to successfully deliver property-related services. A list of relevant services is at Appendix 2.

A whole-of-government Legal Services Panel has been established by the former Department of Justice and Regulation (now the Department of Justice and Community Safety) to provide legal services to government agencies and public entities. Use of the panel is a mandatory requirement for government departments. It is strongly encouraged for public entities also use this panel, or legal services firms with specialist property experience within the health sector.

The legal panel members are available on the [Legal services panel contract page](https://www.buyingfor.vic.gov.au/legal-services-panel-contract) of the Buying for Victoria website < <https://www.buyingfor.vic.gov.au/legal-services-panel-contract>>.

Where specific or more comprehensive legal advice is required, the matter should be referred to the department's Legal Services branch for advice.

## Asset register and landholding dataset

Health portfolio public entity boards are accountable for the planning, management and performance of assets under their control and must develop an appropriate asset register, if it does not already exist. Property assets must be identified and classified in line with the *Victorian Government landholding policy and guidelines* minimum property dataset and accounted in the annual financial statements in line with *Financial Reporting Direction 103E*.

The *Asset management accountability framework* is the Victorian Government's policy framework for asset management. It details mandatory asset management requirements as well as general guidance for agencies responsible for managing assets. Further information can be found at [Asset management accountability framework](https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework) <<https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework>>.

The following figure outlines the key stages of the asset lifecycle together with the considerations public health entities should make to realise the full value of assets when delivering services.

**Figure 1: Asset lifecycle**



**Source:** [Asset management accountability framework](https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework) <<https://www.dtf.vic.gov.au/infrastructure-investment/asset-management-accountability-framework>>



## Part 2: Land acquisition process

Land may be acquired by public process or private negotiation and **must comply with the Victorian Government land transactions policy and guidelines**. See the [Victorian Government Land Monitor page](https://www.propertyandlandtitles.vic.gov.au/vglm) <<https://www.propertyandlandtitles.vic.gov.au/vglm>>.

### Process requirements

In line with the Victorian Government landholding policy, property asset management decisions and activities must be fully integrated with corporate business plans and service needs.

This section details the transactional process and should be used once service planning and master planning processes have been completed and the project approved.

Regarding cemetery trusts, this section should be employed once a full business case has been endorsed by the department's Cemeteries and Crematoria unit.

Where State Budget or departmental funding is allocated for acquisition of land, the purchase will be managed by the Property team and owned by the Secretary. Occupation of the land will be formalised through a lease. Refer to Part 5.

The process is tailored for each individual project depending on the project requirements and is broadly covered by the following steps:

1. Identify the property asset or land parcel required to meet service delivery outcomes.
2. Undertake due diligence investigations: legal, contamination, environmental, heritage, town planning, site services, traffic management, geo-technical and site survey.
3. Obtain in-principle approval and commitment of funds from relevant financial delegate.
4. Where properties are listed for sale on the open market, register interest and commence negotiations (refer to points 6 and 7).
5. Complete Valuer-General instruction form and email it to Manager, Property at [vhba.property@health.vic.gov.au](mailto:vhba.property@health.vic.gov.au) to facilitate valuation advice. Where it is anticipated the value of the property is \$750,000 or more, the Valuer-General will seek an independent check valuation. (Refer to the Victorian Government land transactions policy and guidelines Valuer-General request for valuation form is available on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations) <<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>.

The department will request valuation advice in line with the provisions of the *Valuation of Land Act 1960 (Vic)* as the responsible line agency.

6. Where the transaction is \$750,000 or more, **Government Land Monitor approval must be obtained before submitting an offer or negotiating a purchase price**. An approval request can be made using [VGLM Online](https://vglm.vic.gov.au) <<https://vglm.vic.gov.au>>.
7. Once necessary approvals have been obtained, officers can negotiate a purchase price up to the value determined by the Valuer-General and approved by the Government Land Monitor. Land must not be acquired at a price that is greater than the current market value of the land as determined by the Valuer-General Victoria.
8. Upon acceptance of the offer, the vendor's solicitor will prepare the contract of sale. Legal advice should be sought on contract documentation from either corporate counsel or a lawyer from the government's legal panel in order to identify and minimise exposure to risk.
9. Financial delegate executes contract of sale and settles acquisition.
10. Asset register updated.



A checklist to ensure the proper processes are applied to the acquisition of land can be found at Appendix 3. The checklist is for general guidance as the actual process is tailored for each individual project depending on project requirements. It is not mandatory and is provided as a good practice guide to assist officers undertaking acquisition projects.

All associated forms and web-links are available on the [Property management page](http://www.capital.health.vic.gov.au/Property_Management) of the department's Infrastructure Planning and Delivery website  
<[http://www.capital.health.vic.gov.au/Property\\_Management](http://www.capital.health.vic.gov.au/Property_Management)>.

## Zoning

Upon settlement of an acquisition it is desirable that the land is rezoned Public Use Zone 3 (Health). A public use zone ensures the land's use and public ownership are reflected in the relevant planning scheme and will provide flexibility in carrying out service delivery operations and reduce administrative burden.

The process for rezoning land is set down in the *Planning and Environment Act 1987* (Vic) and generally managed by the local Council. The steps include:

1. requesting an amendment by the local council
2. authorisation by the Minister for Planning to prepare an amendment to the planning scheme
3. preparation of the documentation
4. public exhibition
5. submissions, panels and advisory committees
6. adoption of the amendment by council
7. approval by the Minister for Planning.

The Victorian Government has established the Government Land Planning Service (formerly the Fast Track Government Land Service) to deliver changes to planning provisions, or correct planning scheme anomalies for land owned by the Victorian government. Health portfolio public entities can apply to the Government Land Planning Service for assistance with the rezoning process. Further information and application forms are on DEWLP's [Government Land Planning Service page](https://www.planning.vic.gov.au/policy-and-strategy/government-land-planning-service)  
<<https://www.planning.vic.gov.au/policy-and-strategy/government-land-planning-service>>.

## Land purchased or acquired for the purposes of a public cemetery

In line with the Cemeteries and Crematoria Act, cemetery trusts must obtain the Minister for Health's approval to purchase or acquire land. The Minister must not approve the purchase or acquisition unless satisfied that it is necessary or desirable that the land be purchased or acquired for the purposes of a public cemetery and that the cemetery trust has sufficient funds available to purchase or acquire the land.

Where freehold land is acquired for cemetery/crematorium purposes, sections 33 and 34 of the *Cemeteries and Crematoria Act* require that the land vests in the Crown as unalienated Crown land and is deemed to be permanently reserved under Section 4 of the *Crown Land (Reserves) Act 1978* (Vic) for cemetery and crematorium purposes. Cemetery trusts should include a special condition in the contract of sale reserving the right to take transfer of the acquired land at settlement in favour of 'Her Majesty, Queen Elizabeth the Second'. The transfer form must provide the relevant provisions of the Cemeteries and Crematoria Act under which the land is to be reserved and held.

The Property team will ensure that Land Victoria and DELWP are advised on each occasion so that records on the Crown estate can be updated.

Following settlement, the department's Legal Services branch will seek the approval of the Governor in Council to establish the acquired land as a cemetery or include the additional acquired land as part of an existing cemetery in line with Section 4 of the *Cemeteries and Crematoria Act*.

## Part 3: Land divestment process

Different divestment methods will be needed for different types of property assets. Before deciding on a particular divestment method, health portfolio public entities should consider the nature of the asset (specialist or common), the potential market value, in continuing or alternative use, and opportunities for uplift (including demolition of improvements/rezoning amendments), as well as other intrinsic values (such as cultural or heritage aspects).

The sale of land is governed by various legislative provisions and can depend on the enabling Act of the entity as well as the land tenure (Crown or freehold).

**All transactions must comply with the Victorian Government land transactions policy and guidelines.** For more information, see the [Victorian Government Land Monitor page](https://www.propertyandlandtitles.vic.gov.au/vglm) <<https://www.propertyandlandtitles.vic.gov.au/vglm>>.

### Process requirements

A relatively standard process is followed for disposing of surplus freehold land held by the Department of Health or a health portfolio public entity.

The process is tailored for each individual project depending on the project requirements and is broadly covered by the following steps:

1. Land is declared surplus to operational requirements by health portfolio public entity, and/or the department.
2. Due diligence investigations and preparation of land for sale: legal, environmental issues, town planning (public use zoned land must be rezoned to an appropriate zoning), heritage overlays, flora and fauna, cultural heritage, site services, traffic management, engineering, survey and value uplift opportunities.
3. Department facilitates first right of refusal process with Land Use Victoria. Health portfolio public entity to complete the *First right of refusal request form* (Attachment 4A) and email it to [vhba.property@health.vic.gov.au](mailto:vhba.property@health.vic.gov.au)

Prior to divestment, land must be offered for a period of 60 days to other state, Commonwealth and local government agencies for acquisition in compliance with the Victorian Government landholding policy. If no expressions of interest are received, the land may then be offered for sale using a public process.

4. Private treaty sales are only to be conducted if an exemption is granted in line with clause 2(d) of the Victorian Government land transactions policy and guidelines.
5. Appoint real estate agent through a competitive tender process.
6. Appoint a panel lawyer (in consultation with corporate counsel) and prepare contract of sale and Section 32.
7. Complete Valuer-General instruction form and email it to Property Manager at [vhba.property@health.vic.gov.au](mailto:vhba.property@health.vic.gov.au) to facilitate valuation advice. Where it is anticipated the value of the property is \$750,000 or more, the Valuer-General will seek an independent check valuation. (Refer to the Victorian Government land transactions policy and guidelines). Valuer-General request for valuation form is available on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations) <<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>

The department will request valuation advice in line with the provisions of the *Valuation of Land Act* as the responsible line agency.

**An allowance of six weeks to complete the valuation should be built into the sales process.**

8. Where the transaction is \$750,000 or more, **Government Land Monitor approval must be obtained before the close of tenders or auction of the property**. An approval request can be made using [VGLM Online](https://vglm.vic.gov.au) <<https://vglm.vic.gov.au>>.

9. Auction held or tender effected.

If at the auction or following the tender, the reserve price is not met, officers may negotiate with the highest bidder (or bidders) to reach the reserve price. The reserve price must not be less than the current market value of the land as determined by the Valuer-General Victoria and approved by the Government Land Monitor (if required). If the reserve price is not reached, the property is 'passed in' and on the market for private sale.

Valuations generally have a currency of three months. If an offer is received after this time, the Valuer-General's Office must revise the currency of the valuation advice and endorse acceptance of the offer before accepting an offer and finalising the sale, including Government Land Monitor approval (if required). See Part 5 – Valuation requirements of the Victorian Government land transactions policy and guidelines for further advice.

10. Settlement. Asset register updated.

A checklist to ensure the proper processes are applied to the disposal of land can be found at Appendix 4. The checklist is for general guidance as the actual process is tailored for each individual project depending on project requirements. It is not mandatory and is provided as a good practice guide to assist officers undertaking acquisition projects.

All associated forms and web-links are available on the [Property management page](#) of the department's (former) Infrastructure Planning and Delivery website <[http://www.capital.health.vic.gov.au/Property\\_Management](http://www.capital.health.vic.gov.au/Property_Management)>.

## Crown land divestment process

Pursuant to the *Administration of Acts General Order 58* authorised by the Premier of Victoria, responsibility for the **divestment of surplus Crown land rests exclusively with the Minister for Finance**.

Where a Crown land property is no longer required by a health portfolio public entity, the land must be declared surplus and referred to the department. The department may arrange for it to be reallocated to another funded agency or referred to the Department of Treasury and Finance for sale.

The health portfolio entity is responsible for day-to-day site management and associated costs until the property is sold and settled.

Contact the Manager, Property, at [yhba.property@health.vic.gov.au](mailto:yhba.property@health.vic.gov.au) to discuss the process for divestment of Crown land properties.

## Part 4: Land tenures

The delivery of public health services is undertaken on land that can incorporate a variety of land tenure types and classifications. Health portfolio public entities that can control property assets are accountable for their management.

### Freehold land – occupation and use

Health portfolio public entities occupy and use freehold land to deliver government-funded services in the following capacities:

- tenant on land owned by the (former) Department of Health and Human Services
- tenant on land held by another entity (public or private)
- registered proprietor of land held in fee simple.

The cases where a health portfolio public entity occupies departmental owned land as a permissive occupant are anomalous, and arrangements should be made to formalise the occupation by implementing a suitable tenure agreement: lease or licence.

### Crown land – temporary and permanent reservations

Health portfolio public entities may occupy and use Crown land as a committee of management for Crown land temporarily reserved by order of the Governor in Council and in other cases as a trustee or public land manager for Crown land permanently reserved under an Act of the Victorian Parliament for one of a number of health portfolio public purposes: hospital, ambulance station, cemetery, homes for the aged, community health centre, and so on.

Both a committee of management and a trustee may undertake capital improvements to the Crown land and enter into tenure agreements (leases and licences) with third parties to grant access to the land, subject to the approval of the minister responsible for the Crown Land (Reserves) Act. See Part 5 of this guideline.

Guidelines to assist committees of management in managing Crown land responsibilities can be accessed at [Committees of management responsibilities and good practice guidelines](https://www2.delwp.vic.gov.au/boards-and-governance/committees-of-management) <<https://www2.delwp.vic.gov.au/boards-and-governance/committees-of-management>>

### Cemetery land occupation and use

In line with *the Cemeteries and Crematoria Act*, cemetery trusts must obtain the Minister for Health's approval to lease or license cemetery land. The Minister must not approve the tenure unless he or she is satisfied that the purpose for which the occupation is to be granted is not detrimental to the cemetery reserve purpose.

A lease must be for a specified term not exceeding 21 years and a licence for a period not exceeding three years.

## Part 5: Leasing and licensing process

Formal tenure agreements provide legal certainty and ensure that the responsibilities and obligations of both the owner and the occupant are clearly identified and managed.

Tenure agreements can provide for exclusive occupation (lease) or shared occupation (licence) of premises.

Health portfolio public entities may enter tenure agreements for health service and non-health service-related purposes. At a public hospital, health service-related purposes would include medical imaging, pathology and pharmacy services, and non-health service-related purposes would include a food and beverage outlet, card and florist shop and hairdresser.

### Crown land

Leases and licences on Crown land operate under the provisions of the Crown Land (Reserves) Act and must be approved by the responsible minister, principally the Minister for Energy, Environment and Climate Change. See [Crown land leases, licences and permits](https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits) <<https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits>>.

The Minister for Health is the responsible Minister for approving tenures on Crown land at: Bendigo Hospital, the Victorian Comprehensive Cancer Centre and Box Hill Hospital.

A licence may be issued for a term of up to ten years (s.17B) and a lease for a term of up to 21 years (s17D), but in some specific circumstances, longer terms up to 21 years (s17BAA – Licence) and 65 years (s17CA – Lease) may be granted.

The Department of Environment, Land, Water and Planning mandates the use of precedent lease and licence documents, which is intended to save time and expense for committees of management and trustees and to ensure that the requirements of the Crown are correctly documented to facilitate ministerial approval.

A department funded entity in possession of departmental Crown property involving nominal rent may not charge market rent to a subtenant that is also a department funded entity. In these cases, the subtenant is required to pay its share of property outgoings comprising utility charges, cleaning, security and maintenance.

### Freehold land – Retail Tenancies Act

The department's tenure agreements take a commercial form in terms of documenting the respective roles and responsibilities of the department as landlord and the health portfolio public entity as tenant but do not require the payment of rent or licence fee. They are drafted on the basis that occupation of departmental premises for delivering department funded services is not subject to the provisions of the *Retail Leases Act 2003* (Vic) or the *Residential Tenancies Act 1997* (Vic).

In this regard, reference should be made to the Ministerial Determination made under section 5 of the *Retail Leases Act*, which provides that premises do not constitute retail premises for the purposes of the Act where they are used predominantly for public, municipal or charitable purposes and the rent payable is not greater than \$10,000 per annum, as well as the provision at section 23 of the Residential Tenancies Act that excludes health and residential services from the operation of the Act.

A department-funded entity in possession of departmental freehold property under a lease involving nominal rental may not charge market rent to a subtenant that is also a department funded entity. In these cases, the subtenant is required to pay its share of property outgoings comprising utility charges, cleaning, security and maintenance.

## Process requirements

A relatively standard process is followed for leasing transactions. The actual process will be tailored for each individual project depending on the project requirements.

When leasing, public health entities must consider the following.

### Purpose of occupation

Is the occupancy for a health service-related purpose or a non-health service-related purpose for which the provision of either the Retail Leases Act or the Residential Tenancies Act applies?

### Land tenure approval and consents

The proposed tenure of the land must be complementary and not conflict with or be detrimental to the service delivery obligations of the public entity, the permitted use under any head lease or, in the case of Crown land, the reservation purpose.

Land status	Public health entity role	Department of Health role	Minister for Energy, Environment and Climate Change role
Freehold land owned by public health entity	Commercial lease agreement approved by Board	Not applicable	Not applicable
Freehold land owned by department and leased to public health entity	Negotiate terms Commercial sublease agreement	Secretary or delegate approval Consent for sublease	Not applicable
Crown land under control of department as Committee of Management and leased to public health entity	Negotiate terms DELWP Crown land sublease engrossing head lease	Secretary or delegate approval Consent for sublease	Minister or delegate approval Consent for sublease
Crown land under control of public health entity as Committee of Management	Negotiate terms DELWP Crown land lease (or sublease as required)	Secretary or delegate endorses business transaction	Minister or delegate approval Consent for lease (or sublease)

For Crown land leases, see [Crown land leases, licences and permits](https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits)

<<https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits>>.

### Establishing market rental

Complete Valuer-General request for rental valuation form and email it to Manager, Property at [vhba.property@health.vic.gov.au](mailto:vhba.property@health.vic.gov.au) to facilitate valuation advice. The form is available on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations) <<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>.

In line with the Victorian Government land transactions policy and guidelines, leasing transactions must be at a price which is not less than the current market rental value as determined by the Valuer-General, unless an exemption applies – see Part 9 of policy on the [Victorian Government Land Monitor page](https://www.propertyandlandtitles.vic.gov.au/vglm) <<https://www.propertyandlandtitles.vic.gov.au/vglm>>.



Victorian Government land transaction policy and guidelines leasing exemptions:

Agency	Exemption
Department of Health	Land that is leased to service providers, where the service provided is related to the core functions of Department of Health. Land that is leased as part of a public private partnership project.
Department of Health health services as defined in Schedules 1 to 6 of the <i>Health Services Act</i>	Land that is leased to service providers, where the service provided is related to the core functions of Department of Health health services. Land that is leased as part of a public private partnership project.

Any consideration less than full market rent must be approved by the financial delegate having regard to the estimated loss of revenue and the community benefit arising from the non-commercial lease.

### Lease agreement components

- (a) Sub-tenures must be consistent with the **head lease**, and the **Retail Leases Act** where retail services are provided.
- (b) **Essential terms** must be capable of determination beyond doubt.
- (c) **Assignment, subletting or transfer** clauses should be subject to the consent of the health portfolio public entity.
- (d) **Public liability** and other appropriate insurances must be held and maintained, including an indemnity in favour of the landlord and head landlord and Crown, as appropriate.
- (e) The **term should not exceed 10 years** and ideally should be shorter so that the market can be regularly tested for alternative service providers (except where the tenant proposes significant capital works, in which case the term should be the lesser of a period considered sufficient for the tenant to amortise the cost and the balance of the term remaining under the head lease).
- (f) Negotiations are expected to be consistent and fair with prospective tenants. In cases where subtenants providing health services are also department funded public entities, the financial provisions of the tenure agreement are to reflect those of the head lease.

### Management

The management of established leases, including collection of rent and rent reviews, is the responsibility of the public health entity.

### Lease and licences by cemetery trusts

Cemetery trusts have power to grant leases and licences in line with their enabling legislation. Sections 36(1) and 37(1) of the *Cemeteries and Crematoria Act* provide that a cemetery trust may grant a licence or lease to anyone to enter and use any part of the land for which it is responsible provided that the purpose has been approved by the Minister for Health.

In line with the Victorian Government land transactions policy and guidelines, leasing transactions must be at a price which is not less than the current market rental value as determined by the Valuer-General. To establish market rental, Cemetery Trusts must complete the Valuer-General instruction

form and submit to the Manager, Property at the department to facilitate valuation advice. (Appendix 5).

Any consideration less than full market rent must be approved by the Minister for Health with regard to the estimated loss of revenue and the community benefit arising from the non-commercial lease.

The department has developed precedent lease and licence documents for cemetery trusts to use which is intended to save time and expense and to ensure that the requirements of the Minister are correctly documented.

A copy of the executed document must be forwarded to the department's Cemeteries and Crematoria unit for placement on the trust's file.

A licence must not exceed a term of three years, and a lease must not exceed a term of 21 years but ideally should not exceed 10 years so that the market can be regularly tested for alternative service providers (except where the tenant proposes significant capital works).

## Part 6: Maintenance obligations

### Operational maintenance

Health portfolio public entities are responsible for the management, operations and maintenance of buildings and/or infrastructure under their control. In compliance with the current Victorian policy and funding guidelines, maintenance, management processes and reporting should include:

- internal information on the condition, suitability and capacity of property assets
- reporting on asset-related risks and strategies in place to mitigate them
- establishing annual and long-term maintenance plans for all key sites.

An effective maintenance plan forms part of the asset management responsibilities of health portfolio public entities and sustains the ability to support delivery of government funded services including structural integrity, useful life and life safety.

Regarding departmental property, the department's precedent documents for lease of Crown land and freehold land require the tenant to maintain the premises in the same condition as at commencement date with the exception of 'wear and tear'.

Repairs and maintenance are 'defined terms' in the lease, but they are generally understood by the legal profession and property managers to require the tenant at its cost:

- to fix anything that is broken (repairs)
- to have contracts in place for ongoing activities such as grounds, interior cleaning, exterior cleaning (exterior windows and gutters) and essential services (air-conditioning and life safety systems).

### Maintenance – surplus assets

Where a property is deemed obsolete or surplus to health portfolio requirements, the health service or department's program/region is responsible for day-to-day site management and associated costs until the property is sold and settled.

The Property team can assist to determine the scope of property management activities required during this period including:

- grounds maintenance
- site and building security
- disconnection of water and sewerage services
- disconnection of electricity, gas and telephone services
- maintenance of fire services
- building maintenance.

In preparation for divestment, some hospital facilities and assets require particular considerations, detailed as follows.

### Buildings

Where buildings have been decommissioned and are not occupied, they need to be made safe and secure. High-value buildings and, in particular, buildings with a heritage value should have intruder alarms installed.

### Lifts

Lifts should be parked at the ground floor. One lift should be maintained in a fully serviceable condition to enable upper level access for building inspection purposes.

## **Boilers (hospitals)**

If there are no services required to be provided from the boiler plant, then the boiler should be decommissioned and stored either wet (if the boiler is likely to be recommissioned in the short term) or dry (if the boiler is likely to be recommissioned in the long term or not at all). A maintenance engineer should be engaged for this purpose.

## **Fire systems**

The fire ring main, fire detection systems, hydrants and so on must continue to be maintained in line with Victorian Building Code requirements.

## Appendix 1: Key legislation

Legislation	Description
<i>Ambulance Services Act 1986 (Vic)</i>	Head of power to purchase, sell and lease real property
<i>Cemeteries and Crematoria Act 2003 (Vic)</i>	Purchase or compulsory acquisition of land for cemeteries and crematoria purposes
<i>Crown Land (Reserves) Act 1978 (Vic)</i>	Processes involving instituting or revoking permanent or temporary reservation of Crown land and leasing and licensing of Crown land; and for the appointment of Committees of Management to manage the land in line with the reserve purpose
<i>Environment Protection Act 1970 (Vic)</i>	Issues relating to public health and safety arising from contamination, land, air, noise and water
<i>Financial Management Act 1994 (Vic)</i>	Acquisition, leasing and licensing of land and premises
<i>Health Services Act 1988 (Vic)</i>	Head of power to purchase, sell and lease real property
<i>Heritage Act 1995 (Vic)</i>	Limits actions in order to protect heritage-listed assets
<i>Land Act 1958 (Vic)</i>	Sale and leasing of Crown land
<i>Land Acquisition and Compensation Act 1986 (Vic)</i>	Compulsory acquisition and related compensation
<i>Native Title Act 1993 (Cth)</i>	Issues relating to claims over land in relation to native title rights in respect of Crown land; and procedural rights following determinations
<i>Planning and Environment Act 1987 (Vic)</i>	Planning for the use, development and protection of land including regulations covering the 'permitted clearing of native vegetation'
<i>Property Law Act 1958 (Vic)</i>	Transactions relating to freehold land
<i>Project Development and Construction Management Act 1994 (Vic)</i>	To facilitate certain development projects
<i>Public Health and Wellbeing Act 2008 (Vic)</i>	Establishes the Secretary body corporate (Secretary DHHS) with powers to transact real property
<i>Residential Tenancies Act 1997 (Vic)</i>	Security bonds, notices, tenant right to sublet
<i>Retail Leases Act 2003 (Vic)</i>	Minimum terms, notices, renewals, statement of outgoing, landlord obligations for certain maintenance
<i>Sale of Land Act 1962 (Vic)</i>	The primary Act governing sales of land within Victoria. The Act governs much of the conveyancing process and requires vendors to provide certain statements to prospective purchasers. The Act is administered by the Minister for Consumer Affairs
<i>Traditional Owners Settlement Act 2010 (Vic) (and Native Title Act 1993 (Cth))</i>	Issues relating to claims over land in relation to Traditional Owner and native title rights in respect of Crown land, and procedural rights following determinations

Legislation	Description
<i>Transfer of Land Act 1958 (Vic)</i>	<p>Deals with registration of estates (the extent of the real property held by the registered proprietor) and interests (registration of easements, rights or way and a financial interest via a 'mortgage' or 'charge') in freehold land. The Act is administered by the Minister for Environment and Climate Change insofar as it relates to the management and administration of the Office of the Registrar-General and the Office of Titles.</p> <p>The Act is otherwise administered by the Attorney-General</p>
<i>Valuation of Land Act 1960 (Vic)</i>	<p>Establishes Office of the Valuer-General Victoria; standards for valuation of land for the purpose of sale, acquisition or financial accounting</p>

## Appendix 2: Key service providers

Service provider	Description
Office of the Government Land Monitor	Oversee the land transaction to ensure compliance with government policy for property transactions and endorsement where the value of the relevant real estate assets exceeds \$750,000
Office of Surveyor-General Victoria	Investigate the land status and conduct a boundary check, feature or field survey of the land, including preparation of a title plan to enable the issue of a Crown grant title and lease plans
Office of Valuer-General Victoria	Real estate valuation advice
Land Victoria	Register transfers of land titles
Department of Environment, Land, Water and Planning (DELWP)	Manages provision of Ministerial consents for tenures on Crown land; provides an assessment of any public or community values and native title implications for Crown land. DELWP also undertakes the removal of temporary and permanent reservations (the latter by way of an Act of Parliament) attached to Crown land to enable sale. DELWP facilitates closure of unused government roads where necessary to enable the sale of Crown land
Department of Treasury and Finance (DTF)	Lists surplus sites on the first right of refusal notification to allow for the first right of refusal process, responsible for administration and sale of all Crown land
Environmental consultants	Investigate asbestos issues, air monitoring, assess land contamination impediments and devise remediation strategies
Town planning consultants	Provide advice in relation to land rezoning issues, planning overlays and the built-form requirements (includes council planners and planners within the DELWP)
Architectural consultants	Related to preparing concept plans for high-value land sites
Quantity surveying consultants	Related to costing re-development options
Real estate professionals	Assess financial feasibilities to determine the marketability of surplus land, including advise where the sale strategy calls for the removal of existing structures; to acquire and sell land; and who may be required to deal with tenancy issues
Probity auditor	Scrutinise high value, complex and/or potentially controversial property transactions
Heritage Victoria	Provide advice in relation to land and associated assets that are listed on the Victorian Heritage Register
Cultural heritage consultants	For sites that require investigations in relation to indigenous matters and other matters of cultural significance
Flora and fauna consultants	Investigate sites that may have issues associated with rare and endangered species
Engineering consultants	Determine existing building and site conditions and costings associated with redevelopment of the site



Service provider	Description
Traffic management consultants	For sites affected by complex traffic management issues including site ingress and egress
Property maintenance contractors, such as gardeners, plumbers, electricians, painters, cleaners, fencers or arborists	Maintain or prepare property for disposal
Aerial photography contractors	Assist with marketing the property for sale
Utility service providers	Includes gas, electricity and water
Fire service, building surveyor	Assess the adequacy of existing fire services and work required to ensure the services are compliant with fire regulations
Security firms	Patrol and secure sites

## Appendix 3: Acquisition checklist

- Property acquisition checklist (follows)
- Site selection criteria
- Valuer-General valuation request form: available on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations)  
<<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>
- Government Land Monitor approval request: An approval request can be made using [VGLM Online](https://vglm.vic.gov.au)  
<<https://vglm.vic.gov.au>>

# Property acquisition checklist

## Purpose

This checklist is for use by staff to ensure the proper processes are applied to the acquisition of land.

It is incumbent on all Boards, Chief Executives, Trusts and Secretaries responsible for Health portfolio public entities to ensure that all property transactions in which they are involved are carried out in line with whole of Victorian Government and Victorian Department of Health and Human Services policies, procedures and guidelines.

The actual process is tailored for each individual project depending on project requirements.

## Project details

**Note:** Land **must** be acquired in line with the Victorian Government land transactions policy and guidelines.

Question	Response
Health portfolio public entity	
Project objective	To acquire property or land to meet infrastructure or service delivery requirements
Deliverables – FY and file number	
Project manager	
Property address	
Legal description – Volume and folio	
Land area (hectares)	
Legislative provisions authorising transaction – Act and section	

## Due diligence

Project task	Required? (Yes or No)	Details
Check survey		
Building condition		
Hazardous materials		
Service identification (relocation, removal, establishment)		
Geo-tech		

### Environmental assessment

Question or action	Response
Required? (Yes or No)	
Desktop analysis	
Phase 1	
Phase 2	
Remediation strategy	

### Land planning assessment

Question	Response
Required? (Yes or No)	

### Town planning assessment

Question or action	Response
Required? (Yes or No)	
Current zone	
Permit required?	
Rezoning required?	
Proposed zone	

### Heritage assessment

Question or action	Response
Required? (Yes or No)	
Listed on Victorian Heritage Register?	
Local heritage overlay	
Conservation management plan required?	
Cultural heritage plan required?	

### Pest inspection

Question or action	Response
Required? (Yes or No)	

### Demolition

Question or action	Response
Required? (Yes or No)	
Consultant	
Cost	

Question or action	Response
Date of completion	

### Lease or licence

Question	Response
Required? (Yes or No)	
Lease type	
Term	
Date cancelled	

### Other due diligence

Question	Response
Required? (Yes or No)	
Details	

## Government requirements

### Approval or authority

Question	Response
Required? (Yes or No)	
Ministerial, Secretary or Board?	
Date of approval	

### Valuation

Question	Response
Required? (Yes or No)	
Valuer	
Date of valuation	
Valuation amount	

### Check valuation – required above \$750,000

Question	Response
Required? (Yes or No)	
Valuer	
Date of valuation	
Valuation amount	

## Government Land Monitor – required above \$750,000

Question	Response
Required? (Yes or No)	
Date file submitted for endorsement	
Date of approval	

## Contract publishing system

Contracts above \$100,000; full disclosure of contracts above \$10 million.

Question	Response
Required? (Yes or No)	
Completed?	

## Transaction requirements

### Legal engagement

Question	Response
Firm name	
Legal fee (\$)	
Date contract finalised	

### Negotiation

Question or action	Response
Price agreement reached?	
Agreed purchase price (\$)	

### Contracts signed

Question	Response
Date contract executed (settlement date)	
Deposit cheques raised or funds remitted to legal firm?	

## Settlement requirements

### Settlement details

Question or action	Response
Settlement advice (adjustments and so on)	
Raise settlement cheques or funds remitted to legal firm	
Settlement advice (occurred)	
Receipt of freehold title or notification of e-title	

### Settlement deferred

Question or action	Response
Penalty interest rate	
Amount	
New settlement date	
Default notice issued?	

### Crown land reservation

Question or action	Response
Gazettal plan required?	
Type of reservation	
Permanent or temporary?	
Gazette notification	
Reserve number	
For cemetery trusts: Governor-in-Council public cemetery declaration	

### Assessment management record

Question or action	Response
Update asset register	
Add minimum dataset	



## Appendix 4: Divestment checklist

- Property divestment checklist (follows)
- Attachment 4A: DHHS first right of refusal request form (follows)
- Valuer-General valuation request form: available on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations)  
<<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>
- Government Land Monitor approval request: can be made using [VGLM Online](https://vglm.vic.gov.au)  
<<https://vglm.vic.gov.au>>

# Property divestment checklist

## Purpose

This checklist is for use by staff to ensure the proper processes are applied to the divestment of land.

It is incumbent on all Chairs, Chief Executives and Secretaries responsible for Health portfolio public entities to ensure that all property transactions in which they are involved are carried out in line with whole of Victorian Government and Victorian Department of Health and Human Services policies, procedures and guidelines.

The actual process is tailored for each individual project depending on individual project requirements

## Project details

**Note:** Divestment of land **must** be in line with the *Victorian Government land transactions policy and guidelines*, and be conducted through a public sale process unless an exemption is granted.

Question	Response
Health portfolio public entity	
Project objective	To prepare surplus land for sale by public <b>auction or tender</b>
Deliverables – FY and file number	
Project manager	
Property address	
Legal description – Volume and folio	
Land area (hectares)	
Legislative provisions authorising transaction – Act and section	

## Due diligence

Project task	Required? (Yes or No)	Details
Survey or Check survey		
Building condition		
Hazardous materials		
Service identification (relocation, removal, establishment)		

## Environmental assessment

Question or action	Response
Required? (Yes or No)	
Desktop analysis	
Phase 1	
Phase 2	
Remediation strategy	

## Town planning assessment

Question or action	Response
Required? (Yes or No)	
Current zone	
Rezoning required?	
Proposed zone	
Date effected	

## Heritage assessment

Question or action	Response
Required? (Yes or No)	
Listed on Victorian Heritage Register?	
Local heritage overlay	
Conservation management plan required?	

## Demolition

Question or action	Response
Required? (Yes or No)	
Consultant	
Cost	
Date of completion	

## Lease or licence

Question	Response
Required? (Yes or No)	
Lease type	
Term	
Date cancelled	

## Other due diligence

Question	Response
Required? (Yes or No)	
Details	

## Government requirements

### Approval or authority

Question	Response
Required? (Yes or No)	
Ministerial, Secretary or Board?	
Date of approval	

### Valuation

Question	Response
Required? (Yes or No)	
Valuer	
Date of valuation	
Valuation amount	

### Check valuation – required above \$750,000

Question	Response
Required? (Yes or No)	
Valuer	
Date of valuation	
Valuation amount	

### Government Land Monitor – required above \$750,000

Question	Response
Required? (Yes or No)	
Date file submitted for endorsement	
Date of approval	

## Contract publishing system

Contracts above \$100,000; full disclosure of contracts above \$10 million.

Question	Response
Required? (Yes or No)	
Completed?	

## Transaction requirements

### Legal engagement

Question	Response
Firm name	
Legal fee (\$)	
Date contract finalised	

### Real estate agent

Question or action	Response
Real estate tender	
Appointment of agent	
Strategy auction or tender	
Date of auction or tender	

### Sale details

Question	Response
Sale price (\$)	
Date of sale	
Date of settlement	

## Settlement requirements

### Settlement details

Question or action	Response
Settlement advice (adjustments and so on)	
Raise tax invoice	
Process settlement cheques	

**Settlement deferred**

<b>Question or action</b>	<b>Response</b>
Settlement deferred? (Yes or No)	
Penalty interest rate	
Amount	
New settlement date	
Default notice issued?	

**Assessment management record**

<b>Question or action</b>	<b>Response</b>
Update asset register	

## Attachment 4a: Department of Health - First right of refusal request form

To notify Land Use Victoria of a property to be included in the FROR process, please populate the following table and email it to [fror.luv@delwp.vic.gov.au](mailto:fror.luv@delwp.vic.gov.au)

Item	Detail
Municipality	
Street address	
Suburb	
Legal description (such as Crown allot, Vol/Fol, Lot/Plan or SPI)	
Landholding agency, property common name	
Tenure (Crown or freehold)	
Land area (approximate hectares)	
Ministerial or Board approval (date declared surplus)	
Current and former use of asset	
Registered proprietor (if freehold)	
Forecast estimated sale price	
Forecast estimated sale year	
FROR commenced	FROR use
FROR concludes	FROR use
Relevant agency contact information	

## Example completed form

Item	Detail
<b>Municipality</b>	Hepburn
<b>Street address</b>	Smith St
<b>Suburb</b>	Creswick
<b>Legal description (such as Crown allot, Vol/Fol, Lot/Plan or SPI)</b>	16~47\PP5269
<b>Landholding agency, property common name</b>	Department of Justice and Regulation, Old Creswick Police station
<b>Tenure (Crown or freehold)</b>	Crown
<b>Land area (approximate hectares)</b>	0.3692
<b>Ministerial or Board approval (date declared surplus)</b>	10/02/2014
<b>Current and former use of asset</b>	Currently vacant. Previously a police station
<b>Registered proprietor (if freehold)</b>	Not applicable (Crown land)
<b>Forecast estimated sale price</b>	\$500,000
<b>Forecast estimated sale year</b>	2015
<b>FROR commenced</b>	FROR use
<b>FROR concludes</b>	FROR use
<b>Relevant agency contact</b>	mark.french@dtf.vic.gov.au



## Appendix 5: Valuer-General rental valuation form

To request a valuation, government agencies or departments must complete the request form. The form is available under 'Requesting a valuation' on DELWP's [Government valuations page](https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations) <<https://www.propertyandlandtitles.vic.gov.au/valuation/government-valuations>>.

## Appendix 6: Image description

### Figure 1: Asset lifecycle stages

#### **Planning:**

- Asset management strategy
- Planning for uncertainty
- Business cases
- Risk management
- Cost/benefit analysis
- Accounting treatment
- Non-asset alternatives

#### **Acquisition:**

- Acquisition process
- Risk evaluation
- Procurement method

#### **Disposal:**

- Retirement
- Replacement
- Renewal
- Redeployment

#### **Operation:**

- Monitoring
- Maintenance
- Information management
- Asset valuation
- Utilisation
- Functionality

#### **Leadership and accountability:**

- Governance
- Attestation
- Performance management
- Achievement of government outcomes
- Continuous improvement and flexibility

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