

Victorian stamp duty: Sub-sales and “land development”

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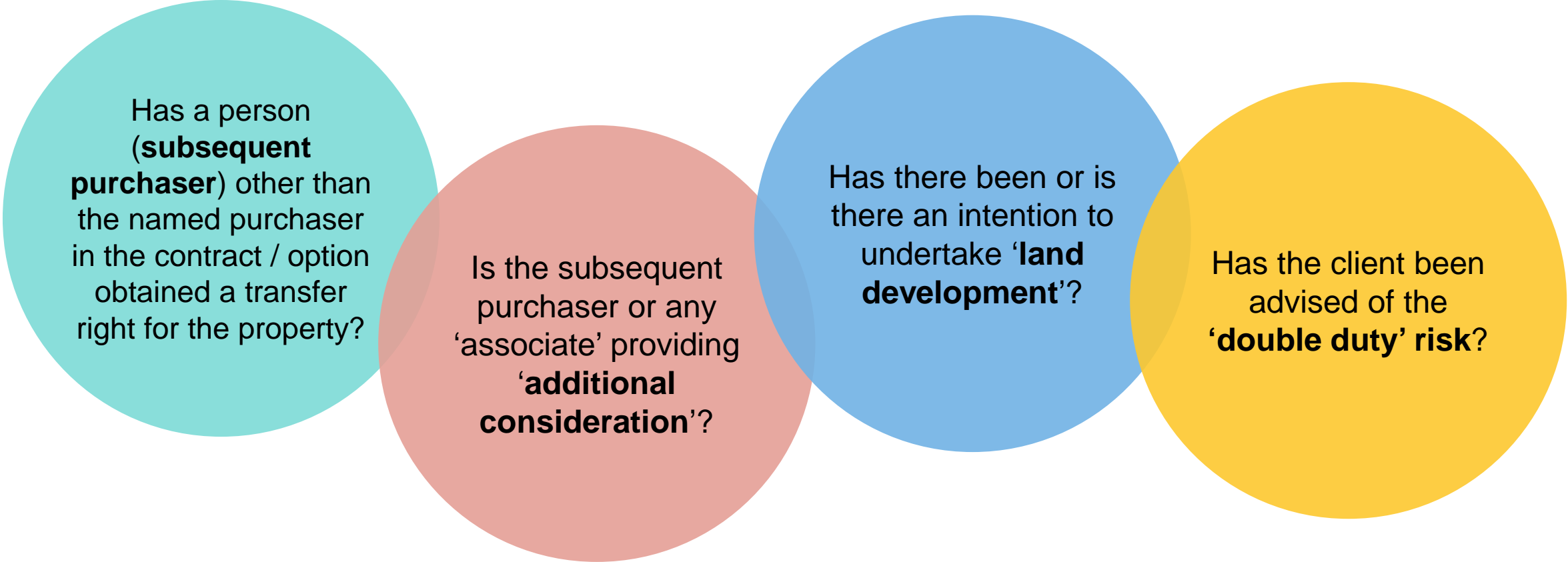
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Sub-sales - risk of multiple dutiable transactions



Has a person
**(subsequent
purchaser)** other than
the named purchaser
in the contract / option
obtained a transfer
right for the property?

Is the subsequent
purchaser or any
'associate' providing
**'additional
consideration'**?

Has there been or is
there an intention to
undertake **'land
development'**?

Has the client been
advised of the
'double duty' risk?

What does 'additional consideration' capture?

Is the subsequent purchaser or any 'associate' providing '**additional consideration**' for the transfer right?

- **Monetary or non-monetary consideration** that exceeds the consideration given (or agreed to be given) by the first purchaser
 - E.g. nomination fee
- **Includes** a 'parallel arrangement', broadly being an arrangement under which the nominee (or an associate) has engaged (or will engage) the first purchaser (or an associate) to construct or arrange for the construction of improvements on the property for consideration
 - May be entered into before, at the time or within 12 months of obtaining the transfer right
- **Excludes** reimbursement of costs reasonably incurred by the first purchaser as part of the sale contract
 - E.g. legal costs, selling agent's fees, survey / valuation payments, GST except where credits are available



To mitigate the risk of double duty applying under the Victorian sub-sale rules, parties must ensure that no 'land development' activity occurs:

- a) Prior to signing the contract
- b) Between signing the contract and making the nomination
- c) After making the nomination and prior to settlement

What does 'land development' capture?

Has there been or is there an intention to undertake '**land development**' after signing the contract but prior to the subsequent purchaser obtaining the transfer right?

- 'Land development' is defined broadly in the *Duties Act 2000* (Vic)
 - a) **preparing a plan of subdivision** of the land or taking any steps to have the plan registered under the *Subdivision Act 1988*
 - b) **applying for or obtaining a permit** under the *Planning and Environment Act 1987* in relation to the use or development of the land
 - c) **requesting** under the *Planning and Environment Act 1987* a planning authority to prepare an amendment to a planning scheme that would affect the land
 - d) **applying for or obtaining a permit or approval** under the *Building Act 1993* in relation to the land
 - e) **doing anything in relation to the land** for which a permit or approval referred to in paragraph (d) would be required
 - f) **developing or changing the land in any other way** that would lead to the enhancement of its value
- SRO published Revenue Ruling DA-064: *Meaning of land development* on 8 September 2021

Consultation on draft ruling DA-064:

Meaning of land development

Some key points raised		Position in final ruling
Just if increase in value or change in utility of the land?	In order to fall within the definition of 'land development' under limbs (a) to (e), the relevant activity should increase the value or utility of the land (to be consistent with the policy and purpose of the sub-sale rules).	Rejected
Just if activities of purchaser (not vendor or third parties)?	Land development should only be treated as occurring where the activity is initiated by the purchaser or an associate of the purchaser.	Rejected
Some draft ruling examples for limb (a) are too preliminary?	Remove example of 'engaging a council or servicing authority to review or comment on a plan either inside or outside of a formal process, and irrespective of whether it results in any changes to the plan' as an initial activity which the Commissioner would regard as land development under limb (a) – too remote and preliminary in nature.	Accepted
	Examples 1-3 for 'land development' under limb (a) should also be removed as 'preliminary research and analysis'.	Rejected
Criteria for consideration provided under the contract for the activity	It should <u>not</u> be necessary for the purposes of the exemption in section 32J(3)(a): <ul style="list-style-type: none"> - for the contract price to expressly specify it includes consideration for the relevant activity; and - for the sale contract to be subject to the relevant event occurring. 	Unclear
All activities that impact value are relevant for limb (f)	All relevant factors that may impact the value of the land should be considered for an activity relevant to limb (f), including contemporaneous activities that may have a negative impact on the land.	Rejected

SRO view in DA-064: Meaning of land development

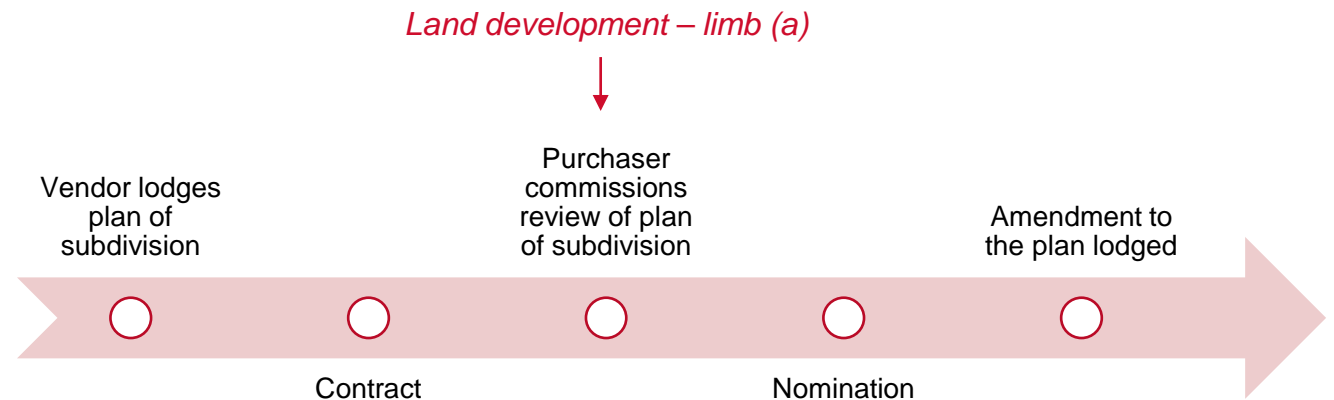
General

1. Meaning of limbs (a) to (e) can be attributed to words that have specific meanings that serve as inherent boundaries to the land development definition in the *Subdivision Act*, *Planning and Environment Act* and *Building Act*.
2. Other than limb (f), not necessary to show there was an increase in value or change in utility of the land.
3. Generally, the Commissioner will only take into consideration activities undertaken directly or indirectly by a party to the contract/agreement and nomination, including activities by related parties, agents, associates or tenants who act with the knowledge or consent from any of the parties.

Limb (a) – Plan of subdivision

1. Initial activities undertaken to prepare a plan of subdivision or measures towards registering a plan of subdivision or consolidation under the *Subdivision Act* constitute land development.
2. Preliminary research and analysis excluded.

Example 1



SRO view in DA-064: Meaning of land development

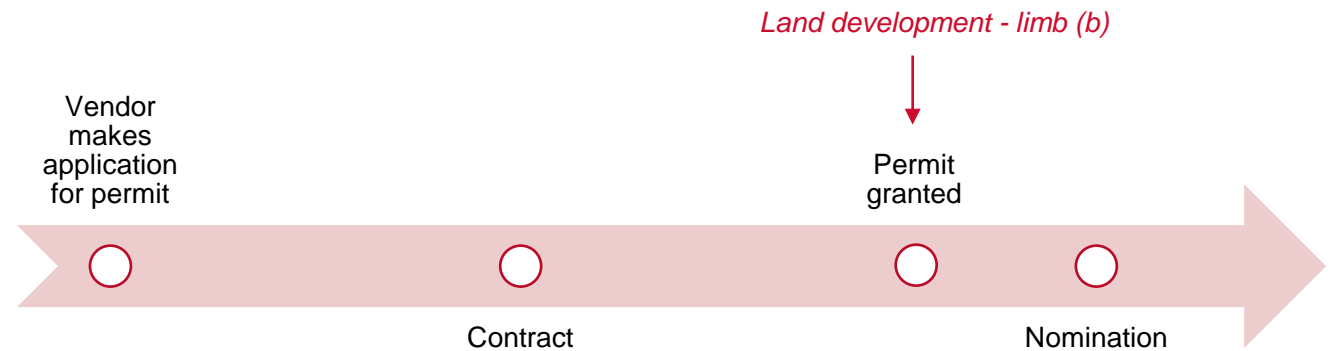
Limb (b) – Planning permit

1. An application for a permit or the granting of the permit under the *Planning and Environment Act* (with or without conditions) constitutes land development.
2. Generally OK if:
 - permit solely for maintenance work
 - minor amendments to an existing permit in a Secondary Consent Form
 - tenant applies for / obtains planning permit for minor activities (e.g. erecting a sign)
 - or an extension of time for an existing permit will not amount to land development under limb (b)
3. Mere act of requesting an extension of time for permit OK under limb (b). **However**, if the grant of an extension enhances the value of the land → limb (f).

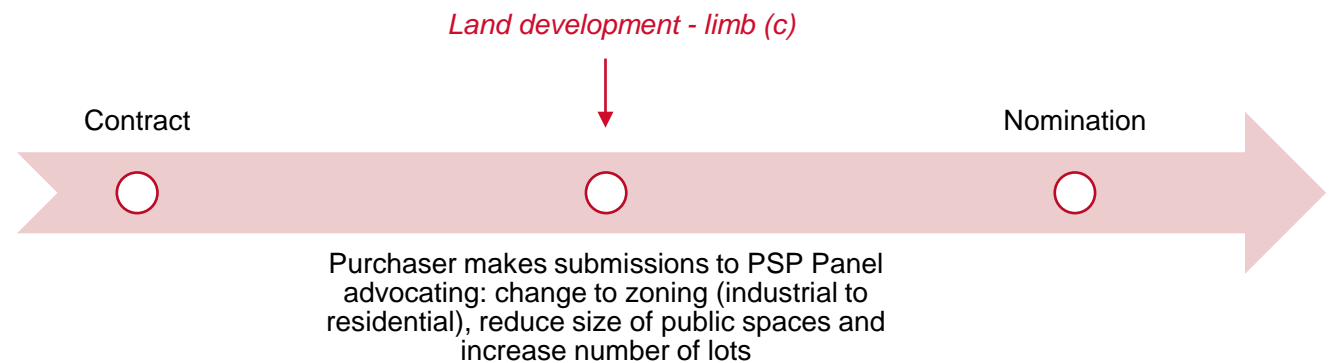
Limb (c) – Planning scheme amendments

1. A request for the purpose of limb (c) would generally be in the form of a submission advocating for amendments to be made to a planning scheme.
2. Submissions that seek to preserve the status quo or informal discussions about the process for a planning scheme amendment would not be considered as a request under limb (c).

Example 2

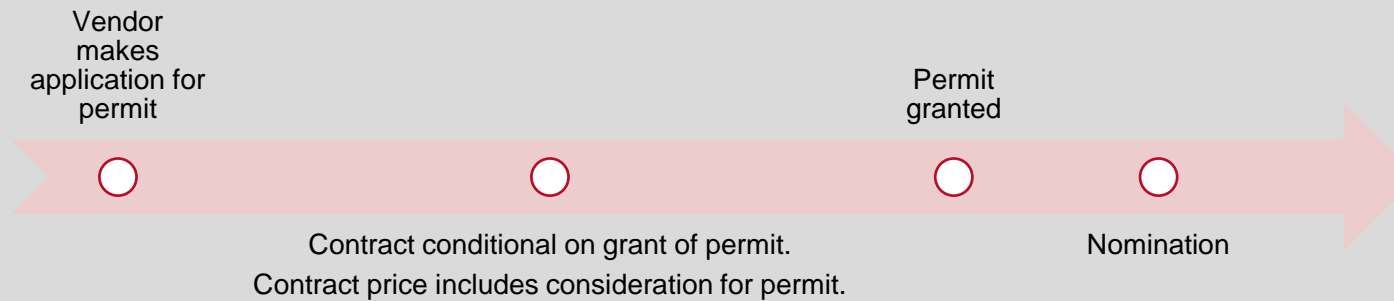


Example 5





Which response best describes the outcome in Example 2A of DA-064?



- a) Grant of the permit is not land development.
- b) Grant of the permit is land development, and duty is assessable on both the contract and nomination.
- c) Grant of the permit is land development, but duty is assessable only on the nomination (not on the contract).

SRO view in DA-064: Meaning of land development

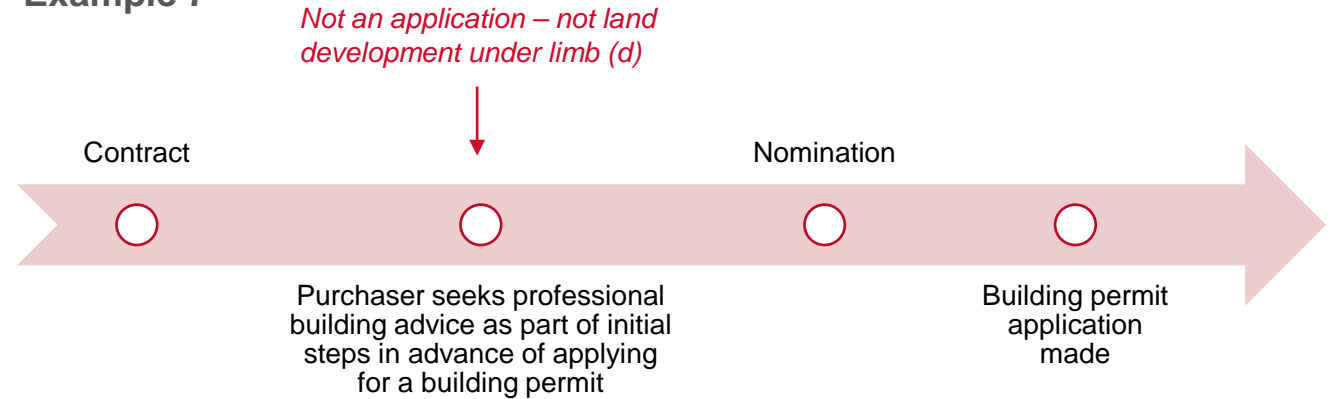
Limb (d) – Building permit

1. An application for, or the granting of, a building permit or approval under the *Building Act* constitutes land development under limb (d).
2. If a building permit or approval is issued after the contract date, land development under limb (d) has occurred even if the application was made prior to the contract date.
3. Amendments to a building permit could also constitute land development under limb (f).

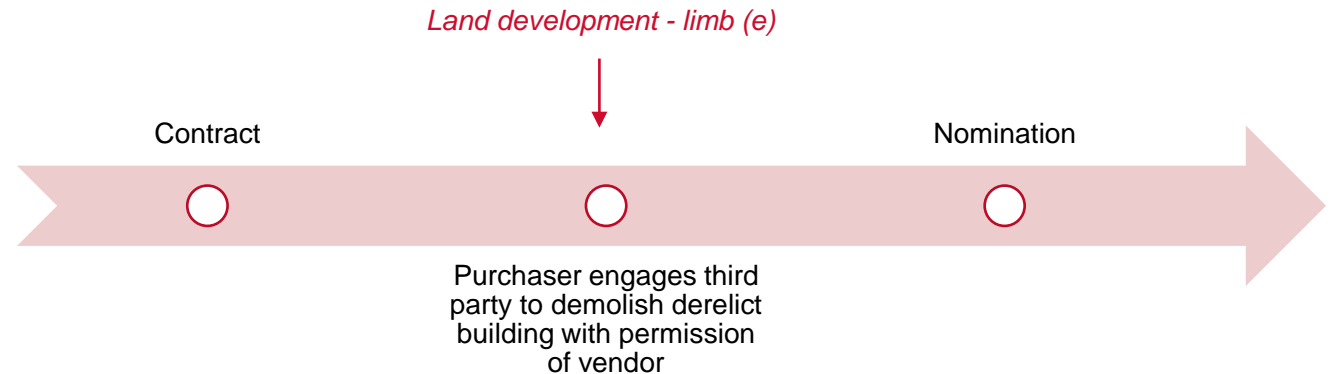
Limb (e) – Activities requiring a building permit

1. This limb captures activities undertaken on land which require a permit or approval under the *Building Act* and which are done with or without obtaining such permit or approval.

Example 7



Example 8

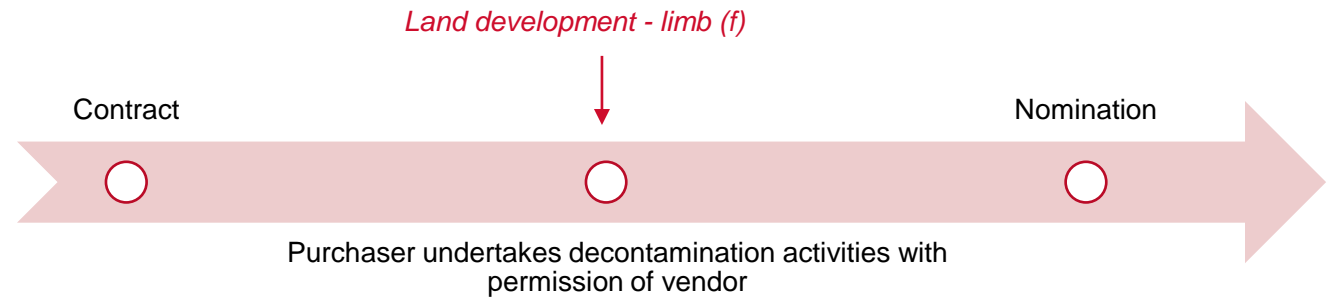


SRO view in DA-064: Meaning of land development

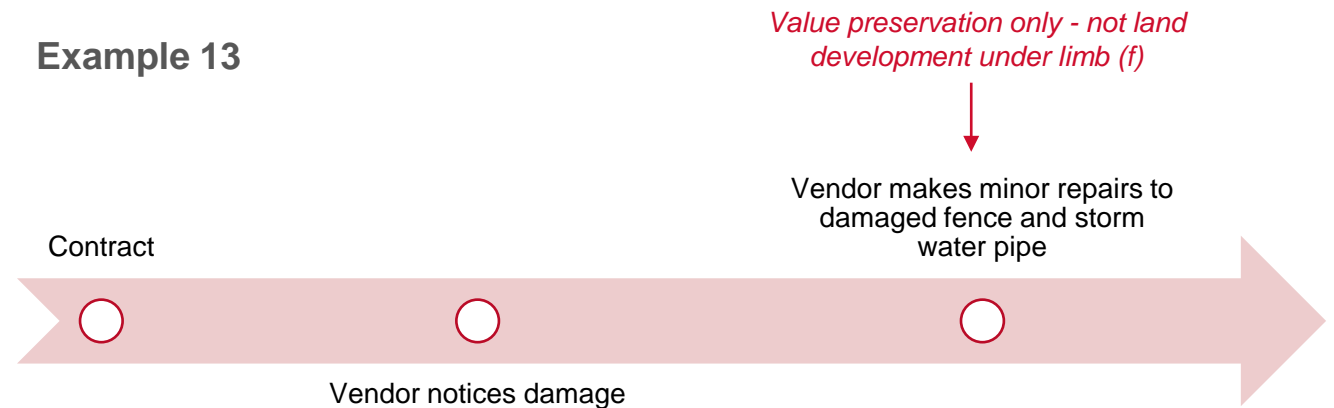
Limb (f)

1. Even if an activity falls outside of limbs (a) – (e) and/or it does not alter the physical characteristics of the land, it can constitute 'land development' under limb (f) if it leads to an enhancement in value of the land.
2. Examples:
 - decontamination activities
 - removal of a single dwelling covenant
 - removal from Victorian Heritage Register
 - rezoning of the land as a result of submissions from the parties or their associates
3. Irrelevant whether there are any other contemporaneous activities that may have a negative impact on the land.
4. Where necessary, the Commissioner will rely on the opinion of the Valuer-General or another competent valuer to determine if there has been a change in the value of the land and whether that change resulted from the activity or market forces.

Example 10



Example 13



Practical tips

- Can it be ensured that named purchaser will be the transferee?
- If there is any chance of the transferee differing from the original named purchaser, always consider the sub-sale rules
- Raise duty risk up front and get clear instructions on the facts
- Drafting of contract – consideration for land development?
- Risk mitigation – obtain expert advice and / or SRO private ruling?
- Complete duties forms carefully
- If responding to an SRO investigation:
 - comply with deadlines / seek extensions at earliest opportunity
 - confirm key facts / timelines with client, obtain supporting documentation
 - obtain expert advice
 - consider potential penalties and interest charges, potential to make voluntary disclosures

To mitigate the risk of inadvertently triggering multiple assessments of duty under Victoria's sub-sale rules.

Foreign purchaser additional duty

8% additional duty on acquisitions of 'residential property' by a 'foreign purchaser'

Residential property

- Interests in land that are used or intended to be used solely or primarily for residential purposes.
- Includes:
 - land or buildings already capable of lawful use as a residential property; and
 - land on which building construction / refurbishment or **land development is undertaken (or intended)** to enable such use.

Change of intention

No
FPAD

At settlement foreign purchaser (**FP**) acquires non-'residential property'

Post-settlement, FP forms an intention to refurbish, extend, construct or **undertake land development** for use of the land / building as 'residential property'

FPAD
may
apply

FP must notify SRO within 14 days of the change of intention

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