

# 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 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.

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# 1 Policy

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## 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.

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 need to establish the probability of whether a new lease would be agreed for that interest to be considered. However, the continuance of the tenancy 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.	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.

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 of this policy.

## 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.

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.

### 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.

## 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 land owner due to the acquisition. Disturbance includes any of the following:

<b>Legal costs and valuation fees</b>	a) Legal costs and b) valuation fees reasonably incurred by the land owner in connection with the compulsory acquisition of the land excluding costs incurred for acting as an agent for the owner.
<b>Relocation costs</b>	c) Costs reasonably incurred by the land owner in connection with their relocation (including legal costs but not transfer of land or business duty (stamp duty) or mortgage costs).
<b>Stamp duty costs</b>	d) Stamp duty costs reasonably incurred (or that might reasonably be incurred) by the land owner 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.
<b>Mortgage costs</b>	e) Costs reasonably incurred (or that might reasonably be incurred) by the land owner 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.
<b>Other financial costs</b>	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.

#### 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))

**passive investor**

- 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. Legal and stamp duty costs are only payable where the costs incurred are related to the actual use of the land and are a direct and natural consequence of the acquisition.

**Example**

A developer who buys and sells land would be eligible for stamp duty and legal costs of a replacement property where the acquired land was part of his or her portfolio.

**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 for disturbance costs should be sourced where available. Although land 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 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. In these cases 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 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.

Land 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 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 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 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 assessed 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 costs considered.

#### **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 must 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 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 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 can 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 Finance, Services and Property. The decision of the reviewer is final.

Under the hardship provision there is discretion as to whether to take into account:

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

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'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.

Where it is 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:

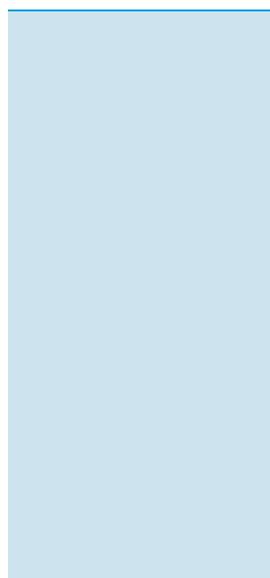
- the whole of an existing parcel of land (total acquisition)
- a part of an existing parcel of land or
- an interest in land (an easement or some other such right over land).

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	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

<p>possession value of the land</p>	<p>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.</p>
<p>Value the land at its highest and best use</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>
<p>The market value is not to reflect the reservation for the public purpose.</p>	<p>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.</p> <p>In assessing compensation, you must disregard the zoning or reservation for the public purpose for which the land is being acquired and adopt the zoning most likely to apply if there had been no zoning or reservation for the public purpose.</p> <p>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.</p> <div data-bbox="798 1406 1402 1659" style="background-color: #e0f2f7; padding: 10px;"> <p><b>Example</b></p> <p>If you are valuing land zoned for open space and it is surrounded by residentially zoned land it is likely that the zone adopted will be residential.</p> </div> <p>When there is more than one public purpose zoning or reservation on the land being acquired, only the public purpose zoning for which the land is being acquired should be disregarded.</p> <p>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.</p>



If the underlying zoning cannot be 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. 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 in the compensation.

### **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.

### **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, irrespective of a land owner'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.

In determining the amount of compensation where a business is affected you need to consider the NSW Government'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:

- 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, 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.

### paired sales approach

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

The amount determined for the added value of improvements must be evidence based, 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.

## Before and after method

### public purpose

The before and after method is to 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.

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 make 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).
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 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**

Where there is insufficient comparable sales evidence to make a reliable valuation the hypothetical development method can be used.

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.
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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.

## 1.6 Market analysis

### Wide analysis of sales evidence

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

When analysing 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. Sales analysis 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.

## 1.7 Communications

### Transparency

It is important that the process is transparent and that all stakeholders have:

- input into the process
- access to relevant material
- the opportunity to scrutinise and query that material.

### Valuation Services Coordinator

Valuation Services is to appoint a coordinator to assist the land owner through the determination process.

The coordinator is to be available to discuss issues with the land owner or their representative and the acquiring authority at any time during the process. This presents opportunities to provide additional submissions, discuss concerns, ask questions and where possible, attempt to settle any disagreements over matters of fact prior to the determination being made.

### Independent advice

Where required you should obtain independent professional advice.

However, there may be times when using advice already provided by either the land owner 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 that has been relied upon must be appropriately referenced in 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**

Property inspections are to be made during the valuation process. Where possible, you should obtain the permission of the land owner. Where the land owner refuses access to property for the purposes of an inspection the matter shall be referred to the Valuer General's delegate for direction.

### **Communication with land owners**

You must make every effort to speak to the land owner or their representative in person to discuss their claim for compensation and address any issues or concerns they have.

Where a land owner refuses access to a property for inspection the matter should be referred to the Valuer General's delegate for direction.

You should encourage land owners to provide any supporting material that they would like to be considered as part of their claim for compensation.

### **Communication with acquiring authorities**

You must speak with the relevant acquiring authority to understand and consider their issues and concerns. Supporting material relevant to the compensation matter must be shared with the acquiring authority.

### **Information provided by the land owner and the acquiring authority**

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

The Valuer General is committed to full disclosure in the determination of compensation process. Consequently, all information considered by the Valuer General in determining compensation will be provided to both the land owner and the acquiring authority prior to finalisation of the determination.

Land owners who wish to claim compensation must lodge a claim in accordance with section 39 of the Land Acquisition Act with the acquiring authority or the Valuer General. The land owner should be aware that a copy of the information they provide to the Valuer General or acquiring authority will be given to the acquiring authority or Valuer General.

Following publication of the acquisition notice in the Government Gazette information provided by the acquiring authority is also to be provided to the land owner.

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 land owner, the acquiring authority, or independently commissioned by the Valuer General. The valuation report which accompanies the determination will reference these documents.

## 1.8 Valuation reports

### **Preliminary valuation report**

Before the determination of compensation is finalised, Valuation Services must send the land owner and the acquiring authority the preliminary valuation report and any supporting information for their review. The report is to include the amount of compensation and how it was determined. The land owner and acquiring authority have 15 working days to provide feedback.

Any concerns raised by the land owner or acquiring authority must be addressed before the valuation report is finalised.

### **Valuation report standard**

Valuation reports must clearly:

- rationalise the market value
- explain the rationale for any assumptions made
- address the land owner's claim for compensation
- respond to any issues or concerns raised by the land owner or acquiring authority
- detail all adjustments made between the market evidence and subject property and the rationale for those adjustments.

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 Australian and New Zealand Valuation and Property Standards.

## 1.9 Issuing the determination of compensation

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 enquiries necessary to gain a complete understanding of the factors affecting the level of compensation prior to issuing a determination. Every effort should be made to clarify and where possible resolve any issues of fact with the land owner and the acquiring authority prior to completion of your advice.

After the valuation report has been finalised, Valuation Services must issue the determination of compensation together with the valuation report to both the land owner and the acquiring authority.

The valuation report will include a list of all supporting information attached or previously provided.

Valuation Services will answer any questions the land owner or acquiring authority have about the valuation report and determination of compensation.

## 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 the revision of all calculations and peer review, prior to the final issue of a recommendation of determination of compensation.

Valuation Services is required to review all valuation reports to ensure there is consistency and accuracy in the assessment of compensation.

## 1.11 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 any errors.

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 Determination of Compensation with land owners and the acquiring authority involved if required.

**Dispute resolution** The Land and Environment Court provides dispute resolution services through its conference process. Matters listed before the court will first be heard in a less formal situation than a full hearing, with different rules of evidence and less formal procedures.

These conferences can be used to settle the matter or the case can be moved to a full hearing.

## 2 References

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### 2.1 Definitions

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**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.

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**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.

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**easement** An easement is an acquired legal right enjoyed by the owner of land over the land of another.

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**environmental planning instrument** A legal document that regulates land use and development under state environmental planning policies and local environmental plans.

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**fee simple** Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.

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**gross realisation** The property's value (or gross sales) upon completion of construction.

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**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.

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**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.

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**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.

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**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.

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<b>passive investor</b>	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.
<b>public purpose</b>	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> .

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## 2.2 Laws and policies

<b>Governing NSW law</b>	<a href="#"><u>Land Acquisition (Just Terms Compensation) Act 1991</u></a> (Land Acquisition Act)
<b>Related Valuer General policy</b>	<i>Compulsory acquisition advice</i> <i>Compensation following compulsory acquisition involving possible conflicts of interest</i>
<b>NSW Government Guidelines</b>	<a href="#"><u>Property Acquisition</u></a> <a href="#"><u>Determination of compensation following the acquisition of a business</u></a> <a href="#"><u>Determination of compensation for disadvantage resulting from relocation</u></a>

## 3 Context

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### 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*.

The Valuer General delegates the determination of compensation process to Valuation Services, Property NSW. A Valuation Services valuer or private valuer contracted to Valuation Services will assess the amount of compensation for determination 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 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

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Title: Compensation following compulsory acquisition

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Office of the Valuer General

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Any enquiries relating to the policy may be addressed to the Office of the Valuer General at [valuergeneral@ovg.nsw.gov.au](mailto:valuergeneral@ovg.nsw.gov.au)

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## Disclaimer

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The Office of the Valuer General has prepared this policy, but users should obtain independent advice when making any decisions drawing on this policy.

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## Document control

### Approval

Name and position	Signature and date
Simon Gilkes, Valuer General	 05/05/2017

### Version

Number	Status	Date	Prepared /Reviewed by	Comments
2.1	Final	04/06/2019	Rachael Burn	Date of gazettal, for the disadvantage resulting from relocation, amended from February to July in section 1.2, and administrative updates.
2.0	Final	24/08/2017	Rachael Burn	Policy updated: <ul style="list-style-type: none"> <li>• To reflect amendments to the Land Acquisition Act:                             <ul style="list-style-type: none"> <li>○ change of name of solatium</li> <li>○ land owners can provide claim for compensation direct to Valuer General</li> <li>○ preliminary valuation report to be provided to land owner for feedback</li> <li>○ Determination of Compensation to be provided directly to land owner at same time as acquiring authority.</li> <li>○ stamp duty and legal not payable to passive investors for replacement property</li> <li>○ land owners rights to a merits based review if the acquiring authority do not accept their application for hardship.</li> </ul> </li> <li>• Reference to NSW guidelines for:                             <ul style="list-style-type: none"> <li>○ Determinations of compensation following the acquisition of a business</li> </ul> </li> </ul>

				<ul style="list-style-type: none"> <li>○ Determination of compensation for disadvantage resulting from relocation.</li> <li>● Reference the name change of stamp duty to transfer of land or business duty.</li> <li>● To clarify that legal and stamp duty costs for purchasing a replacement property do not apply where an acquired property is held as an investment, and the land owner is a passive investor.</li> <li>● Reflect administrative updates.</li> </ul>
0.1	Final	18/12/2014	Michael Parker	First release

### Next review

Date	Comments
July 2020	May be reviewed sooner following release or as needed