

Russell Kennedy Government CPD

Session 5: Victorian Government Land Transactions Policy Update and Retail Leasing

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Webinar housekeeping

- All attendees will be on mute and their cameras turned off for the entire webinar
- We have BD tech support live to assist with any technical issues
- Use the chat function for any comments/technical issues
- Use the Q&A function for specific questions related to the webinar content – Questions will be addressed at the end of the webinar
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback

Introduction

Two Part Session

- Victorian Government Land Transactions Policy Update
- Tips and Traps in Retail Leasing
- Questions?

Victorian Government Land Transactions Policy Update

Michael Dowling, Special Counsel
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Victorian Land Transactions Policy Update

- New(ish) policy issued April 2022
- Reflection on 2022 Policy vs 2016 Policy and Guidelines
- Compare approaches with particular transactions
- Provide some helpful tips

New Policy issued April 2022

Replaces previous *Land Transactions Policy and Guidelines 2016*

- Applies from 4 April 2022
- Consolidates the “Policy” and “Guidelines” aspects into one comprehensive policy

Greater level of detail

- Compare (approximately) 122 pages against previous 28 pages
- More focus on the practical

Other policies remain relevant

- *Landholding Policy and Guidelines 2015*
- *Strategic Crown Land Assessment Policy and Guidelines 2016*
- *Land Use Policy and Guidelines 2017*

Reflection on 2022 vs 2016 Policies

Expansion on existing framework

- While replacing the 2016 Policy and Guidelines, the 2022 Policy does not introduce a new regime
- Rather, it builds on the past policies and guidelines, providing a clearer set of rules and more expansive examples

Transaction focused

- 2016 Policy always was
- A lot more detailed and practical approach this time

Land Transactions

- Sale of land/interest in land
- Purchase of land/interest in land
- Acquiring/granting a lease
- Offers of compensation under the *Land Acquisition and Compensation Act 1986* or Part IV of the *Planning and Environment Act 1987*

Format of the new policy

Four Key Parts

- Basic principles (Part 1)
- Land transaction requirements (Part 2)
- Exemptions (Part 3)
- Transactions (Part 4)

Reflection on 2022 vs 2016 Policies *cont.*

The “11” 2022 Policy requirements

- Accountability, transparency and legislation
- Due diligence
- Victorian Government Land Monitor (VGLM) approval
- Valuer-General Victoria (VGV) valuation
- Sale price and rent received
- Purchase price and rent paid
- Offer of market value/financial loss compensation based on VGV Valuation
- Land exchange
- Sale by public process
- Sale of land with a public land zone
- Lease with option to purchase

Plus exemptions

Reflection on 2022 vs 2016 Policies *cont.*

Compare to 2016 Policy Requirements

- All transactions to achieve accountability and transparency
- Conduct an appropriate level of due diligence prior to sale, grant, or acquisition
- Must not sell, grant a lease, or grant an interest, below current market value/rent as determined by Valuer-General Victoria (VGV)
- Must not purchase, acquire a lease, or acquire an interest, above current market value/rent as determined by VGV
- Must not sell land without a public process (other than by Government right of first refusal process)
- Land must have most appropriate zoning in place prior to offering for sale
- Must not grant a lease containing option to purchase
- Must obtain Victorian Government Land Monitor (VGLM) approval where market value of land or transaction exceeds \$750,000 excl GST

Plus exemptions

Reflection on 2022 vs 2016 Policies *cont.*

2016	2022
Assurance and Probity	Accountability, Transparency and Legislation
Due Diligence	Due Diligence
VGLM Approval	VGLM Approval
Valuation requirements	Valuer-General Victoria valuation
Sale Specific Provisions	Sale price and rent received
Purchase Specific Provisions	Purchase price and rent received
Lease Specific Provisions	Offer of market value
Government-to-Government Transactions	
Exemptions	

Reflection on 2022 vs 2016 Policies *cont.*

Difficult to make a straight comparison of requirements

- While the requirements are similar in nature, as you can see from earlier slides they are not described in exactly the same manner
- A side-by-side comparison of some requirements is complicated by this, and not all that helpful in any event
- Instead, we look at common land transactions for Victorian Government agencies and consider the two policies in context

Sale/Purchase of Land or Interest in Land 2022 vs 2016 Policies

	2016	2022
Accountability, Transparency, and Legislation	General aspects and guidance applies.	General aspects and guidance applies. Checklist provided at Table 4. Further express requirements apply depending on nature of transaction – refer Tables 31 (for sale).
Due Diligence	Due diligence required prior to sale or purchase. Policy provides some high-level guidance on key areas (Legal review, SCLA for Crown land, survey, planning, contamination, pollution, cultural heritage, and native title and traditional owner rights). Checklist provided at Appendix 1	Due diligence required prior to sale or purchase. Policy provides some high-level guidance on general due diligence (Preliminary, legal, survey, building, planning, ecological, historical places, objects and archaeological sites, cultural heritage, contamination (steps 1, 2 and 3)).

Sale/Purchase of Land or Interest in Land 2022 vs 2016 Policies *cont.*

	2016	2022
VGLM Approval	<p>VGLM approval prior to entering into contract where current market value of the land or interest is \$750,000 (excl GST) or more.</p> <p>This applies to a series of related transactions where the aggregate value is \$750,000 (excl GST) or more.</p> <p>Applies to transactions between government agencies.</p> <p>Some limited guidance provided on when to seek VGLM approval.</p>	<p>VGLM approval prior to entering into contract where current market value of the land or interest is \$1 million (excl GST) or more.</p> <p>This applies to a series of related transactions where the aggregate value is \$1 million (excl GST) or more.</p> <p>Does not apply to transactions between agencies.</p> <p>Tables 32 (for sale) or 36 (for purchase) provides greater guidance on when to seek VGLM approval.</p> <p>If an exemption is sought, VGLM engagement is required even if otherwise it would not be (e.g., value of transaction below threshold).</p>

Sale/Purchase of Land or Interest in Land 2022 vs 2016 Policies *cont.*

	2016	2022
VGW Valuation	<p>VGW Valuation mandatory:</p> <ul style="list-style-type: none"> • One valuation for any inter-agency or inter-government transactions. • One valuation for any transaction below \$750,000 excl GST. • Two valuations (one normal, one “check”) for non-government transactions worth \$750,000 excl GST or more. <p>Strictly confidential, unless required for process (e.g., setting reserve price) or compelled by law.</p> <p>Must be “current”.</p>	<p>VGW Valuation mandatory*:</p> <ul style="list-style-type: none"> • One valuation for any inter-agency or inter-government transactions. • One valuation for any transaction below \$1,000,000 excl GST. • Two valuations (one normal, one “check”) for non-government transactions worth \$1,000,000 excl GST or more. <p>*Exception for general government sector agencies which may transfer land at book value.</p> <p>Confidential, but can be disclosed for legal reasons or after consulting with VGW.</p> <p>Must be “current”.</p>

Sale/Purchase of Land or Interest in Land 2022 vs 2016 Policies *cont.*

	2016	2022
Sale or Purchase Price	<p>Must not sell land below current market value as provided for in VGV Valuation.</p> <p>Must not purchase land above VGV Valuation.</p>	<p>Must not sell land at below current market value as provided for in VGV Valuation.</p> <p>Must not purchase land above VGV Valuation, except in rare circumstances approved by the VGLM (which is treated as an exemption)</p> <p>Does not apply to GG sector agencies transferring at book value.</p>
Land exchange	Not directly referenced.	Land exchanges (generally) prohibited.
Zoning	<p>Agencies must have in place the most appropriate planning provisions so that the land can be sold at its highest and best use.</p> <p>No sale of land with public purpose zoning (unless approved by Minister for Planning).</p>	<p>No sale of public purpose zoning except to another government agency.</p> <p>Limited exemption where land can be offered for sale while still subject to public use zoning, but appropriate planning controls must be in place by settlement.</p>

Sale of Land or Interest in Land 2022 vs 2016 Policies

	2016	2022
Public sales process	<p>Sale of land by public process required unless sale is to another government entity pursuant to first right of refusal process (FROR). Does not apply to Easements.</p> <p>Recognises sales by auction, tender, EOI or ROI.</p> <p>Recognises market-led proposals.</p> <p>Preferred sale terms contained in Policy. Alternative terms must be discussed with VGV (as may impact on valuation).</p>	<p>Sale by public process required unless sale is to another government entity pursuant to FROR. Does not apply to Easements.</p> <p>Recognises auction, other publicly listed sales (including tender, EOI, and private sale), direct tender/EOI, or multi-stage tender/EOI. Provides greater clarity around appropriateness of methods. VGLM approval needed for other sale methods (e.g., limited EOI).</p> <p>Market-led proposals still available, however, engage with VGLM to assess how to comply with policy.</p> <p>No preferred sale terms.</p>

Sale of Land or Interest in Land 2022 vs 2016 Policies *cont.*

Table 34: Quick reference guide for sales exemptions

Exemption	Land transaction requirements				
	VGLM approval	Sale price	Land exchange	Public sales process	Public land zone
Cabinet or committee of Cabinet		●	●	●	●
Minister for Planning				●	●
Assistant Treasurer		●			
VGLM – Sale after unsuccessful public process		●			
ERC or Assistant Treasurer - Land exchange		●			
Legislation		●	●	●	●
Recognition and Settlement Agreement		●		●	
Sale of residence to renter under a residential rental agreement				●	
Surplus railway land				●	
Public universities	●	●	●	●	

NB: Extracted from 2022 Policy – Table 34 – May be subject to copyright

Sale of Land or Interest in Land 2022 vs 2016 Policies *cont.*

Table 37: Quick reference guide for purchase exemptions

Exemption	Land transaction requirements		
	VGLM approval	Purchase price	Land exchange
Cabinet or committee of Cabinet		●	●
Minister for Planning		●	
Assistant Treasurer		●	
VGLM – Purchase in excess of VGV valuation		●	
ERC or Assistant Treasurer - Land exchange		●	●
Legislation		●	●
Public universities	●	●	●

NB: Extracted from 2022 Policy – Table 37 – May be subject to copyright

Leasing of Land 2022 vs 2016 Policies

	2016	2022
VGLM Approval	Not required.	<p>VGLM approval required for the granting of a lease:</p> <ul style="list-style-type: none"> • for a term exceeding 5 years (including renewals); and • if the land is in greater Melbourne, has a book value of \$5 million (excluding GST) or more; or • if the land is in regional Victoria, has a book value of \$3 million (excluding GST) or more. <p>No VGLM approval for taking a lease (as tenant).</p>

NB: Accountability, Transparency and Legislation, and Due Diligence, requirements still apply – we have just not compared here

Leasing of Land 2022 vs 2016 Policies *cont.*

	2016	2022
VGV Valuation	<p>VGV current market rental valuation mandatory.</p> <p>Must be “current” as at commencement date.</p>	<p>VGV current market rental valuation mandatory.</p> <p>Must be “current” as at commencement date.</p>
Rental	<p>Cannot grant lease for below current market rental.</p> <p>Cannot take lease for above current market rental.</p>	<p>Cannot grant lease for below current market rental.</p> <p>Cannot take lease for above current market rental.</p>
Lease with option to purchase	<p>Cannot grant lease with option to purchase, except to government agency.</p>	<p>Cannot grant lease with option to purchase, except to government agency.</p>

NB: Accountability, Transparency and Legislation, and Due Diligence, requirements still apply – we have just not compared here

Leasing of Land 2022 vs 2016 Policies *cont.*

Table 40: Quick reference guide to leasing exemptions

Exemption	Land transaction requirements			
	VGLM approval	VG V valuation	Price – granting a lease	Price – acquiring a lease
Cabinet or committee of Cabinet			●	●
Minister for Planning			●	●
VGLM – Lease after unsuccessful public process			●	
Responsible Minister or statutory officer – lease terms			●	●
Responsible officer or statutory officer – Public and community purposes			●	
Legislation			●	●
Public universities	●	●	●	●
Alternative valuation		●	●	
Agency specific exemptions	●	●	●	

An agency should request an early engagement meeting with VGLM if it has any concerns about meeting the leasing requirements in the delivery of a government policy commitment.

NB: Accountability, Transparency and Legislation, and Due Diligence, requirements still apply – we have just not compared here

Conclusion

- Be familiar with all aspects of the 2022 Policy
- Make sure you undertake the appropriate level of due diligence
- Engage early with the VGV and VGLM
- Transparent and accountable public processes are what government land transactions are all about
- If in doubt, go back to the 2022 Policy

Questions



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