

Valuer General's Policy

ISSN 2203-9600

September 2022

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 the land is not available for sale. The Valuer General determines compensation when an agreement for the purchase of the land cannot be reached between the land owner 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:

- land owners are justly compensated for the acquisition of land
- compensation offered to land owners 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	9
1.4 Valuation assumptions	11
1.5 Valuation methods used to determine market value	16
1.6 Valuation reports	20
1.7 Issuing the determination of compensation	21
1.8 Quality control	21
1.9 Post determination process	22
2 References	24
2.1 Definitions	24
2.2 Laws and policies	26
3 Context	27
3.1 Role of the Valuer General	27
3.2 Background	27

1 Policy

1.1 Scope

Compulsory acquisition of land

land owner

public purpose

Where land is required for a public purpose an authorised acquiring authority will negotiate with the land owner 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.

1.2 Assessing compensation

Interest in land

easement

fee simple in possession

interest in land

Land for which compensation is assessed includes 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 entitled to compensation can include:

- the owner of the fee simple
- 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'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.

Where an acquiring authority seeks to acquire an easement over an existing easement, there may be an entitlement to compensation for the landowner and/or the existing beneficiary depending on the terms of the respective easements.

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 on an expired lease are also relevant interests in land. However, the continuance of the tenancy cannot be assumed to be without risk or for an indefinite period and this will affect the determination of compensation.

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.	The disadvantage resulting from relocation.
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.

In cases where land is used for a particular purpose for which there is no general market (and an owner genuinely proposes to use other land for that purpose), market value may be determined by reference to its reinstatement value. Reinstatement value is to be reduced by any disturbance compensation and any likely improvement in the owner's financial position because of the relocation.

2. Any special value

Special value of the land to the land owner 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 has been said to represent the additional price that the land owner would be prepared to pay for the land rather than lose it.

Example

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 land owner may value that site over the market value due to the advantage of operating from the adjoining site.

The advantage must be specific to the land owner 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.

The replacement of structures (the value of which is not otherwise captured in market value) can be considered as special value rather than as disturbance.

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 land owner's land as a result of the acquisition and the reduction in value of the retained parcel.

Example

A dairy farm is severed into two parcels of farmland by the construction of a highway. As a result, one of the retained parcels no longer has access to the dairy facilities. The land therefore suffers a loss in value.

When considering whether to provide compensation for severance the valuer must consider all factors, including whether the acquisition has increased the value of some land, (refer to page 8 -6. *Increase or decrease in the value of other land*).

4. Any loss attributable to disturbance

Loss attributable to disturbance refers to costs reasonably incurred by the person entitled to compensation due to the acquisition. Disturbance includes any of the following:

Legal costs and valuation fees	a) Legal costs and b) valuation fees reasonably incurred by the person entitled to compensation 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 person entitled to compensation in connection with their relocation (including legal costs but not transfer of land or business duty (stamp duty) or mortgage costs).
Stamp duty costs	d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the person entitled to compensation 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 person entitled to compensation 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.

passive investor**Example**

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)).

Where an acquired property is held as an investment, and the land owner is a passive investor, legal and stamp duty costs for purchasing a replacement property will not apply. Unless stamp duty is recoverable under s. 59(1)(d) as a cost of relocation, it is not otherwise recoverable – even if it meets the terms of s. 59(1)(f).

For example:

- Mr & Mrs Brown own a house which they live in. The house is acquired by compulsory acquisition so they will need to move. Mr & Mrs Brown would be able to claim stamp duty on their replacement home as disturbance under s. 59(1)(d) of the Act.
- Mr & Mrs Smith own a house which is rented out as an investment. The house is acquired by compulsory acquisition. Mr & Mrs Smith would not be able to claim stamp duty on a replacement investment property as disturbance because Mr & Mrs Smith have not relocated as required by s. 59(1)(d) of the Act. It is only Mr & Mrs

Smith's tenant who will have necessarily relocated for the purpose of s. 59(1)(c) and (d) of the Act.

- Mr Jones has a portfolio of 10 residential investment properties, one of which is acquired by compulsory acquisition. Mr Jones may buy another investment property when an appropriate opportunity arises. Mr Jones would not be able to claim stamp duty on a replacement investment property as disturbance if he does not live or physically operate his business from the property. It is only if a physical relocation is required that stamp duty under s. 59(1)(d) can possibly be awarded.

Buyer's/lessee's agent

Costs associated with a buyer's or lessee's agent will not normally be compensable unless exceptional circumstances apply including, but not limited to:

- the claimant is resident overseas and only visits Australia infrequently; or
- the technical specifications of the property or business are of such complexity that the claimant is unable to undertake an alternative property search himself/herself; or
- such reason as the Valuer General may consider reasonable.

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 interpreted broadly, as it relates to costs that might reasonably be expected to be incurred given the balance of probability.

Proof of expenditure

Proof of expenditure (such as invoices) for disturbance costs incurred, or estimates from providers for disturbance costs not yet incurred, must be provided as evidence of the disturbance costs claimed.

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 land owner to an equivalent position to their position prior to the acquisition
- be relevant to the matter and not be whimsical or obstructive (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.

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 generally be payable.

In some cases, the acquiring authority will carry out the reinstatement of the service, but this needs to be confirmed prior to disallowing a disturbance item. This is especially so if reinstatement works are required to be carried out upon any residue land and where the land owner and acquiring authority have not agreed those works. If the reinstatement works are going to be completed by the acquiring authority by agreement or because of a requirement under a planning approval for the project, no further compensation should be assessed for these items.

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

Reasonable costs

The Land Acquisition Act requires that an amount attributable to disturbance be provided for costs or fees reasonably incurred. Courts have held 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 land owner relates directly to the acquisition.

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 land owner cannot be expected to have expertise in this area.

Whether the costs themselves are reasonable or exorbitant must be considered on a case by case basis. If the costs are thought to be exorbitant, proof may 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 land owner you must determine if the costs are not exorbitant 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 land owner. It is reasonable for the land owner 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 land owner's further rights and opportunities for appeal.

No amounts should be allowed for possible future court action which may or may not eventuate. If court action does occur the land owner will have a further opportunity to have those costs considered.

No professional fees relating to whether the acquisition can be avoided or in respect of the making a hardship application are to be allowed as disturbance items.

The fees of town planners, surveyors, flooding engineers, etc., that may be engaged to assist in determining the highest and best use of the acquired land are generally not compensable unless they can be characterised as "legal costs" under s 59(1)(a) of the Land Acquisition Act. If lawyers require the input from the experts in order to advise their client, they would be "legal costs". Costs of non-legal and non-valuation consultants may be claimable under s. 59(1)(f) if they relate to the "actual use of the acquired land". For example, if an acquisition leads to wasted development application costs on a development site.

5. Disadvantage resulting from relocation

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

The maximum amount payable for the disadvantage resulting from relocation is set by the State Government and adjusted annually. It is published in the NSW Government Gazette on 1 July each year.

In assessing the amount of compensation for the disadvantage resulting from relocation you should consider the NSW Government's Guidelines *Determination of compensation for disadvantage resulting from relocation*.

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 land owner 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 payable for market value (s. 55(a)), special value (s. 55(b)), severance (s. 55(c)) and injurious affection (s. 55(f)) 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 reduction in value.

1.3 Exclusions – compensation

Where the market value reflects an unrealised potential of land
highest and best use

Market value must assume the highest and best use of the 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.

Where you assess market value on the basis of a higher potential use rather than the current use and the existing improvements would have to be forgone to achieve 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 may be able to be considered as a disturbance item, for the reasonable time it takes to relocate and re-establish a business.

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 land owner of 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 ask the responsible authority to acquire 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.

If a land owner makes an application for hardship that is not accepted by the acquiring authority, they have the right to a merits-based review of the decision. This review would be undertaken by a suitably qualified independent person appointed by the Minister for Water, Property and Housing. The decision of the reviewer is final.

In determining compensation following the compulsory acquisition of land on the basis of hardship, the Valuer General has the discretion to determine whether compensation for:

- special value
- severance
- disturbance and
- the disadvantage resulting from relocation

will be paid. This is to be determined on a case by case basis.

All matters determined under the hardship provision should be referred to the Valuer General's 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.

The Valuer General generally issues a determination of nil compensation immediately after gazettal. In matters where it may be unclear whether these provisions should apply, the matter should be referred to the Valuer General's delegate for direction.

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 interest in land at the date of acquisition is the amount that would have been paid for the interest 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 must 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	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 time and cost of achieving that use, including demolition of existing improvements, must be considered.

The market value is not to reflect the reservation for the public purpose.

Generally, land acquired for a public purpose is subject to a zoning or reservation for the public purpose. This imposes a legal constraint on possible development and hence market value.

In assessing compensation, you must disregard the impact on value caused by the zoning or reservation for the public purpose for which the land is being acquired and adopt the zoning that most likely would have applied if there had been no zoning or reservation for the 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.

Example

If you are valuing land zoned for open space and it is surrounded by residentially zoned land, it may be likely that the zone adopted will be residential.

When there is more than one public purpose zoning or reservation on the land being acquired, only the public purpose for which the land is being acquired is to 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.

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

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, however, this obligation is met if compensation is determined in accordance with s. 55 of the Land Acquisition Act. 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 land 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 land owner’s other land, the increase should be offset against the amount of compensation payable for market value (s. 55(a)), special value (s. 55(b)), severance (s. 55(c)) and injurious affection (s. 55(f)).

Interest of mortgagee

Where land is acquired and is subject to one or more mortgages, the compensation is to be assessed without regard to the mortgage(s).

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.

Easements

Where an easement is acquired over land, compensation for the landowner will generally be assessed as a percentage of the value of the land subject to the easement depending on the terms of the easement, consistent with case law and applying the provisions of the Land Acquisition Act.

In the absence of relevant comparable sales supporting the value impact of an easement, the table below should be followed to determine the percentage reduction in land value to reflect the compulsory acquisition of an easement over that land:

Percentage Reduction	Impact of Easement on Underlying Land
Range 0-10% Commonly 0%	Negligible impact – for example: <ul style="list-style-type: none"> • where the easement has no physical impact on the land • Where the sole impact of the easement is as a blot on title • Where the easement is fully sub-surface (eg a tunnel, pipe or rock anchor), noting the provisions in s. 62 of the Land Acquisition Act
Range 10-30% Commonly 10%	Limited impact – for example: <ul style="list-style-type: none"> • where the easement will traverse open space that can in any case only be used by the landowner as open space (eg a public park) • where above-ground or overhead structures result in loss of visual amenity • where the easement otherwise does not significantly impinge landowner’s use of land

Percentage Reduction	Impact of Easement on Underlying Land
Range 30-60% Commonly 50%	Low to Moderate impact – for example: <ul style="list-style-type: none"> • visible surface impact (eg such as pipes above the surface of the ground or electricity substations) that diminish visual amenity for the landowner and create inconvenience but still allow the land to be used
Range 60-80% Commonly 80%	Moderate to High impact – for example: <ul style="list-style-type: none"> • other restrictions on use or rights under easement that significantly impinge landowner's use of land
Range 80-100% Commonly 100%	Severe to total impact – for example: <ul style="list-style-type: none"> • where the landowner is legally unable to build in the easement area (eg beneath an electricity transmission line) • where the terms of the easement authorise the land to be occupied by a structure such as a pumping station or electricity pylon which completely forestalls the landowner's use of that land

Where an acquiring authority seeks to acquire an easement over an existing easement, there may be an entitlement to compensation for the landowner and/or the existing easement beneficiary depending on the terms of the respective easements.

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.

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, unless, because of a land owner's circumstances, an input tax credit can otherwise be claimed in relation to GST. Therefore, if a land owner is registered for

GST, compensation will exclude GST as an input tax credit could be claimed.

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.

In determining the amount of compensation where a business is affected you need to consider the Valuer General's Guidelines ['Determination of compensation following the acquisition of a business'](#).

Each land owner's circumstances will be different. If you consider the guidelines do not address a particular situation the matter should be referred to the Valuer General's delegate for direction.

1.5 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 explicitly and transparently:

- establish the highest and best use of the land
- accumulate and consider all directly comparable market evidence
- analyse all directly comparable market evidence to a common basis for adjustment
- 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
- adjust, using an evidence based approach, all directly comparable market evidence to allow for similarities and differences between the market evidence and subject property
- apply the adjusted directly comparable market evidence to the subject property.

You must analyse enough comparable market sales to establish the market value of the property at the acquisition date.

When adjusting sales you should place the greatest weight on sales of properties with similar characteristics. Sales that have different characteristics or occur further in time from the valuation date will need to be adjusted to take those differences into account. All adjustments need to be rationalised by reference to market evidence if possible. Sales adjustment should be supported by photographs.

Care should be taken to avoid using sales which reflect an impact of the proposed public works, whether positive or negative. It may be necessary, where the impact of the public work is widespread, to obtain sales from other locations which, historically, have reflected similar value levels.

Rental analysis is required where the property or interest is valued using the capitalisation method. Sales showing rental returns and capitalisation rates are required to support the rental basis and applied capitalised values.

Summation method

When using the summation method you must individually value the component parts of the land, including the added value of the 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 may be determined by direct comparison with sales of other farm land, excluding improvements.

The sheds and home may be valued by depreciation of the cost new or by calculating their added value to the land.

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. The cost of a building does not necessarily equal its added value and circumstances where

paired sales approach

the land has been over capitalised must be taken into account.

The amount determined for the added value of improvements must be evidence based, for example, by using the paired sales approach.

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.

The subjective intentions of an actual landlord and/or tenant cannot be taken into account in the hypothetical assessment of market value carried out under s. 56 of the Land Acquisition Act.

Before and after method

public purpose

The before and after method is the typical method 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.

While the before and after method of valuation is the primary method of determining compensation where only part of the land is acquired, however, it may not be suitable if only a small piece of land is acquired and the difference in value resulting from the acquisition is too small to be reliably measured. In these cases the piece meal method may be applied.

Using this method you must undertake two valuations:

- | | |
|-----------|---|
| 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). Advice from other consultants (such as a town planner) may be required to determine the value of land unaffected by the carrying out, or the proposal to carry out, the public purpose. |
| 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 is typically adopted when only a small piece of land is acquired 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 property (excluding building improvements) to derive a rate per square metre or hectare and then apply the rate to the acquired land.

This method will not capture the loss due to severance or the increase/decrease in the value of other land.

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 consider the possible impact of the public purpose, on the value of the whole property.

Hypothetical Development Method

gross realisation

Only where there is insufficient comparable sales evidence to make a reliable valuation, the hypothetical development method may be used.

Depending on the nature of the site, the hypothetical development method may be static (residual) or cash flow based.

To derive the value of a site 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 that 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 and inputs selected when you apply the method with reference to evidence, research and reasoning.

1.6 Valuation reports

Preliminary valuation report

Before the determination of compensation is finalised, the Valuer General may send the land owner and the acquiring authority the preliminary valuation report and issue response document. The report is to include the proposed amount of compensation and how it was determined. The land owner and acquiring authority have 10 working days to correct matters of fact.

Valuation report standard

Valuation reports must clearly:

- rationalise the market value
- explain the rationale for any assumptions made or inputs selected

- detail all adjustments made between the market evidence and subject property and the rationale for those adjustments.

The issue response document must clearly:

- address the land owner's claim for compensation
- respond to any issues or concerns raised by the land owner or acquiring authority

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 as well as a list of supporting documents relied upon and/or attached.

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

The report provided should be written in accordance with the current requirements of the International Valuation Standards Council and the Australian and New Zealand Valuation and Property Standards.

1.7 Issuing the determination of compensation

Determinations of Compensation are issued by the Valuer General having regard to the preliminary valuation report and the issue response document and clarification of matters of fact arising therefrom.

After the valuation report and the issue response document have been finalised, the Valuer General will issue the determination of compensation together with the valuation report and the issue response document to both the land owner and the acquiring authority.

1.8 Quality control

Quality reviews

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

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

The Valuer General is required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

1.9 Post determination process

Valuer General's 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 land owner and the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct a clerical error or obvious mistake.

Where a clerical error or obvious mistake is identified on a Determination of Compensation, the Valuer General may amend the Determination of Compensation, but only if the compensation notice offered by the relevant acquiring authority has not been accepted by the claimant.

The response to the preliminary report provides an opportunity for the acquiring authority and the claimant to raise errors of fact for consideration by the Valuer General. After a Determination of Compensation has been issued, provided it has not been accepted by the claimant, the Valuer General will only consider requests for amendment on provision of a valid reason being exceptional and/or unexpected circumstances such as:

- the claimant is self-represented and does not have a solicitor or professional adviser
- the claimant suffered an unexpected serious illness, injury or health issue
- there had been a death or unexpected serious illness or injury in the claimant's family
- the claimant was unexpectedly out of the country or away from home for an extended period when the Determination of Compensation was issued
- other exceptional and/or unexpected circumstances, however these circumstances need to be well explained.

The Valuer General is not bound to accept a request for amendment for any of the above reasons.

Failure to have provided full details of disturbance costs incurred within responses to the preliminary report will not be considered to be a valid reason for a change to a Determination of Compensation.

Objections against the compensation notice are between the land owner and the acquiring authority. However, valuers providing advice on behalf of the Valuer General must make

themselves available to discuss the valuation report and issue response document with land owners and the acquiring authority involved if required.

Dispute resolution If the land owner wishes to object to the offer of compensation in accordance with the Valuer-General's determination, it may do so in the Land and Environment Court. The Valuer-General is not a party to such litigation.

2 References

2.1 Definitions

capitalisation	Capitalisation is a method used to determine the capital 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 capital value at a given time.
easement	An easement is an acquired legal right enjoyed by the easement holder 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	Absolute title to land, free of any other claims against the title, which can be sold or passed to another by will or inheritance.
gross realisation	The property's value (or gross sales) upon completion of development.
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.
interest in land	Interest in land means: <ul style="list-style-type: none">• 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.
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.
owner	Any person with an interest in land

paired sales approach	The paired sales approach refers to the analysis of the added value of improvements by comparing sales with no improvements or poor improvements to sales with improvements to determine how much those improvements add to the value of land otherwise comparable.
passive investor	A passive investor is a person who acquires, builds or develops property with a view to holding it long-term to derive rent, but who may later sell the property. Conversely an active investor acquires, builds or develops property with a view to profiting from its sale in the short term.
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	<u>Land Acquisition (Just Terms Compensation) Act 1991</u> (Land Acquisition Act)
Related Valuer General policies	<i>Compulsory acquisition advice</i> <i>Compensation following compulsory acquisition involving possible conflicts of interest</i> <i>Determination of compensation following the acquisition of a business</i> <i>Determination of compensation for disadvantage resulting from relocation</i>

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 determine the compensation to be offered to the land 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 appointment under the *Valuation of Land Act 1916*.

A Valuer General NSW valuer or private valuer contracted to the Valuer General will prepare a valuation for determination of compensation by the Valuer General or his or her delegate.

The Valuer General is committed to maintaining an open and transparent valuation process that is easy for land owners 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 attempt 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 in land are vested in the acquiring authority, by notification 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.

Copyright

Title: Compensation following compulsory acquisition

ISSN: 2203-9600

Valuer General NSW

Copyright



© Crown in right of New South Wales through the Valuer General NSW, 2022.

This copyright work is licensed under a Creative Commons Australia Attribution 4.0 licence,

<https://creativecommons.org/licenses/by-nd/4.0/legalcode>

Any enquiries relating to the policy may be addressed to Valuer General New South Wales at valuergeneral@ovg.nsw.gov.au

Author: Valuer General New South Wales

Disclaimer

Valuer General New South Wales has prepared this policy, but users should obtain independent advice when making any decisions drawing on this policy.

 For more on our copyright and disclaimer notices, go to www.valuergeneral.nsw.gov.au or contact Valuer General New South Wales by telephone on 1800 110 038.

Document control

Approval

Name and position	Signature and date
David Parker, Valuer General	 6 September 2022

Version

Number	Status	Date	Prepared /Reviewed by	Comments
7.0	Final	06/09/2022	Dr David Parker	Policy updated to reflect changes to easements.
6.0	Final	19/06/2022	Dr David Parker	Policy updated to reflect changes to post determination process.
5.0	Final	27/04/2022	Dr David Parker	Policy updated to reflect changes to VG policy on proof of expenditure.
4.0	Final	02/03/2022	Dr David Parker	Policy updated to include paragraph regarding Buyer's/Lessee's agents.
3.0	Final	29/06/2021	Dr David Parker	Policy updated following stakeholder consultation to better align with the requirements of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
2.0	Final	24/08/2017	Rachael Burn	Policy updated to reflect amendments to the Land Acquisition Act and make reference to the NSW Guidelines.
1.0	Final	18/12/2014	Michael Parker	First release.