Australian Government
Department of Finance

A Guide to Commonwealth Property Disposals

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1. Introduction

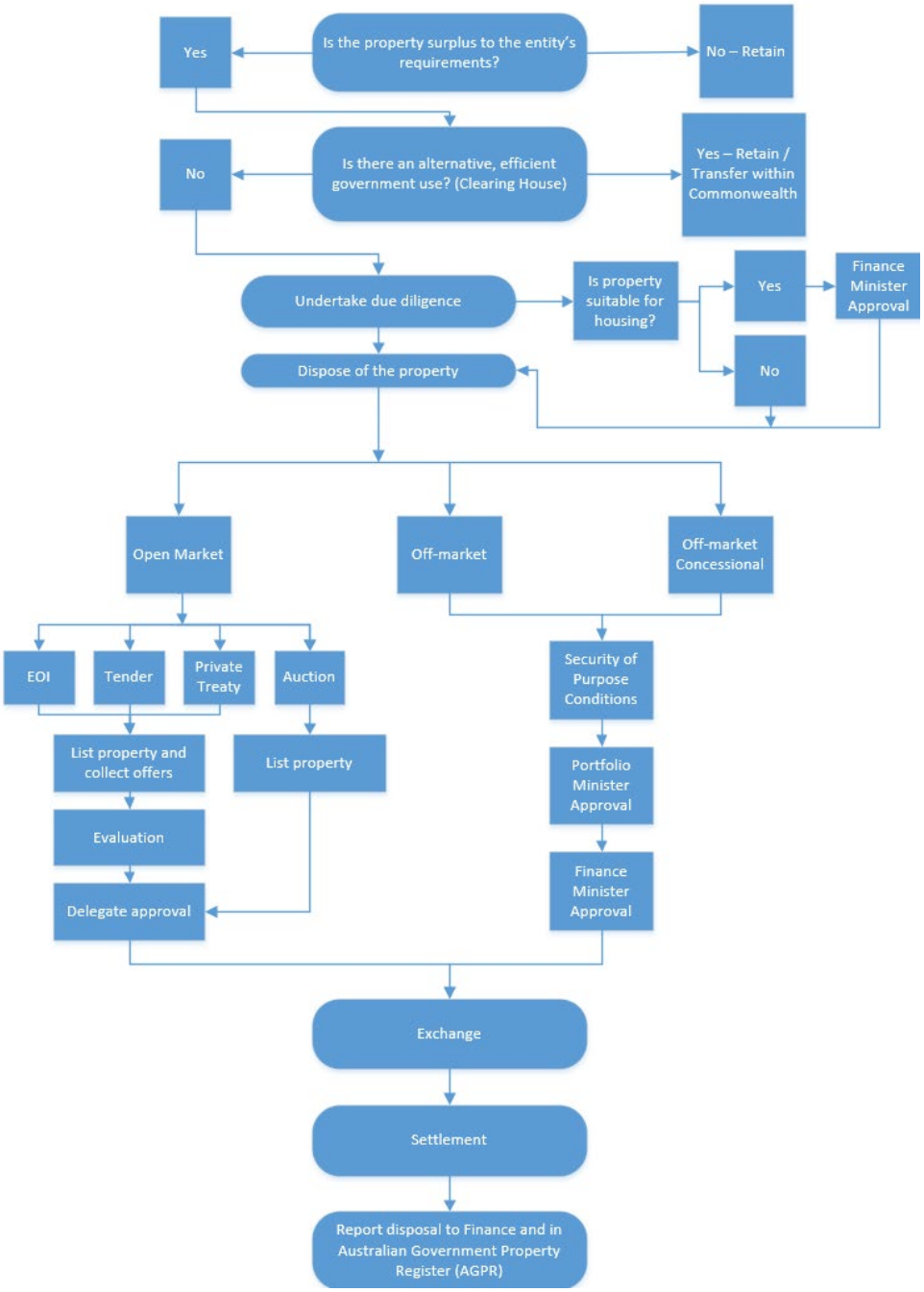
This guide is intended to assist non-corporate Commonwealth entities (NCEs) and corporate Commonwealth entities (CCEs) that are subject to the requirements of the *Lands Acquisition Act 1989* (LAA) and the Commonwealth Property Disposal Policy (CPDP). This guide deals with the disposal of 'real property', that is, land and structures on Commonwealth-owned land. The disposal of other types of property or assets (for example, equipment or intellectual property) is governed by the *Public Governance, Performance and Accountability Act 2013* and Resource Management Guide 213 (RMG 213).

This guide should be read in conjunction with Resource Management Guide 500 (RMG 500) - Commonwealth Property Management Framework (CPMF), Resource Management Guide 501 (RMG 501) – Lands Acquisition Framework, the CPDP and relevant legislation set out at Appendix 1.

Entities considering the disposal of surplus property are encouraged to contact the Department of Finance (Finance) in the first instance to discuss the proposed disposal.

2. Disposal process

The flowchart below outlines the general steps required to dispose of a property. The work involved will vary depending on the nature of the property and factors such as environmental and heritage values and any state, territory or local government planning requirements.[1]



1 For off-market sales, concessional or otherwise, Commonwealth entities must not enter into any sale negotiations that might give rise to commercial obligations before Finance Minister approval has been received. In some cases, it may be appropriate to seek in-principle approval prior to engaging any discussions regarding the disposal (refer below for further information).

3. Property Review – identifying surplus property and alternative uses

The CPMF requires that property should only be held by the Commonwealth where it demonstrably contributes to government service delivery outcomes and ownership represents value for money. To ensure these requirements are met, entities should regularly review their property portfolio.

The CPDP requires surplus Commonwealth property with no alternative efficient Commonwealth use to be sold on the open market at full market value, unless agreed otherwise by the Minister for Finance.

3.1 Alternative Efficient Government Use – Property Disposal Clearing House

Prior to disposing of a property that is surplus to requirements, an entity should determine if other Commonwealth entities have an alternative efficient government use for the property. The Property Disposal Clearing House (Clearing House) has been established to assist NCEs in determining whether other Commonwealth entities have an alternative efficient use for a property.

Surplus properties must be listed on the Clearing House by the owning entity. Other Commonwealth entities then have up to 10 business days to express an interest and propose an alternative use. Once this period has passed, the disposing entity will then engage with any entity that has proposed an alternative use to discuss the proposal further.

If no expressions of interest are received at the end of the 10 business day period, entities should proceed with the disposal of the property in accordance with the CPDP.

If multiple entities are interested in a property, Finance will progress discussion with interested entities, the Department of the Prime Minister and Cabinet and the Department of the Treasury to determine the proposal that best aligns with the government's policy objectives and priorities. Finance may seek further information on the proposed use of the property from the interested entities to inform decision-making.

The Clearing House applies to all disposals of real property, except those with no marketable value (for example, very small or land-locked properties) or those with previous owner rights.

The Clearing House does not apply to the grant of licences or leases to third parties or the disposal of a leasehold interest held by a Commonwealth entity (unless an entity is disposing of a Crown Lease in the Australian Capital Territory).

The Clearing House is located on the Australian Government Property Register and is managed by Finance. For further information, please contact divestments@finance.gov.au, or to request access, please contact PropertyData@finance.gov.au. A flowchart of the Clearing House process is detailed at Appendix 2.

3.2 Affordable Housing

The CPDP provides that the sale of land suitable for housing should include affordable housing initiatives, such as inclusionary zoning, where practical. Affordable housing should be considered as a potential alternative use for surplus properties. Properties are also tested for affordable housing outcomes when they progress through the Clearing House.

When progressing a disposal, entities should work with state, territory and local governments to encourage planning measures that promote an appropriate proportion of affordable housing at sites where residential development is feasible.

The structure and conditions of the disposal of land suitable for housing **must** be approved by the Minister for Finance.

3.3 Alternative Use Proposals

The CPDP provides a mechanism for external parties to propose alternative uses for Commonwealth properties managed by NCEs. These proposals are submitted to Finance and forwarded to the owning entity for consideration against the alternative use proposal criteria and response to the proponent.

The steps for assessing alternative use proposals can be found at Appendix 3.

Any disposal of land under the alternative use proposal framework must be consistent with the CPDP. For more information, please contact LAA@finance.gov.au.

4. Due Diligence

The due diligence phase of the disposal process should involve identifying the property's physical attributes, values, and constraints and any statutory obligations. As part of this phase, entities should also undertake a risk assessment and determine whether a proposed disposal constitutes a proper use of resources under the PGPA Act. This information can be used to inform a disposal strategy.

The risk assessment for the proposed disposal should identify and consider how risks will be managed during the disposal process. Completing this assessment will also ensure that any approving official is making an informed decision and has all the appropriate information. Entities may contact Finance's Risk and Education Team at ComCover@comcover.com.au for further information relating to undertaking a risk assessment.

In assessing whether the proposed disposal would be considered an efficient, effective, economical and ethical use of Commonwealth resources, entities should refer to sections 8 and 15 of the PGPA Act. Entities may contact Finance's PGPA Advisory Team at PGPA@finance.gov.au for further information relating to the PGPA Act.

The level of due diligence required depends on the property and the extent of material already captured on it. Due diligence material should inform the disposal strategy, and may identify opportunities to improve value, reduce risk, meet Commonwealth obligations, provide a public benefit or contribute to government policy, prior to sale.

4.1 Due Diligence Assessment

A property disposal will be influenced by the due diligence material, noting the property may have environmental, heritage (including Indigenous, historic and natural) or ecological values requiring protection, or contamination which requires remediation. As part of a due diligence assessment, entities must ensure that they comply with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* when disposing of property (further information about these requirements is at Appendix 4). These requirements should be addressed as part of the technical and legal due diligence assessments.

A technical due diligence assessment will be required to develop an understanding of the property's physical attributes, values and constraints. A legal due diligence assessment is required to ensure that a property disposal is compliant with any statutory obligations.

Technical due diligence is the process of reviewing the physical condition and other attributes of a property, including environmental, heritage, ecological or Indigenous values that should be protected, or any planning constraints or contamination that should be disclosed to buyers.

Legal due diligence is the process of ensuring compliance with relevant legislation and obligations at both the Commonwealth and state level, identification of easements or encumbrances, breaches, disclosures, conveyancing and the preparation of sales documentation.

Further resources relating to due diligence can be found at Appendix 4.

4.2 Disposal Strategy

A disposal strategy sets out the business case for an entity to dispose of a property. It is used to inform decision-makers of key considerations and outlines the disposal pathway. Entities should refer to Part 4 of RMG501 – Lands Acquisition Framework for the minimum information that is expected to be included in a disposal strategy.

Each step of the Disposal Strategy may require internal approval from the relevant *Lands Acquisition Act 1989* delegate. Note: only Lands Acquisition Act delegates have legislative powers to authorise the disposal of property. Entities that do not hold delegations to approve the disposal of property should contact Finance.

A key component of the disposal strategy is a valuation of the property being disposed of. Entities should conduct a valuation of the property as part of the preparation of a disposal strategy to ensure the chosen disposal method is appropriate for the value and scale of the property. The valuation can also be used by the disposing entity to conduct a cost-benefit analysis of the disposal to determine whether the conditions represent a proper use of Commonwealth resources. Generally, a valuation is valid for no more than 6 months. After this period, a new or updated valuation should be sought to ensure that the value of the property has not changed.

The disposal strategy should also discuss how the proceeds of the disposal will be dealt with and whether additional funding is likely to be required to conduct the disposal (such as funding to complete remediation works).

If entities are unclear of how the disposal proceeds will be dealt with or requirements to seek additional funding, entities should engage with their internal finance and budgeting areas in the first instance.

In developing a disposal strategy, entities should also refer to relevant Commonwealth legislation, as well as any other relevant legislation, including state and territory legislation.

Lands Acquisition Act 1989 **(LAA)** - the primary legislation that provides for the acquisition and disposal of land by the Commonwealth.

Public Governance, Performance and Accountability Act 2013 **(PGPA Act)** - establishes rules not only for financial management but also for the broader governance, performance and accountability for the Commonwealth public sector.

Environment Protection and Biodiversity Conservation Act 1999 **(EPBC Act)** - provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places.

Native Title Act 1993 - recognises the traditional rights and interests to land and waters of Aboriginal and Torres Strait Islander people.

Australian Capital Territory (Planning and Land Management) Act 1988 - makes provision for the planning and management of land in the ACT, responsibility for which is shared between the Commonwealth and the ACT Government.

Further information on the above legislative instruments and other sources of information can be found at Appendix 1.

5. Post-sale conditions

In some circumstances, entities are required to secure the future use of Commonwealth property that is proposed for disposal (for example, concessional off-market sales). This is generally achieved through the inclusion of a security of purpose clause in the contract of sale between the Commonwealth and the purchaser. This provides a mechanism for the Commonwealth to maintain a form of control over the future use of the property and provides for sanctions in the event of a breach.

A security of purpose clause should be included where an entity is undertaking an off-market concessional disposal. Entities should work with their legal adviser to determine the most appropriate mechanism for guaranteeing the future use of the property.

Finance can provide standard security of purpose conditions upon request. Please contact LAA@finance.gov.au for further information.

6. Reporting

Entities disposing of property are required to report transactions to Finance using either the LAA Form D or 'Report on Exercise of delegated powers under the LAA' spreadsheet within 14 days of the delegate authorising the disposal. The authorisation must be completed before entering into any legal arrangement to dispose of a property. Once complete, the form or report should be sent to LAA@finance.gov.au.

Where entities do not have delegated powers under section 119 of the LAA to authorise the disposal of an interest in land, they should submit a completed (but not fully executed) LAA Form D to LAA@finance.gov.au. A delegate within the Land and Public Works Team will authorise the disposal of the interest in land under section 119 of the LAA and return the Form D to the entity. Once the authorised Form D has been received, the entity can then enter into legal arrangements to dispose of the property.

Entities are also required to update the Australian Government Property Register (AGPR) to reflect the disposal. This information is used for purposes including to support the Commonwealth to meet its obligations in relation to the *Commonwealth Places (Mirror Taxes) Act 1998*.

Details of information to be reported in the AGPR are contained in the most recent Collection Manual which Finance can provide upon request. For assistance with the AGPR, please contact PropertyData@finance.gov.au.

7. Property Disposal Methods

The CPDP states that surplus property must be sold on the open market at full market value, unless agreed otherwise by the Minister for Finance.

7.1 Open Market

There are four accepted methods for the sale of property:

Auction	An auction involves potential buyers gathering and bidding publicly for the property. The auction is conducted by a real estate agent or auctioneer. Prior to the auction a reserve price for the property is set by the vendor. If this price is not met during the auction, the property will be passed in and the vendor consulted. If the price is met, the contract is signed then and there and the settlement period begins.
Private Treaty	When a property is sold by private treaty, the vendor sets the sale price of the property and it is listed on the open market. Interested parties must make an offer to the vendor for consideration. Should an offer be accepted, both parties will exchange contracts and the sale will be completed within an agreed upon settlement period.
Expression of Interest	Expression of Interest sales are where the property is listed on the market for a period of time but the sale price is not disclosed to interested parties. Each interested party must submit a detailed offer in writing including contract and settlement conditions. The vendor will then consider all expressions of interest received and determine which one offers the best price and conditions.
Tender	A Tender is similar to an Expression of Interest but generally requires more information. This additional information may include an estimate price and timeframe for the sale.

The preferred method is dependent on the property and associated complexities. It may also depend on the advice of your real estate agent and other factors such as the market.

There are several steps that will need to be followed when disposing of a property on the open market. These are outlined in Appendix 5 and 6.

7.2 Off-Market Sales

Sections 24 to 27 of the CPDP provide for off-market sales directly to a purchaser in a limited number of circumstances (generally to another level of government). In most cases, except where the disposal is for a minor transport infrastructure project or under a legal obligation, off-market disposals **must** be approved by the Minister for Finance. Entities **must not** enter into any discussions with interested parties that could give rise to legal or commercial obligations until approval from the Minister for Finance has been obtained.

Off-market sales to private individuals or companies, including Commonwealth companies are only permitted in a limited number of circumstances (such as where a property has been assessed as having no competitive market, the property is landlocked, there is a former owner entitlement or legal obligation).

Commonwealth entities considering an off-market sale are encouraged to contact Finance to discuss the property and appropriate next steps. In most cases, the portfolio Minister is required to seek approval from the Minister for Finance.

If any terms of a disposal change significantly following approval, the entity **must** seek updated approval prior to further progressing negotiations.

7.2.1 Concessional Sales

Concessional sales are off-market sales concluded at a purchase price below market value, and may be appropriate in some circumstances, such as to another level of government, where it facilitates broader government outcomes. Situations where a concessional sale may be appropriate include circumstances where a clear community benefit is achieved (such as the delivery of an infrastructure project).

The contract of sale (or transfer deed) for concessional sales should include a security of purpose clause.

Concessional sales require approval from **both** the portfolio Minister and the Minister for Finance **before** negotiations can commence.

7.2.2 Land Swaps

Land swaps are where an off-market sale and acquisition occur simultaneously between the Commonwealth and a state, territory or local government. Land swaps support cooperative policy outcomes and may involve swapping a higher value property for a lower value property due to the strategic significance to the Commonwealth.

Land swaps require approval from **both** the portfolio Minister and Minister for Finance **before** any negotiations can occur.

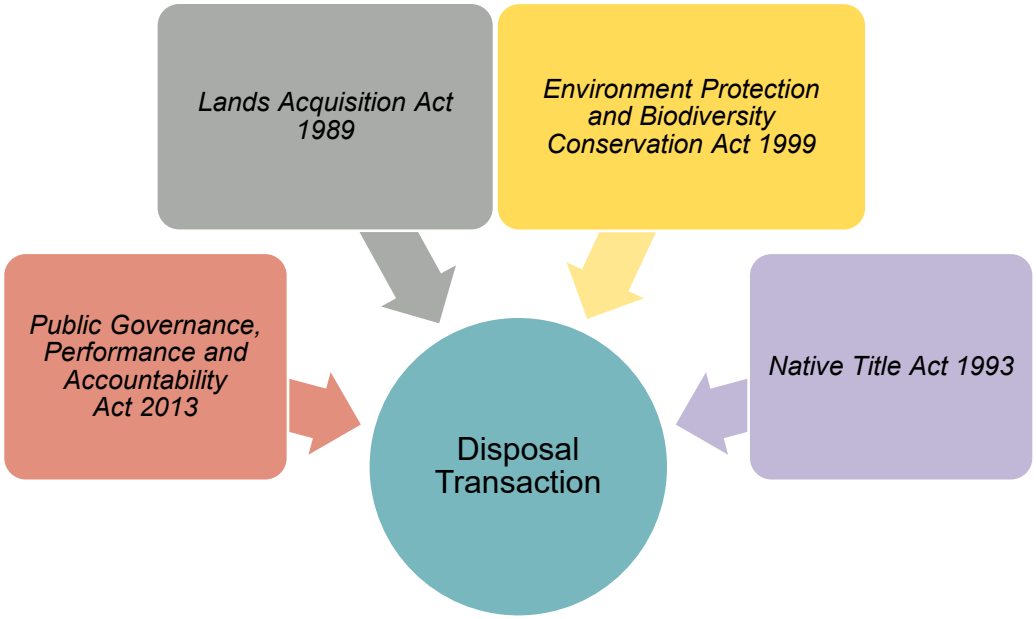
7.3 Other Considerations

Entities should note that obligations exist under the PGPA Act where property is being gifted by a Commonwealth entity to another party. Entities should refer to the PGPA Act and RMG 213 for further information on these requirements. Entities can also contact PGPA@finance.gov.au.

8. Appendices

Appendix 1: Legislation and further information sources

This guide should be read in conjunction with relevant Commonwealth legislation below. We suggest entities obtain legal advice on relevant legislative requirements that might apply to the disposal transaction. It is also recommended that they seek advice from the relevant Commonwealth agencies that administer this legislation.



Public Governance, Performance and Accountability Act 2013 (PGPA Act)

The PGPA Act establishes a system of governance and accountability for public resources, with an emphasis on planning, performance and reporting. The PGPA Act applies to all Commonwealth Entities and Commonwealth companies.

The PGPA Act outlines an agency's responsibilities relating to accountability, transparency, duty of care, disclosure, conflicts of interest and risk.

Lands Acquisition Act 1989 (LAA)

The LAA is the primary legislation that provides for the acquisition and disposal of interests in land by the Commonwealth and is an important component of the CPMF. Disposal of interests in land are provided for in Part X of the LAA, specifically section 119.

The Minister for Finance has portfolio responsibility for the administration of the LAA and has delegated certain functions and powers to officers within Finance and other Commonwealth entities. The LAA Delegations must be read in conjunction with the CPDP and the LAA.

Entities should engage with Finance early for non-routine advice on the interpretation of the LAA, or for any approvals by the Minister for Finance or Finance delegate.

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Disposals must comply with the EPBC Act. Entities should ensure that any environmental and heritage impacts are identified during the due diligence process.

Entities must obtain approval under the EPBC Act for any action that has, will have, or is likely to have a significant impact on the environment.

Heritage

Under the EPBC Act, the Minister for the Environment is responsible for the Commonwealth Heritage List (CHL) which is a list of Indigenous, historic and natural heritage places. For a property to be included on the CHL, the Minister must be satisfied that it has one or more Commonwealth Heritage values.

Commonwealth agencies have a legislative requirement to assess all properties they own or control, to identify if they have any environmental or heritage values (Subdivision E s341ZB(1)(a) of the EPBC Act).

The Department of Climate Change, Energy, the Environment and Water provides support and guidance to Commonwealth Entities on Commonwealth Heritage issues and has developed the following guide in relation to Commonwealth heritage - *Working Together: Managing Commonwealth Heritage Places*.

Commonwealth agencies also have legislative requirements for protecting Commonwealth Heritage values of places sold or leased (Subdivision E s341ZE of the EPBC Act). Further information on the legislative requirements is provided in Appendix 4.

Protecting threatened species and ecological communities

In undertaking a disposal, entities should be cognisant of relevant sections of the EPBC Act which relate to the protection of Australia's native species and ecological communities. Entities should refer to the Department of Climate Change, Energy, the Environment and Water's 'Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies – Significant impact guidelines'.

Native Title Act 1993 (NT Act)

Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs as set out in Australian law.

Under the NT Act, native title claimants can make an application to the Federal Court to have their native title recognised by Australian law. This process is further detailed on the National Native Title Tribunal website.

The Attorney-General's Department provides the government with legal and legal-policy advice on native title.

To determine native title, entities can use the Native Title Registrar and the Native Title Vision tool. The Native Title Registrar holds information compiled from several sources including native title claims, determinations and land use agreements. The Native Title Vision is a quick tool for performing geospatial searches of native title claims, determinations and land use agreements.

Australian Capital Territory (Planning and Land Management) Act 1988 (PALM Act)

At self-government in 1989, all ACT land became either National Land or Territory Land. The leasehold system of land management in the ACT is established under the PALM Act, which specifies that the Commonwealth Government is responsible for National Land and the ACT Government is responsible for Territory Land.

Section 7 of the *Australian Capital Territory National Land (Leased) Ordinance 2022* (Cth) and section 6 of the *Australian Capital Territory National Land (Unleased) Ordinance 2022* (Cth) specify that the relevant Commonwealth Minister (currently a Minister in the Finance Portfolio) is responsible for the management of National Land not designated as land required for the special purposes of Canberra as the National Capital.

The National Capital Authority (NCA), on behalf of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, manages Special Purposes Land. In effect, this is land mainly in the Parliamentary Triangle including Anzac Parade and the Australian War Memorial, diplomatic land (in Deakin, O'Malley and Yarralumla), Government House, the Prime Minister's Lodge, the National Museum of Australia, Lake Burley Griffin and a number of parks.

Entities seeking to dispose of Commonwealth property in the ACT with National Land status should contact Finance to discuss the proposed disposal.

State and Territory Requirements

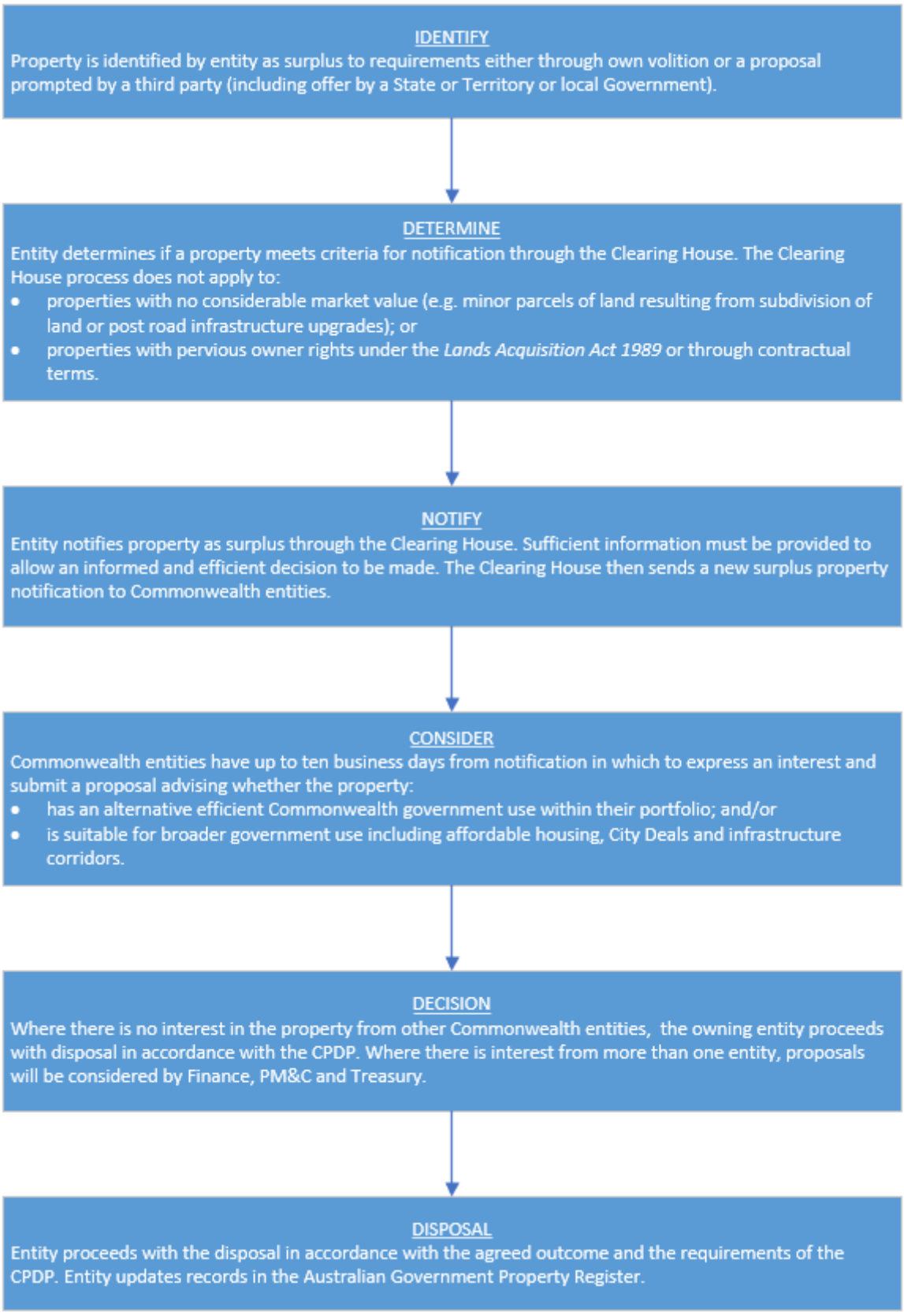
In addition to Commonwealth policy and legislation, State and Territory legislation, land use zoning, building codes and compliance, heritage and environmental protections, and disclosure of land contamination may also be applicable.

Local Government Requirements

Local Governments represent a valuable source of information, and have an overall understanding of the area, and may have historic context of a property.

Local Governments control planning and development, and access to services (electricity, gas, water, sewerage) and implement town-planning schemes, which specify land uses.

Appendix 2 – Property Disposals Clearing House Process



Appendix 3: Process for assessing alternative use proposals

Step 1: Submit proposal

Proposal received by Finance. The responsible entity is determined by Finance and the proposal is forwarded to it for action within 30 days.

Step 2: Preliminary Assessment

The responsible entity conducts an assessment to determine whether the site is surplus to requirements.

Should the site not be surplus to requirements, the responsible entity will respond directly to the proponent advising of the outcome.

Step 3: Consultation

Should the responsible entity determine that the site is surplus to its requirements, Finance must be consulted to assist in assessing the proposal against the following criteria:

- whether the site is essential to Government service delivery outcomes
- whether the proposal is feasible and represents value for money for the Commonwealth
- whether the proposal will benefit the economy, community and/or environment from the proposed use
- whether the proposal aligns with Government policy
- any other relevant criteria which may arise as a consequence of the nature and content of the proposal, including special community interest or environmental or heritage significance.

Finance may consult other relevant Government stakeholders to consider the options, risks and opportunities for the proposed alternative use.

Step 4: Outcome

Following consultation with Finance, the responsible entity will advise the proponent of the outcome of the alternative use proposal.

Appendix 4: Due Diligence Resources

The following is a list of reports that may be considered as part of due diligence. An entity may already have many of these on-hand and others may not be required.

Land

- Property valuation
- Heritage
- Ecological
- Indigenous
- Contamination – searches, phase 1 or phase 2
- Land survey
- Town planning

Building

- Tenant lease (commercial terms / revenue)
- Expenditure – historic & forecast
- Building condition report
- Compliance with building codes
- Security
- Hazardous materials or chemical
- Flood assessment
- Traffic assessment
- Building certificate
- Occupying certificate
- Certificate of regularisation

Legal

- Certificate of title
- Encumbrances
- Environment
- Native title
- Contract of sale / Deed of transfer

Heritage / Ecology

The Commonwealth has an interest in ensuring environmental values are identified and protected pre/post-sale. Heritage values (including natural, Indigenous and historic values) and ecological values (including flora and/or fauna and their habitats) are protected under the EBPC Act.

Heritage

The development of a heritage assessment and a heritage management plan may be required prior to listing a property for sale.

- Section 341ZE of the EPBC Act requires that the Minister for Environment be provided with a minimum of 40 business days' notice of a sale effecting a place with heritage values.
- Under Section 341ZE of the EPBC Act, the Commonwealth is to ensure the Contract of Sale includes a covenant to protect the Commonwealth Heritage values of the place, unless including this covenant is deemed unnecessary, unreasonable or impracticable.

Indigenous and Cultural Heritage

Australia's State and Territory governments also have broad responsibilities for recognising and protecting Australia's heritage, including Indigenous and historical archaeological sites, built heritage places and Indigenous cultural values. An assessment of the land may be required to identify and protect heritage values.

In order to identify Indigenous heritage values of a site, entities will likely need to consult with the local Indigenous community. The circumstances and timing around when entities should consult with the Indigenous community are set out in the *Engage early – indigenous engagement guidelines* (Engage Early Guidelines).

The Engage Early Guidelines recommend that if a proposed action will occur on an area that is, or in the future could be, subject to a native title claim or determination consultation with Indigenous peoples is expected to occur. Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional laws and customs as set out in Australian Law. Any current native title claims on the land would need to be considered prior to disposal, including consultation with the National Indigenous Australians Agency and the National Native Title Tribunal. The Attorney-General's Department provides the government with legal and legal-policy advice on native title.

Ecology

For divesting land, a conservation management plan may need to be established to protect flora and/or fauna.

- Under Section 207C of the EPBC Act, the Commonwealth is to ensure the Contract of Sale includes a covenant to protect any critical habitat.

Other Considerations

Entities should refer to the 'Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies – Significant impact guidelines' as there may be additional impacts and sections of the EPBC Act which apply to their particular disposal. The applicable section will differ for each site. Entities should engage with the Department of Climate Change, Energy, the Environment and Water to seek further advice as necessary.

Contamination

The 'polluter pays' principle is a widely accepted practice that holds that the polluter should bear the costs of managing contaminants to prevent damage to human health or the environment.

The nature of contamination assessment undertaken is a matter for the disposing entity to determine based on the factors of the property. At a minimum, a search of the relevant Environment Protection Authority register should be undertaken, however any historic context on the use of the site is also useful.

An environmental consultant may be engaged to perform a phase 1 (non-intrusive) examination of the property, or a more detailed phase 2 (intrusive) which will include bore holes and soil samples which are laboratory tested.

If contamination is present, at a minimum it must be disclosed to buyers. A decision will need to be made whether remediation occurs prior to sale.

Building Condition Report

This report provides an overview of the condition and compliance of a building. All the relevant material available on the building should be made available to the building consultant, before an inspection is undertaken. This could include:

- Construction diagrams
- Asset management plans
- Hazardous material report and register
- Hazardous chemicals report and register
- Electrical compliance, inspection and testing
- Hydraulic compliance, inspection and testing
- Lift compliance, inspection and testing
- Fire compliance, inspection and testing
- Building energy efficiency certificates
- Structural reports
- Flood assessment
- Traffic assessment
- Certificate of Occupancy & Use

The report may highlight issues that can be addressed prior to sale, and before the report is finalised.

Legal Due Diligence

To minimise pre- and post-settlement risk, engagement of a legal adviser should be considered to undertake general conveyancing services, compliance with relevant legislation, state and local council requirements, and drafting of the contract of sale.

The legal adviser will review the certificate of title, checking for restrictions, easements, covenants or encumbrances, and third party rights that should be disclosed to buyers.

As previously stated, the Attorney-General's Department provides the government with legal and legal-policy advice on native title.

Town Planning

A town planning study and report may inform the disposal process by identifying any constraints or opportunities that may affect the development of the land, and its future use.

This typically involves engagement of a qualified town planner who would perform a site inspection, liaise with the local council and neighbours, and undertake relevant state searches.

The report would address and possibly make recommendations on the items listed below.

- Review of local environmental plans, development control plans or other relevant planning information
- Planning issues including site access, servicing, potential height and setback restrictions, physical constraints, easements and encumbrances
- Council restrictions on approved development applications that would also be relevant to any future developments
- Environmental planning assessment
- Zoning/land use - the current/future land use, ownership arrangements on neighbouring properties and any benefits or burdens associated with the property
- Access to services including electricity, gas, water, sewerage and communication.

A town planner is generally not required (or qualified) to undertake a detailed contamination, ecological or heritage assessment, however, could undertake registry searches, outline commentary or make recommendations for further detailed investigations.

Obtaining town planning reports may provide potential purchasers with greater certainty of the property's development opportunities and constraints.

Appendix 5: Property Disposal Checklist Example

The below checklist outlines the steps entities should consider when disposing of property. Depending on the nature of the disposal, some items may not apply. This list is not exhaustive and additional steps may need to be required depending on the disposal or internal entity requirements.

Pre-Sale Checklist:

	Description	**Yes**	**No**	**N/A**
Disposal Strategy				
Property details	Location, history, details of prior Commonwealth use and notable site conditions.			
Reason property is surplus to requirements	Outline why the property is considered surplus to Commonwealth requirements, having regard to the CPDP and CPMF.			
Timeframe for disposal	Include any critical dates.			
Due diligence	Outline due diligence activities that have been conducted or will be conducted (refer below for items to consider).			
Disposal method	Open market, off-market, full value or concessional sale and reasons for the chosen disposal method.			
Approval mechanism	Cabinet, Portfolio Minister, Finance Minister, delegate within acquiring authority.			
Risk assessment	Pre- and post-settlement risk assessment.			
Strategic property adviser	Can be engaged to advise on opportunities and the proposed method of sale, coordinate due diligence activities, and/or project manage the disposal.			
Legal adviser	Engaged to provide advice on the proposed disposal method, conduct legal due diligence, and conveyancing.			
Probity arrangements	Probity adviser, governance or steering committee, conflict of interest disclosures, tender evaluation plans or vendor disclosure arrangements.			
Disposal proceeds and value for money assessment	Outline how the disposal proceeds will be treated and how the disposal would be considered a proper use of resources.			
Due Diligence – Existing Information				
Reports	Existing property reports, property management reports, valuations, condition assessments, flood and traffic assessments and geotechnical surveys.			
Land attributes	Planning overlays, zoning, easements, location, size, condition.			
Services	Electricity, water, sewerage and telecommunications.			
Heritage values	Registry searches, inspections, assessments, native title claims and consultation and Heritage Management Plan (if appropriate).			
Ecological values	Registry searches, inspections, assessments and impact.			
Contamination	Registry searches, historical use information, inspections and contamination assessments.			

Building condition reports	Contamination, work health and safety reports, maintenance reports and condition reports.			
Building compliance certificates	Certificate of Occupancy and Use, Certificate of Regularisation (ACT), annual certifications, compliance certificates, lift registration and annual compliance reports, annual fire testing and compliance reports.			
Architectural drawings and structural assessments	Current and previous architectural drawings of structures and structural assessment reports.			
Tenant lease or licence	Tenancy agreement, conditions of tenancy, rent amount, commercial terms and permitted uses.			
Security	Requirements to secure the site prior to disposal (for example, fencing or access control). Discuss specific arrangements with your internal entity security team.			
Legislative and Policy Requirements				
History	Historical ownership details and chain of custody.			
Certificate of Title or Crown Lease	Associated restrictions, easements, covenants, encumbrances and third-party rights.			
Legislative compliance	LAA, PGPA Act, EPBC Act, NT Act, delegate approvals and compliance with applicable State and Territory legislation.			
Policy compliance	Property Disposal Clearing House, affordable housing consideration, Commonwealth Property Disposal Policy and government policy initiatives.			
Ministerial approval	Portfolio Minister and Finance Minister approval required for most off-market and concessional sales. Policy authority may be required in some cases.			
Sales documentation	Contract of sale, deeds of transfer, settlements terms, deposit amounts, payment methods and possession.			
Foreign investment	Foreign investment review board approval requirements.			
Consultation	Department of Finance – Advice on LAA, CPDP and RMG 500 and 501. Department of Climate Change, Energy, Water and the Environment – S.321ZE sales notice, heritage and ecological assessments. Indigenous communities – native title claims and consultation. Tenant – property information and access. Facilities manager – property information and access.			
Real Estate Agent				
Agent details	Method of procurement.			
Commission structure	Fixed or variable commission.			
Marketing method	Online, newspapers, social media and signage.			
Property access arrangements	Via agent or property service provider.			
Sales method	Auction, private treaty, EOI or tender.			
Tenancy details provided to agent	If property tenanted at the time of sale, advise the real estate agent of the tenancy (including terms, duration, rent amount and contact details) for marketing and access purposes.			
Reserve sale price	Seek formal and documented approval for an agreed reserve price (if applicable).			

Post-Sale Checklist:

	Description	Yes	No	N/A
Offers Made/Auction				
Delegate approval	Delegate must authorise the disposal of an interest in land under section 119 of the *Lands Acquisition Act 1989* prior to any offer being accepted or auction taking place. An LAA Form D or 'Report on Exercise of delegated powers under the LAA' spreadsheet must be completed to report this to Finance.			
Tender evaluation	Evaluation should be formally documented and consistent with the acquisition strategy and agreed probity arrangements.			
Offer or tender accepted	Acceptance should be considered by the appropriate PGPA delegate and formally documented.			
Auction takes place	Consider arrangements for the reserve and whether an entity representative should attend in person. Auction arrangements should be consistent with the acquisition strategy and agreed probity arrangements.			
Contracts exchanged				
Deposit received	10% of the purchase price (unless agreed otherwise).			
Contacts signed by vendor and purchaser	Two copies of the contract must be signed by the vendor (delegate) and purchaser. If the purchaser is a company, the contract must be signed by the Directors.			
Confirmation of exchange	Lawyer/conveyancer advises when exchange has taken place and when settlement date is scheduled.			
Settlement				
Settlement statement	Agree on settlement statement (engage with your CFO/finance team including in relation to GST and other financial implications).			
Method of settlement	Meeting between lawyers, online transaction or another permitted method (dependent on legal adviser).			
Confirmation of settlement	Lawyer to confirm settlement has taken place.			
Australian Government Property Register	Entity to update Australian Government Property Register to reflect the property is no longer owned by the Commonwealth.			
Internal notifications	Notify Chief Financial Officer, property service provider, internal security team, security provider and other relevant teams that property is no longer owned by the entity.			

Appendix 6: Open Market Sale Process

The following steps will generally need to be followed when disposing of a property on the open market:

1. Governance / Probity

Governance and probity arrangements should be commensurate with the value of the property holdings being sold.

An evaluation plan needs to be agreed prior to going to market, which outlines the basis for the selection and the rejection of buyers.

- This process is similar to a procurement exercise, with many of the underlying principles of Commonwealth Procurement Rules relating to accountability and transparency being applicable.

For higher value property holdings, you may wish to consider establishing a steering committee to oversee the governance process, and engaging a probity adviser to ensure the sales process is clear, defensible and accountable.

2. Contract of Sale

Prior to going to market, a contract of sale and disclosure document will need to be prepared by a legal adviser/conveyancer. These documents will be provided to prospective buyers. State and territory regulations around property sales, documentation and processes may differ. Seek advice from your legal adviser on these requirements and your responsibilities early in the process.

3. Marketing

The appointed real estate agent will recommend a marketing plan for the property. This may include the placement of newspaper and online advertisements, and / or other platforms.

The agent will need to understand the evaluation process, the collection of offers and timeframes.

4. Offers

Offers are assessed against the evaluation criteria, with a recommendation made to the delegate about which offer should be accepted.

Once an offer is accepted by the delegate, the real estate agent should be notified of the delegate's decision. The agent will then send sales instructions (that is, price, deposit, settlement date and conditions) to the legal adviser to update the Contract of Sale.

5. Exchange

Once an offer is accepted by the delegate, a LAA Form D or 'Report on Exercise of LAA Delegations, **must** be completed, and provided to Finance. This form is required to be completed **before** contracts are exchanged.

Following completion of the LAA Form D or 'Report on Exercise of delegated powers under the LAA' spreadsheet, the Contract of Sale is sent to the purchaser's legal advisers for review. The entity's legal adviser will then arrange for execution of the Contract of Sale (two copies) first by the Purchaser, and then by the entity.

- These contracts are not dated.
- The original certificate of title is sent back to the purchaser's legal adviser with the one of the executed contract of sale.
- The purchaser will pay their deposit for the property as outlined in the sales contract.

Once contracts have been formally exchanged, the legal adviser will notify the divesting entity that exchange has occurred and the settlement period begins.

6. Settlement

Prior to settlement, the entity's legal adviser should provide a settlement statement for approval. Once the funds have been transferred by the purchaser to the disposing entity, the legal adviser will advise the entity that settlement has occurred.

The Australian Tax Office (ATO) sets out several requirements which must be undertaken during the settlement process. These requirements state that, if you are selling a residential premises or potential residential land you must:

- notify the purchaser in writing (supplier notification);
- advise whether they need to pay a withholding amount – or not – from the contract price for the property; and
- state the withholding amount.

A purchaser of an Australian property with a market value of $750,000 or more, must withhold 12.5% of the purchase price unless the vendor holds a valid clearance certificate from the ATO. If the vendor does not hold a valid clearance certificate, the purchaser must pay the withheld amount directly to the ATO as the time of settlement. This amount is known as the foreign resident capital gains withholding amount.

Appendix 7: Planning Tools / Useful Information

Australian Government Property Register

The Australian Government Property Register contains a list of landholdings owned by non-corporate Commonwealth entities, including title and address information.

Mapping

There are a number of free or subscription mapping services that can provide high resolution area maps and imagery.

- National Map
- Google Maps (including Street View)
- Nearmap

Planning

Each State and Territory also hosts online planning tools that can provide useful site planning information.

- Australian Capital Territory
  - http://www.actmapi.act.gov.au/
- New South Wales
  - https://maps.six.nsw.gov.au/
  - https://www.planningportal.nsw.gov.au/
  - https://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx
  - https://www.environment.nsw.gov.au/threatenedspeciesapp/
- Northern Territory
  - http://www.ntlis.nt.gov.au/imfPublic/imf.jsp?site=nt_atlas
  - https://nt.gov.au/property/land
- Queensland
  - https://planning.dsdmip.qld.gov.au/maps
  - https://culturalheritage.datsip.qld.gov.au/achris/public/home
- South Australia
  - https://www.sa.gov.au/topics/planning-and-property/
- Tasmania
  - https://www.iplan.tas.gov.au/
- Victoria
  - https://mapshare.vic.gov.au/mapsharevic/
  - https://achris.vic.gov.au/#/dashboard
- Western Australia
  - https://www.dplh.wa.gov.au/planwa

The Dial Before You Dig is a free national referral service designed to identify essential infrastructure services. This website is useful to identify any easements or impediment that may impact on development or value.