



Valuer General's Policy

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Compensation following compulsory acquisition

What

This policy guides valuers on the methods to use, and factors to consider, when determining compensation for the compulsory acquisition of land or an interest in land.

How

Land may be acquired by an authority of the State for a public purpose when it is not available for sale. The Valuer General determines compensation when an agreement for the purchase of the land cannot be reached between the landholder and the acquiring authority.

Valuers assist the Valuer General, in this task by investigating and assessing the amount of compensation payable.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

Why

This policy will ensure that:

- landholders are justly compensated for the acquisition of land
- compensation offered to landholders is in line with the Land Acquisition Act.

Contents

1 Policy	1
1.1 Scope	1
1.2 Assessing compensation	1
1.3 Exclusions - compensation	8
1.4 Valuation assumptions	10
1.5 Provision of information	15
1.6 Valuation methods used to determine market value	16
1.7 Market analysis	19
1.8 Valuation reports	20
1.9 Post determination process	21
1.10 Quality control	21
2 References	23
2.1 Definitions	23
2.2 Laws and policies	24
3 Context	25
3.1 Role of the Valuer General	25
3.2 Background	25

1 Policy

1.1 Scope

Compulsory acquisition of land

public purpose

Where land is required for a public purpose an authorised acquiring authority will negotiate with the landholder to purchase the land. If the owner and the authority cannot come to an agreement on the compensation to be paid, the acquiring authority can compulsorily acquire the land.

The land is compulsorily acquired through publication of the acquisition in the government gazette, at which time ownership passes to the acquiring authority.

Compulsory acquisition of land is the acquisition of the land by compulsory process under the Land Acquisition Act. Land includes any interest in land.

Land which is compulsorily acquired may be in private or public ownership. This policy is specific to land which is privately owned.

1.2 Assessing compensation

Interest in land

easement

fee simple in possession

interest in land

Land for which compensation is assessed must include any interest in land.

Interest in land means:

- a legal or equitable estate or interest in the land, or
- an easement, right, charge, power or privilege over, or in connection with, the land.

An interest in land which may be due compensation upon compulsory acquisition of land can include:

- the owner of the fee simple in possession
- the interest of a beneficiary of an easement, right of way or restriction of user over land
- a lessee's interest in the land
- the interest of a business operating under a lease or tenancy agreement on the land
- anyone having a legal financial interest in the land.

Generally, the acquiring authority will identify all compensable interests. However, if you identify an interest that has not already been identified you must notify the Valuer General or the Valuer General's delegate who will notify the acquiring authority of that interest. You will be provided with advice on how to proceed with the determination from that point.

As a rule, you must only consider the interest of a tenant where a clearly defined tenancy arrangement is in place. This can be a legally executed lease that is current or expired. It may also be a verbal agreement to occupy between two parties.

Tenancies at will or holding over need to establish the probability a new lease would be agreed for that interest to be considered, however it cannot be assumed to be without risk or for an indefinite period.

Matters to be considered when assessing compensation

When you determine the amount of compensation you must consider the requirements of section 55 of the Land Acquisition Act:

1.	The market value of the land on the date of its acquisition.
2.	Any special value of the land to the person on the date of its acquisition.
3.	Any loss attributable to severance.
4.	Any loss attributable to disturbance.
5.	Solatium
6.	Any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

These matters, which are often referred to as the heads of compensation, are discussed below.

1. The market value of the land

The market value of land means the amount that would have been paid for the land, or interest in land, if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

When you determine the market value of the land on the date of its acquisition you must disregard:

- any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- any increase in the value of the land caused by the carrying out by the acquiring authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

- any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

The sum of the market value for all interests in the land must not exceed the market value of the land, at the date of acquisition.

The assumptions and the methods you use to assess the market value of the land are discussed at section 1.4 and section 1.6.

2. Any special value

claimant

Special value of the land to the claimant is the financial value of any advantage, in addition to market value which is incidental to the person’s actual use of the land.

Special value may lead to an increase in compensation where the land acquired has some quality or potential for use in the hands of the claimant which makes it more valuable to them than a general purchaser in the market place. Special value has been said to represent the additional price that the claimant would be prepared to pay for the land rather than lose it.

The advantage must be specific to the claimant only. Special value does not include unique features of the site which enhance the value of the property since these are reflected in the market value.

Example where special value may arise

The site being acquired is a retail business and the owner of the business also occupies the adjoining site where he manufactures the goods sold in the shop. The claimant may value that site over the market value due to the advantage of operating from the adjoining site.

3. Any loss attributable to severance

Any loss attributable to severance of land is defined in the Land Acquisition Act as:

the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Compensation for severance generally arises from the separation or division of the claimant’s land as a result of the acquisition and the reduction in value of the retained parcel.

Example:

Severance results in the creation of two parcels of farmland

used for dairy. One of the retained parcels no longer has access to the dairy facilities due to severance by a highway. The land therefore suffers a loss in value.

Sometimes severance can increase the value because it creates an alternate, higher and better use. For example, where new roadwork provides access to formally inaccessible land the value of the retained land may increase. (refer to page 8 - increase or decrease in the value of other lands)

4. Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the claimant due to the acquisition and includes any of the following:

Legal costs and valuation fees	a) Legal costs and b) valuation fees reasonably incurred by the claimant in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner.
Relocation costs	c) Costs reasonably incurred by the claimant in connection with their relocation (including legal costs but not stamp duty or mortgage costs).
Stamp duty costs	d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the purchase of land for relocation. The cost must not exceed the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired.
Mortgage costs	e) Costs reasonably incurred (or that might reasonably be incurred) by the claimant in connection with the discharge of a mortgage and the execution of a new mortgage. This amount must not exceed the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage.
Other financial costs	f) Any other financial costs reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Where an acquired property is held as an investment, legal and stamp duty replacement costs will still apply.

A typical assessment of disturbance costs for an owner occupied cottage incurred in connection with a compulsory acquisition would include the following:

- legal costs (section 59(a) of the Land Acquisition Act)
- valuation fees (section 59(b))
- legal cost on purchase of a replacement property of the same value (section 59(c))
- removal expenses (section 59(c))
- pest certificate (section 59(c))
- identification survey (section 59(c))
- building inspection (section 59(c))
- electricity and telephone reconnection (section 59(c))
- mail redirection (section 59(c))
- stamp duty on purchase of a property of the same value (section 59(d))
- discharge of mortgage costs (section 59(e))
- mortgage reinstatement cost on a replacement property (section 59(e))

Costs for disturbance not yet incurred

The Land Acquisition Act requires that the Valuer General **must** have regard to the heads of compensation detailed in section 55. The assessment of compensation for disturbance must therefore be made whether the costs associated have actually been incurred or not.

Costs that have not occurred at the date of acquisition but which might reasonably be incurred are still to be considered. However it must be reasonable that they would be incurred, sometime in the not too distant future.

The term 'incurred' is to be given the broadest interpretation possible, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

Proof of expenditure Proof of expenditure for disturbance costs should be sourced where available. Although owners must submit a claim for compensation, providing details of costs is not a statutory requirement. Therefore the assessment of compensation is to include a reasonable allowance for costs attributable to disturbance whether or not proof of expenditure has been received.

Costs to be reasonably incurred

The Land Acquisition Act states that disturbance includes costs and fees that are reasonably incurred or that might reasonably be incurred. For a cost or fee to be considered allowable it must:

- relate directly to the acquisition process
- if not already incurred be likely to occur on the balance of probabilities
- return the owner to an equivalent position to their position prior to the acquisition
- be relevant to the matter and not be whimsical or vexatious (see professional fees below).

Costs associated with relocation and those relating to the actual use of the land must be determined on the basis of returning the former owner to an equivalent situation they were in before the acquisition. For example if land prior to the acquisition had three phase electricity available and a partial acquisition removed that service, the cost of re-establishing that service would in most cases be payable.

Costs should not be determined on the basis of improving the land. Using the example of electricity supply given above, it would not be appropriate to calculate the cost of establishing three-phase electrical supply if it was not available prior to the acquisition.

In some cases the acquiring authority will carry out the reinstatement of the service. In these cases no further compensation should be assessed for these items.

Reasonable costs

The Land Acquisition Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred, accepting that the “reasonableness” relates to the incurring of the costs, and not necessarily the costs themselves. Nevertheless exorbitant costs could not be said to be “reasonably incurred”.

Care should be taken to ensure that costs are not exorbitant and that direction given to professionals such as valuers and solicitors by the landholder relates directly to the acquisition.

Owners are required to exercise the same level of care in incurring such cost as they would assuming that such costs were not payable by the acquiring authority.

Action taken by professionals must relate specifically to the acquisition and they must be guided by their professional ethics and code of conduct. It must be noted that fees for professional services will vary and the landholder cannot be expected to have expertise in this area.

Whether the cost themselves are reasonable or exorbitant must be considered on a case by case basis. If the costs are thought to be exorbitant, proof may then be required. Where there is doubt, instructions and itemised accounts for the professional services should be obtained to confirm the appropriateness of the fees. Professional fees can also be vetted through professional associations such as the Law Society.

Where costs have been incurred by the landholder you must determine if the costs are reasonable by considering:

- whether documentary evidence has been provided
- whether they are within a reasonable range of similar costs incurred for similar services in the market.

Professional fees must relate to acquisition

Professional fees for services such as solicitors and valuers must relate directly to the acquisition and not to possible future actions taken by the landholder. It is reasonable for the landholder to claim for costs directly associated with advice prior to the determination of compensation and to also include costs for advice after the determination. Post determination advice should be limited to the professional explaining the outcome of the determination and the landholder's further rights and opportunities for appeal.

For valuation and legal fees to be determined the owner must have engaged, or be in the process of engaging those services.

No amounts should be assessed for possible future court action which may or may not eventuate. If court action were to occur the landholder will have a further opportunity to have costs considered.

5. Solatium

Solatium is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition.

The maximum amount payable for solatium is set by the State Government and adjusted annually. It is published in the NSW Government Gazette in late February each year.

Compensation for solatium can be the whole amount allowable or a proportion of that amount.

In assessing the amount of compensation for solatium you must consider:

- the interest in the land of the person entitled to

compensation,

- the length of time the person has resided on the land (in particular, whether the person is residing on the land temporarily or indefinitely), and
- the inconvenience likely to be suffered by the person because of his or her removal from the land, and
- the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

Only one payment of compensation in respect of solatium is payable for land with a single dwelling (even if there are two families occupying the single dwelling).

However, if more than one family resides on the same land in separate legally approved dwellings, a separate payment may be made for each family. A family can constitute a single person provided they are unrelated to other occupants on the land.

If separate payments of compensation are made, the maximum amount of solatium applies to each payment, and not to the total payments.

6. Increase or decrease in the value of other land

When you determine compensation you must have regard to any increase or decrease in the value of land held by the claimant which adjoins or is severed from the acquired land due to the public purpose for which the land was acquired.

Where the value of such land is increased, because it has benefited from the public purpose, you must reduce the amount of compensation by the amount of that increase in value.

The value of the land may be reduced due to the impact of the public purpose on that land or due to its inability to be used for its previous existing use because it has been severed from the acquired land. In this case you must increase the compensation payable by the corresponding amount.

1.3 Exclusions - compensation

Where the market value reflects an unrealised potential of land

In accordance with section 61 of the Land Acquisition Act when you assess the market value of land based on the potential use of the land rather than the current use of the land, you must not include:

- any financial advantage that would necessarily have been

- forgone in realising that potential, and
- any financial loss that would necessarily have been incurred in realising that potential.

In other words if the valuation is made for a higher use and not on the current use, a claim cannot be made for costs that would arise from the loss of the current use. To do so would be double recovery.

Market value must assume the highest and best use.

Where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements add no value for that higher use, relocation costs are not paid.

For section 61 to apply, the potential higher use should be achievable within a reasonable timeframe.

Future profits

Lost profit for a business or other enterprise can be considered as a disturbance item, for the reasonable time it takes to relocate and re-establish a business enterprise.

No compensation is to be determined for lost future profits upon the extinguishment of a business as compensation will be for the market value of the business. See section 1.4, Compensation where a business is affected.

No compensation is to be determined for lost future profits due to the unrealised potential of land. Such potential is contained within market value.

Owner initiated acquisition in cases of hardship

environmental planning instrument

A landholder owning land reserved for a public purpose under an environmental planning instrument or given written notice by an authority that land is designated for future acquisition, can give notice to the responsible acquiring authority requiring acquisition of the land.

To acquire the land the acquiring authority must be of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the Land Acquisition Act (section 24).

An owner suffers hardship if:

- (2) (a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and
- (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - (i) for pressing personal, domestic or social reasons, or
 - (ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation to which this Division applies, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

(a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or

(b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

Under the hardship provision there is a discretion as to the requirement for the determination of compensation for:

- special value
- severance
- disturbance and
- solatium.

Following the compulsory acquisition of land, the Valuer General has the discretion to determine amounts under the above heads of compensation on a case by case basis. All matters determined under the hardship provision should be referred to the Valuer General or his or her delegate for direction.

Acquisition for the purpose of constructing a tunnel

Where land under the surface is compulsorily acquired for the construction of a tunnel, compensation is not payable unless:

- the surface of the overlying soil is disturbed, or
- the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

1.4 Valuation assumptions

The market value

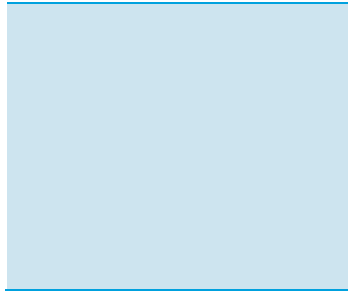
Land which is identified for acquisition may be:

- the whole of an existing parcel of land (total acquisition)
- a part of an existing parcel of land or
- an interest in land (an easement or some other such right over land).

The total compensation for the market value of all interests in the land is not to exceed the market value of the land as a whole.

In assessing the market value of an interest, consideration should be given to the items listed in the following table:

Assumption/considerations	Comment/exceptions
The definition of market value	The market value of an <u>interest in land</u> at the date of acquisition is the amount that would have been paid for the <u>interest</u> if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
The market value includes the added value of improvements	The market value of land includes the value of any improvements on the land or to the land.
The sum of interests in land is not to exceed the full fee simple in possession value of the land	There may be more than one interest to be compensated when land is acquired. Other interests could include easements, covenants, mortgages, leases, caveats and life interests. Where all interests in a parcel of land are acquired, the sum of all interests should not exceed the market value of the land unencumbered. At times, land will be acquired but the easements over the land will not. This corresponds with normal sale conditions where existing easements continue to apply to the land.
Value the land at its highest and best use	<p>Highest and best use 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.</p> <p>Care should be taken to determine the highest use possible for the land. That use may be the existing use or a redevelopment. Where redevelopment is the highest use, the cost of achieving that use, including demolition of existing improvements, must be considered.</p>
The market value is not to reflect the reservation for the public purpose.	Where the current zoning reflects the public purpose for which the land has been acquired, it is to be set aside. The zoning most likely to apply if not for the public purpose is to be adopted. This zoning will often reflect the zoning of adjoining and surrounding land.



If the underlying zoning cannot be determined by reference to adjacent land, the advice of an expert town planner will be required.

On occasions a property may have more than one layer of public purpose zoning, eg a zoning by a roads authority and also a zoning by a local council.

Market value not to reflect the public purpose

When assessing the market value of the land to be acquired you must ignore any increase or decrease in its value which results from the carrying out or the proposal to carry out the public purpose for which the land was acquired.

Generally land acquired for a public purpose is subject to a zoning reservation for future acquisition. In effect this imposes a legal constraint on possible development and hence market value.

In assessing compensation, you must disregard the reservation zoning for the public purpose for which the land is being acquired and adopt the zoning most likely to apply if there had been no reservation zoning for the public purpose.

When there is more than one public zoning on the land being acquired, only the public purpose zoning for which the land is being acquired should be disregarded. However you need to have regard to all circumstances affecting the land including the potential for the land to be acquired for the second public purpose.

When establishing the zone to adopt you should consider the surrounding zoning in conjunction with the physical quality of the land and any environmental constraints such as flora and fauna.

For example, if you are valuing land reserved for road widening, and it is surrounded by residentially zoned land it is likely that the zone adopted will be residential.

Compensation not to be less than market value

The Land Acquisition Act guarantees that, when land is acquired, the amount of compensation will not be less than market value. Compensation is to be made on just terms.

When determining the market value of land subject to acquisition, any reasonable doubt should be resolved in favour of the former owner ensuring that the compensation will not be less than market value.

However in the event there is an increase in the value of the owners other land, the increase should be offset in the compensation.

Interest of mortgagee

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed as if the land was not subject to a mortgage.

If compensation is payable in respect of a mortgagee's

interest, the compensation paid to the owner of the land will be reduced by the amount of compensation to be paid to the mortgagee.

Treatment of GST

Where GST is paid in a property transaction, you must treat GST as part of the market price. This is consistent with a number of court decisions.

When you analyse sales of property any GST paid by the purchaser is to be included as part of the sale price.

Statutory valuations issued on behalf of the Valuer General, including determinations of compensation issued under the Land Acquisition Act, will use the full market price. This price will include any GST which has formed part of the purchase price.

Where compensation is paid for disturbance, the full costs actually, or likely, to be incurred will form the basis of compensation, irrespective of a claimant's circumstances in relation to GST. Where disturbance is based on the extinguishment of a business, it will reflect the value of the business as a going concern and, consequently, there is no liability for GST.

However, where the valuer uses a hypothetical development model to determine the market value of land subject to acquisition, the treatment of GST as a cost in the actual development needs to be considered.

Compensation where a business is affected

Compensation related to a business which is located on the acquired land is considered as a loss attributable to disturbance.

It is assessed on the basis of either relocating or extinguishing the business.

The landholder's actual intentions for the future of the business are not necessarily relevant when you establish whether to assess the compensation based on relocation or extinguishment.

You must decide the most appropriate method given the circumstances. For instance a café in a high street location in an area with shops of a similar standard could easily relocate. However a unique waterfront restaurant in a rare location would have difficulty re-establishing in the area.

Compensation for the relocation of a business should generally not exceed the compensation that would be determined for the extinguishment of the business.

<p>Relocating the business</p>	<p>You must consider all reasonable costs associated with the relocation of the business.</p> <p>Costs will include:</p> <ul style="list-style-type: none"> • loss of profits during relocation and re-establishment period • advertising costs • advising clients of the relocation • storage costs for equipment • fitout specific to the business • stock losses
<p>Extinguishing the business</p>	<p>Compensation for the extinguishment of the business is based on the market value of the business on a walk in walk out basis.</p> <p>You must be appropriately skilled and experienced in business valuations to assess this type of compensation.</p>

If the compensation is based on extinguishing the business, the compensation will be paid for stock losses, incurred in a forced sale of stock. Fixtures such as plant and equipment are usually part of the business, and are included in the business value.

However, stock in trade and other items of personal property do not, by the compulsory land acquisition process, become the property of the acquiring authority.

1.5 Provision of information

Information provided by the landholder and the acquiring authority

When compensation is being determined the Valuer General will receive and consider all information provided by both the landholder and the acquiring authority.

Landholders often provide information to support their claim for compensation under section 39 of the Land Acquisition Act. Claims must be made to the acquiring authority and this information is then provided to the Valuer General.

There are times when the landholder will provide information directly to the Valuer General. In this case the Valuer General will accept the information, but the

landholder should be aware that a copy of the information will be given to the acquiring authority. Following publication of the acquisition notice in the Government Gazette information provided by the acquiring authority is also to be provided to the landholder.

If a document is voluntarily given to the Valuer General over which a claim for privilege (either legal or commercial) might have been made the privilege is waived. This means that if legal privilege or commercial in confidence status is to be maintained the information or document should not be provided to the Valuer General.

The Valuer General's determination of compensation will consider all relevant material information or documents provided, whether they are from the landholder, the acquiring authority, or independently commissioned by the Valuer General. The valuation report which accompanies the determination will include these documents.

1.6 Valuation methods used to determine market value

Direct comparison Direct comparison involves comparing market evidence with the subject property. Direct comparison is usually the primary method of valuation.

Use the direct comparison method to determine the market value of the property. When using this method you must:

- establish the highest and best use of the land
- consider all directly comparable market evidence
- consider all factors that influence the property's market value such as the land's location, size and shape, permitted uses and the condition and style of any buildings
- use an evidence based approach to make any adjustments between the market evidence and subject property.

Summation method

When using the summation method you must individually value the component parts of the land and improvements on the land to obtain the property's market value.

You may, for example determine the current market value of a rural property by separately considering the value of the land and the improvements.

The value of the land maybe determined through the

analysis and comparison of other vacant farm land. While the sheds and home may be valued by depreciation of the cost new.

Where depreciation is applied to adjust the cost to build the improvements, the rate of depreciation used must be rationalised.

Take care when assessing the added value of unique or unusual improvements as they may not represent the highest and best use of the land. Even newly built improvements may not add the same level of value as the cost to build them.

You must be careful to ensure that the summation method does not produce a higher value than would reasonably be expected in that market. Cost does not necessarily equal value and circumstances where the land has been over capitalised must be taken into account.

Capitalisation method

capitalisation
capitalisation rate
market rent

When using the capitalisation method you must:

- determine the capitalisation rate by analysing sales of comparable investment properties
- determine the market rental based on the analysis of comparable rentals
- review the terms of the lease, especially in regard to rent review conditions
- consider the term of the lease and the likelihood of the income continuing.

Before and after method

public purpose

The before and after method can be used to determine compensation where only part of the land is acquired.

The advantage of this method is that it captures the impact of severance and any increase or decrease in the value of adjoining land as well as the market value of the acquired land.

Using this method you must make two valuations, usually using the direct comparison method.

- | | |
|-----------|---|
| 1. | Value the property as if it were unaffected by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired (valuation of the original land before the acquisition). |
| 2. | Value the residual land, assuming that any works that will be made by the acquiring authority have already been constructed and are in use (valuation of the parcel after the acquisition). |

You should seek advice from the acquiring authority about proposed action to adjust services, public utilities, relocate fences or alleviate any impact of the works.

The difference between the two valuations is the compensation payment for the partial acquisition which reflects any reduction in value of the remaining land.

Piece meal method

The piece meal method can also be used to determine compensation where only part of the land is acquired.

This method should be adopted when only a small piece of land is acquired or significant improvements are located on the residue land and the difference in value resulting from the acquisition is too small to be reliably measured using the before and after method.

Using this method you must establish the market value of the whole parcel to derive a rate per square metre and then apply the rate to the acquired land.

This method will not capture severance or the increase/decrease in adjoining land value.

This method is appropriate to use where the acquisition is not considered to have an impact on the value of the residue land.

Before adopting this method, you must assess the possible impact of the public purpose, on the value of the whole parcel.

Hypothetical Development Method

gross realisation

Where there are not enough sales and the sales that are available lack comparability the hypothetical development method can be used.

To derive the value of a site suitable for redevelopment using the hypothetical development method you must:

1. Estimate the total gross realisation of the site based on the hypothetical highest and best use of the land.
2. Deduct the estimated cost of developing the site (including holding costs and developer’s margin) from the total sales value.

Alternatively, if the highest and best use of the site is as an income producing building/suite of buildings you can :

1. Estimate the net rental return which could be obtained from a hypothetical building which represents the

	highest and best use of the land.
2.	Capitalise the estimated net rental return to arrive at the improved value of the site.
3.	Deduct the estimated cost of developing the site (including holding costs and developer’s margin) from the improved value of the site.

The cost of developing the site includes ancillary costs such as purchase fees and stamp duty. Costs should include an allowance for interest payments based on 100 per cent funding for the project. However, interest payment calculations for development costs should reflect the progressive payment of these costs.

An allowance should also be made for the developer’s margin which would be appropriate for the type of development being considered. This should reflect the appropriate margin a developer would require to allow for the risk associated with the development while still ensuring a reasonable return from the development.

The hypothetical development method generally relies on advice from a quantity surveyor or a comparison of unit costs and rates for similar development schemes. These can then be applied to the particular development being analysed. You should clearly state any assumptions made when you apply the method with reference to evidence, research and reasoning.

1.7 Market analysis

Wide analysis of sales evidence

You should, if available, analyse enough comparable market sales to establish the market value of the property at the acquisition date.

Sales that occur further in time from the valuation date will need to be adjusted to the date of acquisition. Sales analysis should be supported by photographs. When analysing sales you should place the greatest weight on sales of properties with similar characteristics. All adjustments need to be rationalised.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates of properties are required to support the rental basis and applied capitalised values. Care should be taken to avoid using sales which reflect an impact of the proposed public works. Such sales may reflect either a positive or negative impact depending on the circumstances

specific to the property.

It may sometimes be necessary, where the impact of the public work is widespread, to obtain sales from other locations which, historically, have reflected similar value levels.

1.8 Valuation reports

Valuation report standard

All valuation reports must clearly explain the rationale for any assumptions made and address the landholders claim for compensation.

You must include supporting evidence and clearly rationalise the comparability or otherwise of sales and rental evidence.

A summary of technical information is to be included in the report with full supporting documents annexed.

Material within the report such as photographs should be taken on inspection of the property. In instances where material is obtained from other sources it must be appropriately referenced.

The report provided should be written in accordance with the requirements of the International Valuation Standards 2013.

Independent advice

Where required you should obtain independent professional advice. There may be times when using advice already provided by either the landholder or acquiring authority is appropriate. For example:

- where the parties agree to rely on the advice of one professional
- where it is unlikely for the advice to be subject to opinion and is likely to be consistent no matter which professional provided such advice
- where there is a very limited field of expertise and the best advice is considered to have been obtained.

All professional advice must be appropriately referenced and annexed to the valuation report.

Where advice has been provided by other stakeholders and that advice is in conflict with the basis of the determination, you must rationalise why that advice was not accepted.

Property inspections and communication with landholders

Property inspections should be made during the valuation process. Where possible, you should obtain the permission of the landholder.

You should speak to landholders in person to address any issues or concerns they have. You should also encourage

landholders to provide any supporting material that they feel is relevant to the determination.

It is important that the process is transparent and that all stakeholders have access to relevant material and the opportunity to scrutinise and query that material.

1.9 Post determination process

Valuer Generals role following completion of the determination

The Valuer General's formal responsibilities under the Land Acquisition Act are completed when the Determination of Compensation is issued to the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct any errors.

Determinations of Compensation are a final decision and so need to be made with the full understanding of all the issues. Therefore you are required to make all enquires necessary to gain a complete understanding of the factors affecting the level of compensation. Every effort should be made to clarify and where possible resolve any issues of fact with the owner and the acquiring authority prior to completion of your advice.

Objections against the amount of compensation determined are between the former owner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General are to make themselves available to discuss the Determination of Compensation with owners and the authority involved.

Appeals as to the amount of compensation are made against the acquiring authority not the Valuer General.

The Land and Environment Court provides dispute resolution services through its conference process. Matters may be settled through these conferences or may proceed to a full hearing.

1.10 Quality control

Quality reviews

The quality assurance process is an important step in the management of issuing determinations of compensation valuations to acquiring authorities for the Valuer General.

It is expected that valuers undertaking determinations of compensation will adopt quality assurance processes, including revision of all calculations and peer review, prior to the final issue of a recommendation of determination of compensation.

Land and Property Information are required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

2 References

2.1 Definitions

capitalisation	Capitalisation is a method used to determine the current market value of a property by converting the net income stream into a capital value using a single conversion factor.
capitalisation rate	Expression of risk and return as a percentage that is used to convert the net income in perpetuity from an investment into value at a given time.
claimant	A claimant is a person or legal entity entitled to a claim for compensation after the compulsory acquisition of land or an interest in land.
easement	An easement is an acquired legal right enjoyed by the owner of land over the land of another.
environmental planning instrument	A legal document that regulates land use and development under state environmental planning policies and local environmental plans.
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.
interest in land	Interest in land means: <ul style="list-style-type: none"> (a) a legal or equitable estate or interest in the land, or (b) an easement, right, charge, power or privilege over, or in connection with, the land
market rent	The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.
public purpose	A "public purpose": means any purpose for which land may by law be acquired by compulsory process under the <i>Land Acquisition (Just Terms) Compensation Act 1991</i> .

2.2 Laws and policies

Governing NSW law	<i>Land Acquisition (Just Terms Compensation) Act 1991 (Land Acquisition Act)</i>
Related Valuer General policy	N/A

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Land Acquisition (Just Terms Compensation) Act 1991* requires that the Valuer General is responsible for the determination of compensation to be offered to the former owner and any other parties having a compensable interest in the land following a compulsory acquisition of land, or an interest in land, by a state or local government authority.

The Valuer General is an independent statutory office appointed under the *Valuation of Land Act 1916*.

The Valuer General delegates the determination of compensation process to Land and Property Information (LPI). An LPI valuer or private valuer contracted to LPI will assess the amount of compensation for determination by the Valuer General or his or her delegate.

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

3.2 Background

Compulsory acquisitions

Where land is acquired for a public purpose, compensation is paid to the owner of the land and any other parties having a compensable interest in the land. The Land Acquisition Act requires the acquiring authority to seek agreement with all parties, having an interest in that land, on the compensation which should be paid for the loss of their interest.

Where agreement cannot be reached, the interest will be compulsorily acquired. The Valuer General provides an independent determination of compensation for those interests which are compulsorily acquired.

Once acquired, all interests (gazetted) in land are vested in the acquiring authority, by written notification printed in the NSW Government Gazette. The identified land will be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over, or in connection with, the land.

Any compensable interest in the land will be converted to a right for compensation

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Title: Compensation following compulsory acquisition

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Any enquiries relating to the policy may be address to the Office of the Valuer General at feedback@ovg.nsw.gov.au

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Document control

Approval

Name and position	Signature and date
Simon Gilkes, Valuer General	 18/12/2014

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