

Victorian Government
**Strategic Crown Land Assessment
Policy and Guidelines**

April 2016

© The State of Victoria Department of Environment, Land, Water and Planning 2016



This work is licensed under a Creative Commons Attribution 3.0 Australia licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

Printed by Finsbury Green, Melbourne. Printed on recycled paper

ISBN 978-1-76047-013-5 (print)

ISBN 978-1-76047-014-2 (pdf/online)

Accessibility

If you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on 136186, email customer.service@delwp.vic.gov.au or via the National Relay Service on 133 677, email www.relayservice.com.au. This document is also available on the internet at www.delwp.vic.gov.au

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence that may arise from you relying on any information in this publication.

Contents

Victorian Government Strategic Crown Land Assessment Policy	i
1 Purpose	i
2 Policy	i
3 Application	iii
4 Supporting and related documents	iii
5 Responsibilities.....	iii
Victorian Government Strategic Crown Land Assessment Guidelines	1
1 Introduction	1
2 Application of the Guidelines.....	2
3 The assessment process.....	3
4 Identifying and assessing public land values.....	5
5 Protecting public land values	7
6 Assessing native title and traditional owner rights.....	10
7 Land status and management arrangements	11
8 Exemptions and responsibilities.....	13
Appendix A – Protection of public land values.....	15
A1 Planning schemes.....	15
A2 Local laws	16
A3 Statutory heritage registers	17
A4 Protection of public land values under the <i>Aboriginal Heritage Act 2006</i>	18
A5 Restricted Crown grants.....	18
A6 Retention and management within the Crown estate	19
A7 Acquisition and addition to the Crown estate	19

Victorian Government Strategic Crown Land Assessment Policy

1 Purpose

- (a) The Victorian Government holds land for a variety of defined functions and purposes, including for the protection and preservation of public land values. Management of the Crown land estate for the protection and preservation of these values, to provide for public benefit, is a recognised role of the State Government.
- (b) The purpose of the Victorian Government Strategic Crown Land Assessment Policy is to:
 - (i) ensure that assessments are undertaken for all Crown land that has been declared surplus to the requirements of a Victorian Government agency by the responsible landholding Minister;
 - (ii) inform decision making by relevant landholding Ministers and the Minister for Environment, Climate Change and Water on:
 - A. public land values of Crown land; and
 - B. the protection of public land values;
 - (iii) determine the status of traditional owner and / or native title rights for Crown land declared surplus to the requirements of a Victorian Government agency.
- (c) A Strategic Crown Land Assessment must be undertaken to enable:
 - (i) a landholding Minister to consider:
 - A. whether land should be alienated from the Crown estate;
 - B. whether appropriate protections exist for any public land values if Crown land is to be alienated; and
 - C. the implications of and impacts on the rights of traditional owners and / or native title claimants if Crown land is to be alienated;
 - (ii) the Minister for Environment, Climate Change and Water to undertake statutory responsibilities and satisfy policy obligations regarding the Crown estate.

2 Policy

- (a) For the purposes of a Strategic Crown Land Assessment, public land values are those which:
 - (i) relate to the inherent value of the land itself;
 - (ii) refer to things that cannot be relocated to, or replicated on, another piece of land;
 - (iii) are of environmental, conservation, cultural heritage, scientific and research, water and catchment, recreational and tourism, natural resource or strategic significance; and
 - (iv) are likely to contribute to current or future service delivery outcomes expected of the State.
- (b) A Strategic Crown Land Assessment must be undertaken to:
 - (i) identify whether traditional owner and / or native title rights exist with respect to the Crown land;
 - (ii) identify whether there are any public land values present on the land, and if public land values are present then:

- A. determine the significance of the public land values;
 - B. identify all existing statutory and other means that may provide protection for the identified public land values; and
 - C. assess whether and which of these existing means would provide adequate long term protection for the identified public land values;
- (iii) determine whether existing means of protection would adequately protect the identified public land values if the land were to be alienated, and provide sufficient information on the existing means to enable the landholding Minister to determine if the land is suitable for alienation;
 - (iv) identify other means of protection or restrictions which should provide adequate long term protection for the public land values if existing means of protection cannot be determined to be adequate should the land be alienated;
 - (v) provide sufficient information with respect to any other proposed means of protection or restrictions to enable the landholding Minister to determine if the land is suitable for alienation;
 - (vi) recommend retention of the land in the Crown estate if other means cannot be identified and determined as providing adequate long-term protection for the public land values; and
 - (vii) provide sufficient information for the Minister for Environment, Climate Change and Water to determine the appropriate status and manager for the land if land is identified for retention or inclusion in the Crown estate administered by the Department of Environment, Land, Water and Planning.
- (c) A Strategic Crown Land Assessment is to be submitted to the landholding Minister and the Minister for Environment, Climate Change and Water or their delegates for consideration prior to any decision being taken on alienation of land from or inclusion of land in the Crown estate.
 - (d) If in the view of the landholding Minister and the Minister for Environment, Climate Change and Water, after considering a Strategic Crown Land Assessment, a parcel of land is suitable for alienation from the Crown estate the land is to be referred to the Minister for Finance for disposal.
 - (e) If in the view of the landholding Minister and the Minister for Environment, Climate Change and Water, after considering a Strategic Crown Land Assessment, a parcel of land is not suitable for alienation from or is suitable for inclusion in the Crown estate, the land is to be referred to the Minister for Environment, Climate Change and Water for retention and delegated management and transferred to the Crown estate administered by the Department of Environment, Land, Water and Planning.
 - (f) Where public land values relate only to part or parts of a parcel of land, that part or those parts of the land on which public land values do not exist should be considered for excision, if possible, from that other part or those other parts on which public land values do exist.
 - (g) A Strategic Crown Land Assessment must be undertaken by:
 - (i) assessors within the Department of Environment, Land, Water and Planning who are suitably qualified to undertake such assessments; or
 - (ii) external assessors who have been evaluated by the Department of Environment, Land, Water and Planning as suitably qualified to undertake such assessments.
 - (h) Unless otherwise agreed by the parties, a Strategic Crown Land Assessment is to be:

- (i) conducted within 90 days from the day on which the assessment was requested and submitted to the assessor in the required format; and
- (ii) funded by the landholding agency.

3 Application

- (a) This policy applies to the assessment of all Crown land identified as surplus to a landholding agency's needs and nominated for a Strategic Crown Land Assessment. Exemptions to this policy may apply as detailed in the Victorian Government Strategic Crown Land Assessment Guidelines.
- (b) Exemptions to this policy generally include:
 - (i) Crown land managed under the *National Parks Act 1975* (national, wilderness, state and other parks and reserves), *Forests Act 1958* (State forest), *Wildlife Act 1975* (wildlife and nature reserves), *Heritage Rivers Act 1992* (heritage rivers and natural catchment areas), and *Reference Areas Act 1978* (reference areas), unless land managed under these acts has been assessed as surplus by the Department of Environment, Land, Water and Planning; or
 - (ii) other Crown land managed as State forest, coastal reserves, reserved river frontage, nature conservation reserves and natural features reserves, including that with a LCC, ECC, or VEAC recommendation approved by government to be managed for environmental, conservation, cultural heritage, and other high public land values; or
 - (iii) Parks Victoria-managed regional or metropolitan parks; or
 - (iv) unreserved Crown land that is bed and banks of waterways, river frontage, reservoirs, and sea bed.

4 Supporting and related documents

- (a) This policy is to be implemented in accordance with the Victorian Government Strategic Crown Land Assessment Guidelines.
- (b) Other policies that are relevant to this policy include the Victorian Government Landholding Policy and Victorian Government Land Transactions Policy.

5 Responsibilities

- (a) The Minister for Environment, Climate Change and Water is responsible for approving the Victorian Government Strategic Crown Land Assessment Policy.
- (b) The Victorian Government Strategic Crown Land Assessment Policy may be amended from time to time as approved by the Minister for Environment, Climate Change and Water.
- (c) The Department of Environment, Land, Water and Planning administers the Victorian Government Strategic Crown Land Assessment Policy.

Victorian Government Strategic Crown Land Assessment Guidelines

1 Introduction

1.1 Policy

The Victorian Government Strategic Crown Land Assessment Policy establishes an assessment process (a Strategic Crown Land Assessment, SCLA) to identify and evaluate public land values in relation to Crown land that has been declared surplus to the requirements of a Victorian Government land holding agency by the responsible landholding Minister, or has been identified for possible inclusion into the Crown land estate. The Policy also requires an assessment of traditional owner and / or native title rights in relation to the Crown land.

1.2 Guidelines

The purpose of the Strategic Crown Land Assessment Guidelines is to provide information and guidance to assist Victorian Government agencies and assessors who have been appointed to undertake a SCLA to implement the requirements of the Policy.

The Guidelines detail key compliance requirements with respect to:

- application of the Guidelines (section 2);
- the assessment process (section 3);
- identifying and assessing public land values (section 4);
- protecting public land values (section 5);
- assessing traditional owner and native title rights (section 6);
- identifying land status and management arrangements (section 7); and
- exemptions and responsibilities (section 8).

The Guidelines apply to the assessment of Crown land that has been declared surplus to a government land holding agency's requirements. Exemptions to the Policy and Guidelines are listed in section 3(b) of the Policy.

The Guidelines may be amended as approved by the Minister for Environment, Climate Change and Water.

2 Application of the Guidelines

The Guidelines apply to Crown land formally declared surplus to a Victorian Government agency's current and future operational requirements by the relevant landholding Minister or delegate.

In the case of Crown land held by the Department of Health and Human Services (DHHS), land may be formally declared surplus by the Secretary to DHHS as a body corporate established under the *Public Health and Wellbeing Act 2008*.

While the Guidelines are administered by the Department of Environment, Land, Water and Planning (DELWP) on behalf of the Minister for Environment, Climate Change and Water, they are to be used for the assessment of public land values and determination for all Crown land in Victoria formally declared surplus by an agency.

The Guidelines may be applied to the assessment of land proposed for inclusion into the Crown land estate.

2.1 Declaration of surplus land

Agencies requesting a SCLA should supply a written declaration that the Crown land to be assessed is surplus to current and future operational requirements with other necessary information as detailed in section 3.1. A SCLA cannot commence without a formal declaration that the land is surplus.

Agencies will undertake their own internal processes to assess whether the Crown land they manage is surplus to their operational requirements.

For Crown land managed by DELWP, an internal agency level assessment will be used to assess whether Crown land may be surplus. If land is determined to be surplus to DELWP's current and future operational requirements, the Minister for Environment, Climate Change and Water or delegate will consider the results of the agency level assessment and formally declare the land to be either surplus or not surplus to DELWP's requirements.

Some Crown land will be determined not to be surplus to agencies' current or future operational requirements, or through the SCLA process as containing significant public land values that require some means of protection into the future. There can also be community, cultural, environmental or strategic considerations that may influence whether or how Crown land could be used for new purposes.

In addition to the inherent public land values of assessed Crown land, the Minister for Environment, Climate Change and Water may also consider past and future community use and benefit of the land in determining whether certain land is surplus and able to be alienated, or whether the land should be retained in the Crown estate.

3 The assessment process

A SCLA is to be undertaken for Crown land that has been formally declared surplus to the requirements of a Victorian Government agency.

3.1 Requests

A government agency may request a SCLA be undertaken by emailing DELWP's SCLA Coordinator at scl.assessments@delwp.vic.gov.au.

A requesting agency must provide the following information to the SCLA Coordinator in order for an assessment to commence:

- written advice that the land has been declared surplus to that agency;
- accurate details of the land, equivalent to the minimum property dataset outlined in Table 1 of the Victorian Government Landholding Guidelines;
- any works history, reports or relevant files on the land, including those related to hazardous materials or contamination; and
- officer contact details.

The SCLA Coordinator will collate this information and forward it to the relevant assessor.

If the assessor determines that the information as provided is inadequate to complete an accurate assessment of the existence and significance of the public land values of the land, he or she can request that additional information be provided by the requesting agency through the SCLA Coordinator.

All communication regarding the SCLA should occur through the SCLA Coordinator via the central SCLA email address listed above.

3.2 Outcomes

The outcomes of the SCLA will inform the decision of the landholding Minister and the Minister for Environment, Climate Change and Water in relation to the alienation or retention of Crown land insofar as it identifies and evaluates public land values and their significance, considers protection afforded to those values, assesses native title and traditional owner rights associated with the land, and if proposed for retention recommends a land status and manager.

The landholding Minister is the Minister responsible for managing a parcel of Crown land as an asset within their portfolio, either as a statutory function or by non-statutory arrangement. In making a decision about the alienation or retention of Crown land, the landholding Minister is to consider the recommendations of a SCLA.

If in the view of the landholding Minister, after considering a SCLA, a parcel of Crown land is:

- suitable for alienation from the Crown estate – the land is to be referred to the Minister for Finance for disposal unless the landholding department has the responsibility to dispose of certain land under its administration; or
- unsuitable for alienation from the Crown estate on the basis of its public land values – the land is to be referred to the Minister for Environment, Climate Change and Water for his or her consideration for retention in the Crown estate with a recommendation for its appropriate status and delegated manager.

Implementation of the means of protection identified and recommended within a SCLA is the responsibility of the landholding Minister and the Minister for Finance. Implementation of the means of protection is to be undertaken prior to alienation of the land where possible.

The formulation of relevant necessary conditions associated with protection of public land values, or the completion of any statutory processes required to alienate Crown land, are outside the scope of a SCLA.

3.3 Report documentation

The SCLA coordinator will provide suitably qualified assessors with a SCLA reporting template in order to complete the assessment. Documentation relevant to the findings of a SCLA should be attached to the report as appropriate, including written confirmation from the landholding minister or delegate that the land is surplus to his or her department's ongoing requirements.

3.4 Report timeframes

A SCLA will be completed within 90 days. This timeframe commences when the SCLA coordinator has received a request to complete a SCLA and has been provided with sufficient information from the requesting agency to make it a complete application, as detailed in section 3.1.

If the information listed in section 3.1 is not received with the request, the 90 day timeframe will not commence until this information is received by the SCLA coordinator.

If additional information is requested as detailed in section 3.1, the assessment timeframe will be extended by the number of days between the date of the request for additional information and the date the assessor receives the additional information.

A SCLA concludes when all relevant assessment components have been completed and verified, and the assessment is submitted to the requesting agency.

3.5 Currency of report

A SCLA represents an assessment at a point in time, based on an analysis of information available at that time. The presence and significance of public land values identified may change over time as can the information available to inform analysis.

If, prior to alienation, public land values change or new information becomes available that would alter the findings of a SCLA, the assessment must be updated and verified accordingly.

In general, a SCLA will remain current for three years or until public land values change or new information becomes available that would alter its findings and recommendations.

4 Identifying and assessing public land values

4.1 Identifying public land values

First, identify whether public land values are present.

For the purposes of a SCLA, public land values:

- relate the inherent values of the land itself;
- refer to attributes that cannot be relocated to, or replicated on, another piece of land without detrimentally impacting those attributes; and
- are of environmental, conservation, cultural heritage, scientific and research, water and catchment, recreational and tourism, natural resource or strategic significance; and
- are likely to contribute to current or future service delivery outcomes expected of the State.

Assessors must refer to the following essential documents in identifying public land values:

- DELWP's Public Land Values Assessment Manual; and
- recommendations that have been made by the Victorian Environment Assessment Council (and its predecessor bodies) and accepted by the Victorian Government which are relevant to the land being assessed and are binding on government.

If public land values are present, the assessor should assess their significance in accordance with section 4.2 of the Guidelines. If public land values are not present, assign the land as having no public land value and proceed to section 6.

4.2 Significance of public land values and assessment categories

Next, classify the significance of public land values present.

Public land values are to be classified as either not significant, or significant at a local, regional, state, or national / international level. The criteria associated with each of the significance levels is set out in Table 1.

If public land values only exist below a local level of significance, the assessor should assign the land as having no public land value and proceed to section 5. If one or more of the public land values are significant at a local level or higher, the assessor should assign an assessment category as set out in Table 1.

Note that significance categories do not apply to the evaluation of Aboriginal cultural heritage values. If such values are present, they are assessed as being of State significance for the purposes of a SCLA as areas of cultural heritage sensitivity are recognised by State legislation, and may be of National or International significance under provisions of the Commonwealth *Aboriginal and Torres Strait Islanders Heritage Protection Act 1984*. In addition, protection mechanisms available for these values do not clearly align with the significance classifications for other categories of public land values.

Then, after evaluating the significance of public land values, assign an assessment category.

The assessment category reflects whether public land values identified on the land are considered significant for the purpose of a SCLA and must be recorded on the SCLA report.

If multiple public land values are assessed at different significance levels, the assessment category must reflect the highest significance level attained by any one value.

When assigning an assessment category, an assessor should identify whether the assessment category relates to the land in whole or in part. If the assessment category relates to part of the land, the assessor should identify on a plan to which part of the land the assessment category relates. If there is more than one assessment category, the plan must be either hatched or colour coded to reflect the different assessment categories.

Table 1. Criteria for classifying the significance of public land values and assessment categories

Significance	Criteria	Category
None	Public land values are either not present or present at below a local level of significance. Local refers to an area comprising part of a local government area.	N
Local (low)	Values primarily important to the local community or municipality, which, if compromised, would impact that locality or community now or in the future. Values which local communities and municipalities have a direct interest in maintaining or protecting, as they derive benefit from their maintenance and protection. Values which may be identified in local management plans or strategic plans, local municipal planning policies or incorporated documents, plans, or reports. Local refers to an area comprising part of a local government area.	L
Regional (medium)	Values primarily of importance to the region in which they are found, beyond the local community or municipal area, which, if compromised, would impact that region now or in the future. Values which may be identified in regional strategies, multiple municipal plans and reports, incorporated documents, or statutory registers. Region refers to an area comprising or crossing multiple local government areas.	M
State (high)	Values identified by Victorian Government legislation or policy, criteria, registers, guidelines, or other Victorian Government instruments. Values include those assessed as being at risk of compromise with State-wide implications, of high priority for conservation and management by the Victorian Government, and which may be most appropriately managed with a level of protection provided through significant restrictions or incorporation into protected land estates.	H
National / International (high)	Values identified in international agreements, Commonwealth Government legislation or policy, criteria, registers or guidelines, or other nationally recognised instruments. Values include those assessed as being at risk of compromise with nation-wide or international implications, of high priority for conservation and management by the Commonwealth Government, and which may be most appropriately managed with a level of protection provided through significant restrictions or incorporation into protected land estates.	H

5 Protecting public land values

There are a number of means that may provide adequate management, protection or conservation of public land values where this is warranted – for example, to fulfil a statutory obligation or achieve an explicit government objective.

5.1 Existing protections

Identify existing means of protection

First, identify means of protection that may already be in place to protect public land values.

Existing means of protection currently apply to the land and would provide protection to public land values if the land were to be alienated from the Crown land estate. They include State and Commonwealth legislation and regulations, local government bylaws, agreements and restrictions that operate across tenures, planning scheme provisions, and statutory registers where values are already listed.

Existing means of protection relevant to a SCLA are detailed in Appendix A of the Guidelines.

Relevant State and Commonwealth legislation affording protection to public land values is detailed in DELWP's Public Land Values Assessment Manual.

If there are existing means of protection in place, the assessor should evaluate their adequacy as described below, considering the Victorian Government's responsibilities to protect the public land values.

If no existing means of protection can be identified, the assessor should consider whether other means of protection are required in accordance with section 5.2 and Table 2.

Evaluate existing means of protection

Next, evaluate whether the identified existing means provide adequate protection for public land values.

Existing means of protection must be considered in each SCLA on a case-by-case basis to determine whether they are applicable to the land and its public land values and whether they would provide adequate long term protection if the land were to be alienated.

Adequate protection for public land values means that the Victorian Government's commitments and objectives with respect to protection of public values on the land are met and would continue to be met for the long term if the land were alienated.

Existing means may not be adequate for the protection of public land values where:

- public land values require significant, long-term protection and existing means would not provide adequate protection outside the Crown estate;
- the Victorian Government has committed to providing a certain type of protection for the public land values and those protections are not currently in place outside of the Crown land estate; or
- the Victorian Government has committed to the protection of public land values or has strategic objectives on surrounding lands that could be compromised if the land is alienated without protections.

If existing means of protection are inadequate, other means of protection must be assessed in accordance with section 5.2. If existing means of protection are adequate, the assessor should continue the assessment in accordance with section 6.

5.2 Other means of protection

The most critical consideration in evaluating and recommending other means of protection for identified public land values is whether the required level of protection for the values can be achieved for the long term. The status of the land is a secondary consideration.

Identify and evaluate other means of protection

If public land values are not adequately protected by existing means, identify and evaluate other means of protection.

Other means are those that could be implemented as part of the alienation process in order to achieve adequate ongoing protection for public land values.

It is the responsibility of the landholding Minister and the Minister for Finance to implement any other means of protection identified and recommended as part of a SCLA.

The assessor may need to identify what other means are available to provide protection for public land values. Other means of protection should be considered on a case-by-case basis to determine whether they may provide adequate protection for each identified public land value.

Other means of protection may include, for example:

- inclusion in statutory registers, such as the Victorian Aboriginal Heritage Register, Victorian Heritage Register, or National Heritage List;
- planning scheme amendments;
- Protection Declarations under the *Aboriginal Heritage Act 2006*; or
- restrictions on Crown grants.

Information on other means of protection is provided in Appendix A of the Guidelines.

DELWP's Public Land Values Assessment Manual provides information on known and potential threats or risks to public land values that will inform an assessor's consideration of protection options.

When evaluating whether other means of protection may provide adequate protection of identified public land values, an assessor should consider the following:

- the type of values requiring protection beyond that which may be afforded through existing means;
- whether alienation of the land would pose a risk to public land values from a landscape perspective, including provision of connectivity, buffers, and the achievement of government objectives; and
- whether government has a commitment to provide a specific type or level of protection or management of the public land values.

In the SCLA report, the assessor must provide justification and sufficient detail relevant to other means of protection which are recommended to inform the landholding Minister's decision regarding the suitability of the land for alienation.

Note that retention in the Crown estate may be the only feasible or possible way to protect medium (regional) high (state or national / international) public land values. If such public land values cannot be adequately protected for the long term following alienation, retention in the Crown estate should be recommended. Note also that some protection mechanisms would be inappropriate if land is retained in the Crown estate.

Table 2. Protecting public land values

Category	Description	Action
N	No public land values: public land values are either not present or present at below a local level of significance.	Determine existing means of protection and recommend other means of protection as necessary.
L	Low public land values: public land values are present at a local level of significance.	Determine existing means of protection and recommend other means of protection as necessary.
M	Medium public land values: public land values are present at a regional level of significance.	Determine existing means of protection and recommend other means of protection as necessary. If no other means of protection can be identified as adequate to protect the assessed public land values, recommend retention in the Crown estate and an appropriate status and manager for the land.
H	High public land values: public land values are present at a state or national / international level of significance.	If no other means of protection can be identified as adequate to protect the assessed public land values, recommend retention in the Crown estate and an appropriate status and manager for the land.

6 Assessing traditional owner and native title rights

Victorian Crown land is subject to compliance with either the Land Use Activity Regime (LUAR) under the *Traditional Owner Settlement Act 2010* (Vic; TOS Act) or the future act regime of the *Native Title Act 1993* (Cth; NT Act). Assessors completing a SCLA will identify whether native title or traditional owner rights exist over the land. This part of a SCLA is mandatory irrespective of the assessor's final recommendations.

Negotiation of consent from the holders of native title or traditional owner rights, or addressing any other procedural rights relating to native title or traditional owner rights, are outside the scope of a SCLA.

6.1 Traditional owner rights under the LUAR

First, ascertain whether the land is within an area subject to the LUAR.

If the parcel is within a Land Use Activity Agreement (LUAA) area, then the LUAA assessment process under the LUAR applies. The LUAR is similar to the future act regime of the NT Act in that it provides for specified rights to be extended to traditional owner groups regarding activities proposed to be undertaken on Crown land. The guidelines for what rights are extended for proposed activities differ from those under the NT Act however. If the land is to be alienated, the regional native title officer is to be advised.

Agreements under the TOS Act are made between the State and a traditional owner group and may include a LUAA which replaces the future act regime of the NT Act.

Note that procedural rights may vary depending on the specific LUAA that applies to the land.

6.2 Native title rights under the future act regime

If the land is not covered by a LUAA, the future act regime under the NT Act applies. The next step is to evaluate whether native title rights exist over a parcel.

In a SCLA, identify whether native title rights:

- have been determined to exist by way of Orders in the Federal Court;
- have been determined not to exist by way of Orders in the Federal Court;
- do not exist because there is primary documentary evidence of an act of the Crown that clearly will have fully extinguished any native title in accordance with the NT Act;
- may exist in the absence of identified extinguishment evidence; or
- are subject to a pre-existing right that may allow the sale of the land to proceed without an Indigenous Land Use Agreement.

If the land is outside a determination area under the NT Act, it is required that an extinguishment assessment be undertaken in accordance with DELWP's Native Title Future Act Assessment Manual. The findings must be documented in the SCLA report. Copies of the primary documentary evidence that proves extinguishment must be provided with the SCLA report.

Agencies should be aware that even if land is retained in the Crown estate but a change in land status is sought, procedural rights under a LUAA or the future act regime of the NT Act may apply.

Agencies should also be aware that even if native title rights are assessed as having been extinguished, the status may be reversed in certain circumstances if the land becomes part of a native title determination under section 47B of the NT Act.

7 Land status and management arrangements

As part of a SCLA, an assessor will establish the land status and management arrangements of the land in a land status report. A land status report will identify the legislation under which the land is managed and will describe existing occupations, tenures, and management arrangements for the land.

The land status report will inform:

- the landholding Minister and the Minister for Finance of any statutory constraints which may exist or processes that may need to be followed in relation to the alienation of the Crown land; and
- the Minister for Environment, Climate Change and Water of any statutory functions that he or she may be requested to perform if a decision is made to alienate the land.

7.1 Legal status

First, identify the land's legal status by determining whether it is:

- unreserved Crown land (managed under the *Land Act 1958* (Vic; Land Act));
- Crown land temporarily or permanently reserved under the *Crown Land (Reserves) Act 1978* (Vic; CLR Act) or other act such as the Victorian *National Parks Act 1975* or *Forests Act 1958*;
- a government road or contains a government road, managed under a variety of legislation; or
- freehold land.

If land is reserved the assessor must identify the reserving act, the purpose for which it is reserved, and whether the reservation is permanent or temporary.

Land status information must be provided by requesting agencies as part of the minimum property data set required for all land assets. The assessor will verify and supplement this information as part of a SCLA, and may request further information or clarification from the requesting agency.

Crown land reserves

Determine if a reservation is in place and the statutory process required to revoke the reservation.

Crown land temporarily or permanently reserved cannot be sold without the land's reservation being revoked prior to sale, unless the sale is clearly authorised by another act. This is a separate process to the assessment of land as surplus to an agency's requirements, and to the SCLA process.

The statutory power to revoke a reservation rests with the minister administering the relevant section of the CLR Act, which in most cases will be the Minister for Environment, Climate Change and Water.

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

Note that Crown land permanently reserved for education purposes does not require an act of Parliament for revocation but rather Governor in Council approval with certification from the Minister for Education that the land is no longer required for education purposes.

Government roads

Identify whether the land contains a government road and whether the road requires closure.

Government roads are administered under a variety of legislation. Government roads must be closed prior to alienation of Crown land. This is a separate process to the assessment of the land as surplus to an agency's requirements, and to the SCLA process.

The Minister for Environment, Climate Change and Water has a statutory role in the closure of an unused government road if it is closed under section 349 of the Land Act. A government road can also be closed by a municipal council under provisions of the *Local Government Act 1989* (Vic) or through an amendment to a planning scheme under the *Planning and Environment Act 1987* (Vic).

7.2 Land management arrangements

Tenures

Determine whether any leases or licenses exist in relation to the land.

Crown land managed under the Land Act, the CLR Act or another act may be leased or licensed in accordance with the provisions of those acts.

The Minister for Environment, Climate Change and Water has statutory responsibility for tenure arrangements under these acts unless specified in administrative arrangements or site-specific legislation.

Note that tenures may exist over the land for which the Minister for Environment, Climate Change and Water has no statutory responsibility. It is the responsibility of the requesting agency to provide this information to the SCLA coordinator and to resolve any such tenure arrangements prior to alienation.

Appointed land managers

Identify if the Crown land is managed by a body, such as a committee of management appointed to manage the land under the CLR Act, or an appointee such as Parks Victoria.

The Minister for Environment, Climate Change and Water has a statutory role in appointing or revoking the appointment of land managers under the CLR Act. Appointees may also resign or management bodies be dissolved prior to the revocation of a reservation in accordance with the CLR Act.

It is the responsibility of the landholding Minister to initiate any necessary changes to existing land management arrangements, such as requesting the Minister for Environment, Climate Change and Water to revoke the appointment of a land manager. It is also the responsibility of the landholding Minister to resolve any informal land management arrangements prior to alienation.

8 Exemptions and responsibilities

The Victorian Government Strategic Crown Land Assessment Guidelines apply to the assessment of Crown land that has been formally declared surplus to a government agency's ongoing operational requirements.

Exemptions to the requirements of the Victorian Government Strategic Crown Land Assessment Guidelines are listed in section 3(b) of the Policy.

The Victorian Government Strategic Crown Land Assessment Guidelines may be amended from time to time as approved by the Minister for Environment, Climate Change and Water.

The Department of Environment, Land, Water and Planning administers the Victorian Government Strategic Crown Land Assessment Guidelines.

Appendix A – Protection of public land values

This Appendix outlines various means that could protect public land values, the different situations for which each means may be used, and their associated advantages and disadvantages. This list is not exhaustive, and other means of protection may become available or be developed over time.

A1 Planning schemes

The planning system is one means by which public land values may be protected on both public and private land. The main role of the planning system in protecting public land values is to set in place a comprehensive framework of policy and provisions to guide decision-making about new use and development through planning schemes.

The administration and enforcement of a planning scheme is the duty of a responsible authority. In most cases this will be a municipal council, but it can be the Minister for Planning as the responsible Minister for the *Planning and Environment Act 1987* or any other person specified as a responsible authority for that purpose in the planning scheme.

To determine whether a planning scheme provides protection for a public land value, an assessor would refer to the relevant planning scheme and consider if the existing zones and overlay provisions and local planning policies give effect to the desired objectives for the protection of a public land value.

A combination of planning scheme provisions can be applied as required to protect public land values. The nature of the value and its level of significance will determine which provisions could apply to the Crown land.

Table A-1 provides an outline of some of the planning scheme provisions and tools that are available to protect public land values. The list of provisions in the table is not exhaustive, but is merely an indication of the types of provisions and tools that can be applied, through an amendment to the planning scheme, to provide protection for public land values.

An assessor may recommend that a planning scheme amendment process be completed prior to the alienation of Crown land to provide an increased level of protection for a public land value. Note that any changes to the planning provisions initiated to improve saleability or facilitate development of the land may impact on the type of public land values protection currently afforded.

Assessors should be mindful that planning scheme amendments do not necessarily provide long-term protection for public land values. Planning scheme amendments are not permanent and any protection they may provide for public land values could be removed at some future date.

Table A-1. Public land values and possible Victorian Planning Provisions for their protection

Public land value	State Planning Provisions	Local Planning Provisions	Zones*	Overlays **	Particular Provisions
Biodiversity and ecological values	Clause 12 – Environment and Landscape Values: <ul style="list-style-type: none"> ▪ Biodiversity ▪ Coastal areas ▪ Alpine areas ▪ Significant environments and landscapes 	Clause 20, 21 and 22	RCZ, RLZ, FZ, PCRZ, PPRZ	Environmental and Landscape Overlays: ESO, VPO, SLO; FO and LSIO indirectly IPO, DPO, HO, DDO	Clause 52.16 – Native vegetation precinct plan Clause 52.17 – Native vegetation
Geological and geomorph-	Clause 12 – Environment and Landscape Values: <ul style="list-style-type: none"> ▪ Coastal areas 	Clause 20, 21 and 22	RCZ, RLZ, FZ, PCRZ, PPRZ	Land Management Overlays:	Clause 52.02 – Easements, restrictions and

Public land value	State Planning Provisions	Local Planning Provisions	Zones*	Overlays **	Particular Provisions
ecological	<ul style="list-style-type: none"> ▪ Alpine areas ▪ Significant environments and landscapes 			EMO, FO, LSIO, BMO, DDO	reserves Clause 52.16 – Native vegetation precinct plan Clause 52.17 – Native vegetation
Water and catchment	Clause 14 – Natural resource management: <ul style="list-style-type: none"> ▪ Water Clause 13 – Environmental risks: <ul style="list-style-type: none"> ▪ Floodplains ▪ Soil degradation 	Clause 20, 21 and 22	PUZ, RCZ, RLZ, FZ, PCRZ, PPRZ	Environmental and Landscape Overlays Land Management Overlays	
Cultural heritage	Clause 15 – Built Environment and heritage: <ul style="list-style-type: none"> ▪ Heritage conservation 	Clause 20, 21 and 22	Any zone could apply	Heritage and Built Form Overlays: HO, DDO	
Research / scientific	Clause 15 – Built Environment and heritage: <ul style="list-style-type: none"> ▪ Aboriginal cultural heritage 	Clause 20, 21 and 22	Any zone could apply	Heritage and Built Form Overlays: HO, DDO	
Recreational and tourism	Clause 17 – Economic development: <ul style="list-style-type: none"> ▪ Tourism 	Clause 20, 21 and 22	PUZ, PCRZ, PPRZ	IPO Heritage and Built Form Overlays: HO, DPO	Clause 52.47 – Bushfire Protection: Planning Requirements
Natural resource and other strategic significance (utility / community service provision)	Clause 14 – Natural resource management: <ul style="list-style-type: none"> ▪ Agriculture ▪ Mineral and stone Clause 11 – Settlement	Clause 20, 21 and 22	SUZ, RCZ, FZ, PUZ, PCRZ	Land Management Overlays: SRO, DDO Other Overlays: AEO, IPO	Clause 52.08 – Earth and Energy Resources Industry Clause 52.09 – Stone Extraction and Extraction Industry Interest Areas

*Zones identified in Table A-1: FZ – Farming Zone, PCRZ – Public Conservation and Resource Zone, PPRZ – Public Park and Recreation Zone, PUZ – Public Use Zone, RCZ – Rural Conservation Zone, RLZ – Rural Living Zone, SUZ – Special Use Zone.

**Overlays identified in Table A-1: AEO – Airport Environs Overlay, BMO – Bushfire Management Overlay, DDO – Design and Development Overlay, DPO – Development Plan Overlay, ESO – Environment Significance Overlay, EMO – Erosion Management Overlay, FO – Flood Overlay, HO – Heritage Overlay, IPO – Incorporated Plan Overlay, LSIO – Land Subject to Inundation Overlay, SLO – Significant Landscape Overlay, SRO – State Resource Overlay, VPO – Vegetation Protection Overlay.

A2 Local laws

Local laws may be prepared under the *Local Government Act 1989* to protect public land values such as those associated with native vegetation, with the approval of the relevant Minister. This approach may be considered as an alternative to using the planning scheme, but again any protection local laws may provide could be removed at some future date. Advice from the relevant municipal council should be sought to determine whether this is an option that is appropriate, feasible or possible for the protection of identified public land values.

A3 Statutory heritage registers

Cultural heritage places can be protected by inclusion on statutory heritage registers, which require permit approval from heritage agencies or planning authorities before changes are made to places. The statutory controls apply to all heritage registered places, regardless of land status. Statutory heritage registers, lists, and provisions used in Victoria are detailed in Table A-2.

DELWP's operational protocols and policies provide instructions and resources for identifying whether a value may already be listed on a statutory heritage register, as well as for evaluating whether this type of protection may be appropriate for identified values without existing protection.

Table A-2. Statutory heritage lists, registers, and provisions applicable to Victoria

Register or list	Jurisdiction and governing legislation	Places included and significance levels	Responsible and supporting authority
World Heritage List	<i>Convention concerning the Protection of the World Cultural and Natural Heritage</i> adopted by United Nations Educational, Scientific and Cultural Organization (UNESCO), 1972 <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)	Places of World Cultural and Natural Heritage that are of outstanding universal value <i>Values of international significance</i>	UNESCO World Heritage Committee Commonwealth Department of the Environment
National Heritage List	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)	Exceptional natural and cultural places including indigenous and non-indigenous sites that contribute to Australia's national identity, or define critical moments in our development as a nation <i>Values of national significance</i>	Commonwealth Department of the Environment
Victorian Heritage Register	<i>Heritage Act 1995</i>	Significant places and objects including extensive land areas, buildings, gardens and trees, and archaeological sites or remains, as well as shipwrecks, collections, and objects <i>Values of state significance</i>	Heritage Victoria Heritage Council of Victoria Department of Environment, Land, Water and Planning
Victorian Heritage Inventory	<i>Heritage Act 1995</i>	Historic archaeological sites and relics <i>Historic archaeological values at any level of significance</i>	Heritage Victoria Department of Environment, Land, Water and Planning
Victorian Aboriginal Heritage Register	<i>Aboriginal Heritage Act 2006</i>	Aboriginal places and collections of aboriginal objects in Victoria	Office of Aboriginal Affairs Victoria Victorian Aboriginal Heritage Council
Planning Scheme Heritage Overlay	<i>Planning and Environment Act 1987</i>	Places and precincts of local heritage significance as well as places included in state and national registers	Municipal council or Minister for Planning (accountable body for planning scheme)
Requirement for and preparation of Cultural Heritage Management Plans	<i>Aboriginal Heritage Act 2006</i> and <i>Aboriginal Heritage Regulations 2007</i>	Preparation of a Cultural Heritage Management Plan is required if the activity is a listed high impact activity, resulting in significant ground disturbance, and if the activity is in an area of cultural heritage sensitivity	Office of Aboriginal Affairs Victoria

Note that historic archaeological places included in the Victorian Heritage Inventory are not required to meet a threshold of significance. Instead, inclusion in this inventory broadly protects the archaeological values of a place.

The Register of the National Estate, formerly managed by the Australian Government through the Australian Heritage Commission, is now redundant but can still provide information about the significance of places.

The National Trust Register, compiled by the National Trust of Australia (Victoria), has no statutory powers to protect cultural heritage but can provide information about the significance of places.

The requirement for and preparation of Cultural Heritage Management Plans under the *Aboriginal Heritage Act 2006* is discussed below.

A4 Protection of public land values under the *Aboriginal Heritage Act 2006*

All Aboriginal cultural heritage values are afforded protection under the *Aboriginal Heritage Act 2006*. This protection applies to values regardless of whether they are listed on the Victorian Aboriginal Heritage Register. This act has various provisions for the protection of Aboriginal cultural values as detailed below.

Aboriginal heritage protection declarations

Some Aboriginal cultural heritage places are of particular significance to Aboriginal people and the broader Victorian community and require special protection. The Minister for Aboriginal Affairs is able to declare such places 'protected areas', to be protected and preserved for future generations.

The Minister for Aboriginal Affairs can place an Interim Protection Declaration over an area to protect it while an assessment is undertaken to see if the area warrants permanent protection. The Aboriginal Heritage Council or any Registered Aboriginal Party (RAP) is able to ask the Minister to make an Interim Protection Declaration, which prevents specific activities within that area while the declaration is in force.

An Ongoing Protection Declaration is a permanent declaration that protects an area from activities likely to harm its Aboriginal cultural heritage values and provides for any necessary maintenance or management activities. Contravention of either an Interim or an Ongoing Protection Declaration constitutes an offence under the *Aboriginal Heritage Act 2006*.

Protection declarations under the *Aboriginal Heritage Act 2006* are listed in the Victorian Aboriginal Heritage Register. Protection declarations may function as an existing or additional means of protection. Consultation relating to, and implementation of, a protection declaration is outside the scope of a SCLA and is the responsibility of the relevant landholding Minister and relevant landholding department.

Cultural heritage management plans

High impact activities, as detailed in the *Aboriginal Heritage Regulations 2007*, which are undertaken in areas of cultural heritage sensitivity will require a Cultural Heritage Management Plan (CHMP). CHMPs are a way of providing for protection and appropriate management of Aboriginal cultural heritage values, in consultation with the relevant RAP, while enabling works or development to proceed. The website of the Office of Aboriginal Affairs Victoria, Department of Premier and Cabinet provides information on the preparation and requirements of CHMPs.

A5 Restricted Crown grants

Crown land can be sold subject to conditions and / or restrictions on use and / or development being registered on the Crown grant. A condition may be formulated with the objective of preserving a public land value, by empowering the Crown or a public authority to take action on a site that will

preserve the public land value or by restricting specific uses or development of, or activities on, the land.

Restricted Crown grants may be recommended as a general means of providing protection for public land values on alienation of Crown land. The formulation of any conditions or restrictions relating to such grants is outside the scope of a SCLA and is the responsibility of the relevant landholding Minister or agency, though an assessor may recommend appropriate conditions or restrictions based on his or her knowledge and experience in a SCLA for the landholding Minister or agency to consider.

A6 Retention and management within the Crown estate

Retention of land within the Crown estate for conservation and management of its public land values provides a high level of protection for the land. Retention and reservation represents one potential outcome of ministerial consideration of the information provided within a SCLA, and could provide protection recommended as part of a SCLA for land with high (state or national / international) public land values or strategic considerations such as significant community use or benefits.

For example, the landholding Minister may propose retention where government has committed to providing a significant level of protection or management for public land values, and where this could not be achieved through any other means. Any specific protection requirements for, or commitments relating to, identified public land values or strategic considerations such as significant community use or benefits should be clearly articulated and justified in the assessment report to fully inform the landholding Minister's decision-making.

If the landholding Minister determines that management of land within the Crown estate is appropriate and necessary, the land is to be referred to the Minister for Environment, Climate Change and Water for management within DELWP's land estate for conservation or protection of high levels of public land values or strategic considerations such as significant community use or benefits, upon agreement with that Minister.

The identification of an appropriate land manager if the land is to be retained within the Crown estate is outside the scope of the SCLA process, though an assessor may recommend a land status and manager based on his or her knowledge and experience in a SCLA, or recommend the land be referred to the Victorian Environmental Assessment Council for determination of an appropriate land manager.

A7 Acquisition and addition to the Crown estate

From time to time, government may consider that parts of the freehold estate may possess public land values of such significance as to warrant protection in the Crown estate, and propose to acquire that land.

Examples may include: sections of freehold coastal land (some 4 per cent of Victoria's coastal land is freehold); freehold inliers in national parks; freehold land which hosts or provides refuge for threatened or endangered species or ecological communities; freehold land which provides critical ecosystem services; freehold land adjacent to Crown land with high public land values which could provide ecosystem services or strategic values such as an ecological or environmental buffer (for example, for protection of habitat for the Southern Brown Bandicoot or Leadbeater's Possum, or protection of Ramsar wetland sites); or freehold land identified for long term government strategic purposes.

In such cases, it is appropriate to assess the land proposed for acquisition through the SCLA process to determine the significance of the public land values of the land and provide open and transparent support for government's decision to acquire the land if those values are assessed to be of high (state or national / international) significance.



Environment,
Land, Water
and Planning