

Valuer General's Policy

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Valuation of contaminated land

What This policy guides valuers on the methods to use, and factors to consider, when valuing contaminated land for rating and taxing purposes.

How Under this policy, valuers use mass valuation methods based on specific assumptions and considerations.

Valuers must also apply market evidence and do ongoing quality reviews to support valuations.

Valuers assess the value of the land only, without including the value of structures or other improvements on that land.

Why This policy will ensure that the Valuer General's valuations of contaminated land are:

- consistent and accurate
- easy for landholders to understand
- in line with the *Valuation of Land Act 1916* (Valuation of Land Act).

Contents

1 Policy	1
1.1 Scope	1
1.2 Identifying contaminated land	1
1.3 Valuation methods	3
1.4 Assumptions and considerations	4
1.5 Possible scenarios	8
2 References	10
2.1 Definitions	10
2.2 Laws and policies	12
3 Context	13
3.1 Role of the Valuer General	13
3.2 Background	13

1 Policy

1.1 Scope

Contaminated land Use this policy to assess the land value of contaminated land.

There is no definition of contaminated land in the *Valuation of Land Act 1916* (Valuation of Land Act).

The Valuer General defines contaminated land as a property which is identified or recorded, by a local or state government authority as being contaminated or is widely known to be contaminated.

Contamination is defined in the *Contaminated Land Management Act 1997* (CLM Act) as:

Contamination of land, for the purposes of this Act, means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Land value

improvement

land improvement

The land value excludes any structures or improvements, but includes land improvements. Where it exists, contamination must be considered as part of the land.

See section 6A of the Valuation of Land Act.

Section 6A(2) will apply to many contaminated sites as a valuation made under this section determines the land value based on the current use of the land.

1.2 Identifying contaminated land

Public registers

Environment Protection Authority

The Environment Protection Authority (EPA) maintains public registers identifying contaminated lands. You must monitor these on a regular basis to identify contaminated land.

At the date of this policy the EPA publishes the following four registers.

POEO Act register of licensed sites

This register lists environment protection licences issued to the operators of properties carrying out activities likely to pollute under the *Protection of the Environment Operations Act 1997* (POEO Act). The licence conditions relate to pollution prevention and monitoring. This register includes uses likely to cause land contamination. You should consider land subject to those uses as potentially contaminated.

POEO Act register of unlicensed sites

This register lists sites for a number of premises that are no longer required to be licensed under the POEO Act. The register only includes those sites where the EPA is still the appropriate regulatory authority under the POEO Act. You should consider land included on this register as potentially contaminated.

Register of contaminated land management order

This register lists sites notified to the EPA as being contaminated under the CLM Act. The register includes:

1. sites subject to current management orders	These sites should be considered contaminated.
2. sites subject to former management orders	Includes properties formerly subject to orders which have either had remediation completed or the orders revoked. These sites may or may not still have contamination depending on the directions provided in the management plan.

Register of possibly contaminated sites

This register lists sites which are notified to the EPA as possibly being contaminated but require further assessment.

Section 60 of the CLM Act sets out the duty of owners and occupiers for sites which they believe to be contaminated, to report those sites to the EPA (the EPA still needs to review these sites and, if necessary, obtain more information to determine if the site should be regulated).

Land subject to a management order or voluntary remediation agreement**voluntary remediation agreement**

Land only becomes the subject of a management order where the contamination is considered to be significant. It does not follow that all land not subject to orders is not contaminated or significantly contaminated.

Sites may also be subject to voluntary remediation agreements, so you should not restrict your investigations to identify contaminated land to the registers listed above.

Additional investigations

Where there is a suspected risk of contamination that has not been identified from the public registers reasonable further investigations should be undertaken:

- interview owners of land
- review prior objections
- review local government registers and hold discussions with local government officers

- interview local property agents
- review sites with industries that are known to cause pollution, for example, dry cleaners and tanneries.

In the absence of evidence of contamination you should value the land as a clean site. Any future advice provided by the landholder or other evidence of contamination must only be applied for the land values current at the time the evidence is received, unless otherwise directed by the Valuer General.

1.3 Valuation methods

Direct comparison Direct comparison involves comparing market sales with the subject land.

remediation

sale

When using direct comparison to value contaminated land, you must:

- consider a broad range of market evidence, including sales of vacant and improved land
- follow an evidence-based approach when using sales of improved land to deduce the land value
- analyse sales to provide a unit of measure such as rate per square metre
- consider whether you have adequate market evidence within the local government area or if you need to include sales evidence from other local government areas
- consider factors such as the land's size, aspect, location, zoning, planning controls and permitted use.

Sales of contaminated sites are rare and often do not represent an arm's length transaction. Where sales do occur, direct comparison is difficult unless you obtain accurate information on the expected remediation cost of both the sale property and the property being valued.

When you use direct comparison to determine the land value of a contaminated site, you must make the comparison on an "as remediated" basis. Firstly determine the unaffected value of the land and then deduct the cost of remediation. The cost should include an allowance for the time delay involved in the remediation process.

Where you are valuing a site under section 6A(2) of the Valuation of Land Act; assuming the current use can continue, you can analyse and compare improved sales of similarly used properties.

The hypothetical development method

net rental

gross realisation

Where there are not enough directly comparable sales to value the subject land you can use the hypothetical development method.

This method is particularly useful for calculating the land value of a contaminated site which requires remediation as part of the development.

To derive the land value of a contaminated site using this method you must:

1.	Estimate the net rental or gross realisation which could be obtained from a hypothetical building which represents the highest and best use of the land.
2.	Calculate the improved value of the site by either capitalising the estimated net rental return or making the appropriate adjustments to the gross realisation.
3.	Deduct the estimated cost of developing the site (including holding costs) from the improved value of the site.

When you apply the hypothetical development method you must remember that land improvements are included in the land value.

Where land improvements on the existing site would be retained for the hypothetical development (reducing the time and cost of the development) you will need to factor this into the calculation.

Where land improvements need to be removed or replaced for the hypothetical development (increasing the time and cost of the development) you will also need to reflect this in the cost of the development.

1.4 Assumptions and considerations

Valuation assumptions

fee simple in possession

highest and best use unencumbered

In line with section 6A of the Valuation of Land Act, you must value the land at its highest and best use, while assuming:

- there is a sale of land
- the buyer and seller are hypothetical
- the title is unencumbered, and the valuation is of the full fee simple in possession
- the land is vacant and has no improvements other than land improvements
- there is no existing development consent for the land.

Valuation considerations

You must also consider and reflect in the valuation these other section 6A requirements:

date the valuation was made

statutory restrictions

- the current use of the property if it differs from planning controls or environmental development constraints likely to apply if the land were vacant and would, if allowed, result in a higher land value (section 6A(2))
- all statutory restrictions on the land
- the valuation reflects a sale of the property at 1 July of the valuing year (section 14B)
- the property's physical condition, surroundings, zoning and allowable uses that applied on the date the valuation was made (section 14K).

Valuing contaminated land

When you value land that is contaminated you must first establish if the site requires remediation, or is likely to in the future, and make enquiries to investigate what the cost of that remediation would be.

Some contaminants are best left undisturbed and require no remediation.

Example

Asbestos buried on site may never require extraction or remediation and if buried in a particular area of the site may pose no restriction on the highest and best use of the land.

You must then determine if the highest and best use of the land is the use as set out in the environmental planning instruments.

Similarly, while contamination may prevent the development of vacant land, many contaminated sites have ongoing uses that are able to continue. Section 6A(2) allows you to value the land on the basis that the current use may continue.

To calculate the land value of contaminated land you must:

1.	Value the land value on the highest and best permitted use which may or may not include remediation (section 6A(1)).
2.	Value the land on the basis that the current use of the land may be continued (section 6A(2)).
3.	If the value by method (b) is higher, then that value must be adopted as the land value.

When you value the land under section 6A(1), value the land on the highest and best permitted use having regard to the land's contamination and any remediation that will be required to gain approval for that use (section 6A(1)).

When you value the land under section 6A(2), the current use should be considered the highest and best use. Existing contamination may be a direct and expected result of the current use and, therefore, may not inhibit the land from that use. If the contamination does not need immediate remediation and the current use on the date the valuation is made is continuing, you should value the land on the basis of that use. In establishing the current use you should have regard to the actual use made of the land and buildings. Regard must also be had to any remediation that is required to enable continued use.

Where a building is so contaminated that there are orders preventing its use, the building is not to be considered an improvement and its contamination must be taken into account when determining the land value.

For scenarios you may come across when you value contaminated land refer to section 1.5.

Remediation costs Some cost information is available from industry web sites or within the industry. These will provide a general guide to the remediation cost but won't be specific to the site. Until specific information is available for a site you must base the valuation on the best available industry costing or estimates.

Potential sources of information on remediation costs include:

- the site owner
- the Office of the Environment and Heritage
- local government
- remediation experts associated with the site.

You must document the source and information on which costs are based and advise Valuation Services if your enquiries have been unsuccessful.

Responsibility for contamination You must consider the full extent of contamination in any valuation regardless of the source or responsibility for the contamination.

While the responsibility for remediation lies with the polluter, there is considerable risk, faced by both a potential purchaser and any party with a financial interest, that the polluter may become unable to meet the commitment for the remediation of the contamination.

1.5 Possible scenarios

Sites with an ongoing use with known and ongoing contamination

If the land is an operating site you must value the land under section 6A(1) and section 6A(2) of the Valuation of Land Act. Section 6A(2) requires you to assume that the current use may continue in perpetuity and thus the cost of remediation is not taken into account.

If the section 6A(2) land value is higher than the section 6A(1) land value, the land value under section 6A(2) will be adopted. In most cases it will be found the contamination is a result of the existing use and does not inhibit the existing use.

Typical examples of these types of sites are service stations and industrial operations.

Sites with an ongoing use subject to a management order

Management orders may require a range of works to be carried out in relation to the land or improvements and may require the operator to stop operating on the site for a period of time. You must obtain a copy of the management order and determine the effect of that order on the land value of the site.

Where the land is an operating site at the date the valuation is made, and the management order does not require the site to be closed immediately, then you must assume that the current use can continue (as required by section 6A(2)). However the impact of complying with the order must be taken into account.

Where the impact of the order prevents the continuing use of the site and all of the site is to be closed for the foreseeable future (and the site has closed at the date the valuation is made) you will value the land under section 6A(1) until such time as remediation is completed. Therefore a full account of the contamination is to be considered when determining the value.

Where orders require only part of the site to cease use, and part of the site has closed at the date of valuation, you will value the land under both 6A(1) and 6A(2). If the 6A(2) valuation is higher, the land value under 6A(2) shall be adopted.

Disused sites with remediation works proposed or in progress	Where the land is unused but subject to contamination, you should value the land under section 6A(1), reflecting the highest and best use of the land. The costs of remediation, including the length of time to remediate the land, must be taken into account in the valuation. Where the time and cost to remediate exceeds the land value, the value should be recorded as one dollar.
Land that is contaminated from adjacent sites	You must take into account the effect of contamination when valuing land, regardless of the source of the contamination. However, contamination from adjacent sites, such as the contamination to ground water, may have little impact on the development potential of land. In cases such as this the impact on the land value will be restricted to the stigma associated with the site. The level of the impact will need to be considered on a case by case basis.
Remediated sites	<p>There is some evidence that there is reluctance in the market to purchase sites that have been remediated. This reluctance appears to be associated with the risk of further contamination being discovered that would require remediation by the current owner (or where the remediation is the responsibility of the former owner, cause disruption). This may reduce the market value of some sites.</p> <p>The likelihood of this stigma will be dependent on the nature and extent of the contamination and how recently the remediation was done.</p>

2 References

2.1 Definitions

component method	The component method of valuation is an indexing system of mass valuation based on the principle of identifying groups of comparable properties then extrapolating an individual valuation decision for a typical property within the group across the range of the component.
date the valuation is made	The actual date on which the valuer performs the valuation. The physical condition of the land and the manner in which it may be used on the date the valuation is made must be assumed to be the same as at 1 July. See section 14K of the Valuation of Land Act.
environmental planning instrument	A legal document that regulates land use and development under state environmental planning policies and local environmental plans.
Environment Protection Authority	The NSW Environment Protection Authority (EPA) is the primary environmental regulator for NSW. The NSW Government re-established the EPA as an independent statutory authority in 2012.
fee simple in possession	Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.
gross realisation	The property's value (or gross sales) upon completion of construction.
highest and best use	Valuation concept that refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible.
improvement	Something that improves the value of the land. This is not defined in the Valuation of Land Act, and is different from the term 'land improvement' (below).
land improvement	Land improvement, such as draining, excavating, filling or clearing, as defined in section 4 of the Valuation of Land Act and included in the land value.
land value	Value of the land excluding any structures or improvements, but including land improvements. See section 6A of the Valuation of Land Act for a full explanation.

management order	<p>The EPA may order certain persons to manage significantly contaminated land in the following hierarchy (as far as practicable):</p> <ol style="list-style-type: none"> 1) those responsible for the contamination 2) the landholder 3) the notional owner. <p>A management order can include actions to investigate and/or remediate the land.</p>
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net rental	Rent payable excluding all outgoings and GST.
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outgoings	The total of all statutory charges, operating expenses and other outgoings for which the lessor is liable.
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remediation	<p>Remediation is defined in the CLM Act.</p> <p>Remediation of contaminated land includes:</p> <ol style="list-style-type: none"> a) preparing a long-term management plan (if any) for the land, and b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land, and c) eliminating or reducing any hazard arising from the contamination of the land.
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sale	<p>The transfer of property between parties. To use a sale as market evidence, it must have been:</p> <ul style="list-style-type: none"> • an arm's length transaction • between a willing buyer and willing seller who both acted knowingly, prudently and without compulsion • properly marketed.
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statutory restrictions	Statutory restrictions on the land may include environmental planning instruments and development control plans, as well as restrictions relating to the clearing of land, water and soil management.
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unencumbered	Unencumbered land is land without any encumbrances. An encumbrance is any right to or interest in land by someone other than the owner, and that prevents the transfer of that land or lowers its value. It might include an easement, restrictive covenant, mortgage, or other restriction.
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voluntary remediation agreement	The EPA may approve a voluntary management proposal for the management of significantly contaminated land (with or without conditions). Anyone can put forward a voluntary management proposal.

2.2 Laws and policies

Governing NSW law

Valuation of Land Act 1916 (Valuation of Land Act)

Contaminated Land Management Act 1997 (CLM Act)

Protection of the Environment Operations Act 1997 (PEO Act)

Related Valuer General policy

See policies relating to the land type being valued.

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Valuation of Land Act 1916* establishes the Valuer General as the independent statutory authority responsible for ensuring the integrity of land valuations in NSW.

Valuation Services, Property NSW manages the valuation system on behalf of the Valuer General, outsourcing the majority of valuation services to private valuation firms.

The Valuer General is committed to an open and transparent valuation process that is easy for landholders to understand.

3.2 Background

Management of contaminated land

There are many sites in NSW that have been or are being used in a manner that has caused contamination to the site as well as, in some cases, surrounding sites.

The management of contaminated land in NSW is shared by the Environment Protection Authority, the Department of Planning and Environment and planning consent authorities (usually local councils).

EPA

Under the CLM Act, the EPA regulates contaminated sites where the contamination is significant enough to warrant regulation. The EPA is also responsible for issuing licenses for certain land uses known to pollute under the POEO Act.

Local councils

Contaminated sites that are not regulated by the EPA are managed by local councils. Land remediation is facilitated and controlled through *State Environmental Planning Policy No 55 Remediation of Land (1997)*.

Managing Land Contamination: Planning Guidelines: SEPP55 – Remediation of Land provides advice to planning authorities on the early identification of contaminated sites and consideration of contamination in rezoning and development applications.

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Document control

Approval

Name and position	Signature and date
Simon Gilkes, Valuer General	 30/06/2017

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Next review

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