



Valuer-General's Policy

VGP 08/2020

Highest and Best Use

Approved 27 August 2020

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Note: Words and acronyms that are in italics in this Policy, that are not part of a 'quote' or legislative reference, have a meaning as outlined in the definitions section

PURPOSE

To provide consistent and accurate *valuations* for the purpose of rating and taxing in accordance with the *Valuation of Land Act 1971 (VL Act)* of *land*, by having appropriate regard to the *highest and best use* of the *land*.

This policy supersedes the VGP 06/2019 Highest and Best Use Policy of June 2019.

SCOPE

This policy relates to the determination of site value and capital value for all categories of *land*, except where the valuation needs to have regard to the notional value provisions of s 22A VL Act.

Example

Where the owner of residential or primary production land is entitled to the benefit of a notional value, the value is based on the actual use of the *land* and not the *highest and best use*.

BACKGROUND

For both site value and capital value the capital amount expected to be realised upon sale is the estimated amount for which the *land* should exchange on the *date of valuation* between a *willing buyer* and a *willing seller* in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

The recognition of the *willing buyer* and a *willing seller* concept involves valuation for the highest and best use for which the *land* is adapted. The prudent and well informed seller (whose existence must be assumed) would not willingly part with their land for a price less than that appropriate to its *highest and best use*; and the well-informed buyer would not expect to be able to purchase it for less.¹

It was in *Spencers case* (1907) 5 CLR 418 where it was made clear that a valuation must proceed by reference to the highest and best use of the *land*.

¹ Page 90, '*Land Valuation and Compensation in Australia*', Rost and Collins.

DEFINITION

Highest and best use is the use, from a participant² perspective, that would produce the highest value for an asset. The highest and best use must be:

- physically possible (where applicable);
- financially feasible;
- legally allowed; and
- result in the highest value.

If different from the current use, the costs to convert an asset to its highest and best use would impact the value.³

The asset in the case of this policy is the *land*.

A participant in this case are the market participant, being the *willing buyer* and a *willing seller*.

ASSUMPTIONS AND CONSIDERATIONS

Assumptions

In determining the *highest and best use* of the *land* for the purpose of determining a value under the VL Act the valuer must assume:

- The *land* is capable of being separately sold.
- The *estate in fee simple* in the *land* to be valued is *unencumbered* and the *valuation* is not of the taxpayer's interest in the *land*.
- The *willing buyer* and *willing seller* are hypothetical.

² In this case they are the market participant. See 20.8 (page 4), *Participant*, under International Valuation Standards (IVS) Effective 31 January 2020.

³ See 140, *Premise of Value – Highest and Best Use* (page 24), under International Valuation Standards (IVS) Effective 31 January 2020.

- For site value improvements on the *land* that are not exhausted are assumed to have not been made. These include buildings and structures, wells, dams, reservoirs and the planting of trees for commercial purposes.

Where the improvements are exhausted the valuer will need to give consideration as to how these improvements may affect the highest and best use, based on factors such as where these improvements are located on the *land* and the cost of demolition and site remediation.

- For site value improvements and structures in the nature of *site works* are not hypothetically ignored. These include:
 - reclamation of the *land* by draining or filling, and any retaining walls or other structures or works ancillary to that reclamation;
 - the excavation, grading or levelling of the *land*;
 - the removal of rocks, stone, sand or soil from the *land*; and
 - the clearing of timber, scrub or other vegetation.
- For capital value if the value of the *land* is enhanced by trees planted on the *land*, other than commercial trees, or trees preserved on the *land* for the purpose of shelter or ornament, the *capital value* must be determined as if the value of the *land* had not been so enhanced.
- For capital value trees planted for the primary purpose of commercial production of timber, or the prevention of degradation of *land*, or the disposal of effluent, or the provision of a habitat for wild life must not be taken into account in the *valuation* of the *land* (reg 11 VL Reg).

- For capital value any item of machinery, plant or equipment that is used in connection with the *land* being used for purposes that are in scope of this policy, or trade, manufactory or other business must not be taken into account in the *valuation* of the *land* where:
 - It is not fixed to the *land* or premises; or
 - It is fixed to the *land* or premises so as to be capable of being removed without structural damage, other than minor or trivial structural damage, to the *land* or premises.

- For capital value any main, pole, transformer, wire, pipe, machinery, plant or equipment that is used in the connection with the generation and supply of electricity, the supply of gas or water or the provision of sewerage and is erected on *land* occupied by a public utility undertaking⁴ to the supply or provision of such services must not be taken into account in the *valuation* of the *land*, unless:
 - It is electricity generating plant, and substations for converting, transforming or controlling electricity that are used by a body specified by proclamation under clause 3(2) of Schedule 1 of the *Electricity Corporations (Restructuring and Disposal) Act 1999*; and
 - are situated on *land* to which a proclamation under clause 3(3) of Schedule 1 applies.

⁴ Whether or not an agency or instrumentality of the Crown

Considerations

The following considerations as at the *date of valuation* must be had in determining the highest and best use of the *land*:

- To establish whether a use is physically possible, regard will be had to what would be considered reasonable by *participants*⁵. This will take into account the specifics of the *land* such as size, shape, topography, access, availability of services and the surrounds.

Gobbo J said at 92-93 in *Equity Trustees Executors and Agency Co Ltd v Melbourne and Metropolitan Board of Works* that the determination of highest and best use required that the land be considered with all its attributes, existing and potential, at the relevant moment for assessment of value.

- To reflect the requirement to be legally permissible, any legal restrictions on the use of the *land*, such as town planning/zoning designations, need to be taken into account as well as the likelihood that these restrictions will change.
- The requirement that the use be financially feasible takes into account whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical *participant*⁵, after taking into account the costs of conversion to that use, over and above the return on the existing use.
- Where the *land* is on a State/local heritage list take into account the fact that the *land* is on a heritage list in determining the highest and best use, including disregarding any potential use of the land that is

⁵ In this case they are the market participant. See 20.6, *Participant* (page 4), under International Valuation Standards (IVS) Effective 31 January 2020.

inconsistent with its preservation as a place of State or local heritage significance or value.

- Any site contamination on or in the land, even those brought about by the use of the *land* associated with the improvements.
- Known planning outcomes associated with development approval for the *land* should not be considered.
- For site value existing improvements on the *land* should not form the basis of an assumption that such development (and use associated with those improvements) will again be permitted under current planning controls.
- Regard is not to be given to any potential development approval associated with a SCAP assessment.

For Example



Development approval for allotment A should not be considered when determining site value. If planning approval on vacant land for an apartment building has been granted or already developed in the case of improved sites, no additional value will be attributed. The above position has been taken so that similar properties can be valued equally.

Two adjoining sites of the same area, one with development approval and one without will be valued the same.

All four allotments to be valued the same level given all have identical site areas and frontage dimensions – even though one site has approval for greater development. No consideration is to be given to possible SCAP assessments that may provide greater development opportunities, even where the development may exceed a cost of \$10 million.

- Sales evidence that include known planning outcomes when the price was negotiated between the buyer and seller, such as development and SCAP approvals, will need to be adjusted to account for the added value associated with approval. Where the purchaser seeks an approval following the negotiated purchase price, then the sale price does not need to be adjusted.

LSSA will maintain sales analysis in support of the adjustments required that can be accessed by the OVG.

For Example

Sale 1 in Capital City Zone (53m Height Limit); Site Area of 1000 square metres.

- Date of Sale 1/5/2018 Sale Price \$5000 per square metre ex GST. (No development approval at sale)
- Purchaser to seek approval for development to maximum permitted.
- No adjustment to sale required.

Sale 2 in Capital City Zone (53m Height Limit); Site Area of 980 square metres.

- Date of Sale 1/7/18 Sale Price \$5400 per square metre ex GST. (Development approval for maximum permitted residential included with sale)
- Purchaser has approval for development to exceed maximum permitted at time price was negotiated.
- Added value of approval to be removed from sale. Look to compare to similar sales with no approval.

- Any benefit to the *land* associated with being a *catalyst site* is to be ignored.

For Example

There are three adjacent assessments in a common ownership comprising:

1x 1300 square metre
1x 200 square metre
1x 100 square metre

With a total site area 1600 square metres.

These catalyst sites combined provide a development parcel of 1600 square metres, which under the current zone for each of the land may have a site value of \$4000 per square metre.

Land of 200 and 100 square metres respectively may have lower values if offered individually, where possible adjoining owner premiums are ignored.

In valuing each of the three individual parcels of land the valuer is to assume a hypothetical seller, and not a specific owner. As such they are not to be treated as a collective development site, and the highest and best use for each site must be determined ignoring any additional opportunity associated with the land being a catalyst site.

- For capital value the existing use of the *land* may be the highest and best use of the *land*, despite current planning controls no longer allowing the existing development and use. Often referred to as 'existing use rights'.
- For capital value consideration must be given to the improvements on the *land* being listed as a *Contributory Item* by the relevant Local Government, and the manner in which this may affect the *highest and best use* of the *land*. While it is conceivable that the *capital value* in this case may be less than site value, it is the Valuer-General's policy that *capital value* can be the same but not less than the *site value* for the *land*.

REFERENCES

Definitions

| | |
|--------------------------|---|
| Area | Has the meaning given to that term under s 5(1) of the VL Act. |
| Catalyst Sites | A collective of sites that when developed together unlock additional development opportunities, and therefore each site becomes more valuable than what it would be valued at on a stand-alone basis. |
| Capital Value | Has the meaning given to that term under s 5(1) of the VL Act. It is a statutory valuation used for the purposes of rating and taxing, and is the value of the <i>land</i> including structures and improvements. |
| Contributory Item | A Contributory Item is a surviving example of older buildings within historic (conservation) zones, which collectively, contribute positively to the historic and architectural character of a particular area. They do not however display sufficient merit to be individually listed as <i>Local Heritage Places</i> . |
| CV Guideline | Means Capital Value Guideline. It provides instruction on an acceptable approach to the valuation of the <i>land</i> for the purposes of determining a <i>capital value</i> . |
| Date of Valuation | <p>A <i>value</i> assigned to the <i>land</i> must be as at a date.</p> <p>For the purpose of a <i>general valuation</i> made under s 11 of the VL Act, the date of valuation is determined by the <i>Valuer-General</i> under s 12 of the VL Act. Currently the date of valuation for this purposes is 1 January each year.</p> <p>For the purpose of a <i>valuation</i> made under the s 15 <i>discretions</i> of the VL Act it is the date the determination of <i>value</i> is made, which can be different for the date of valuation for the <i>general valuation</i>.</p> |

Encumbered

Is where the *estate in fee simple* in the *land* is affected by private conditions, limitations, restrictive covenants and restrictions at general law that has a depreciatory effect on the value of the *land*.⁶

Both site value and capital value require the valuation to be of the unencumbered estate in fee simple in the *land*.

Estate in Fee Simple

The most common freehold estate granted by the Crown. An estate in fee simple is the greatest estate in *land* and is for practical purposes the equivalent to absolute ownership. Note, however, that in Australia, no person other than the Crown can 'own' land absolutely.

Fixtures

A fixture, as a legal concept, means any improvement, structure or physical property that by virtue of the degree and/or the intent is considered permanently attached (fixed) to the *Land* (real property), and becomes part of the *Estate in Fee Simple* in the *land* to be *valued*. Property not affixed to real property is considered personal chattels and are not included in the *valuation* of the *land*.

Local Heritage Places

Local heritage places are listed in Development Plans and are established through the Development Act 1993.

Local heritage places are stand-out examples of heritage buildings in a Local Government Area, but are not of significance to the State and meet the requirement to be considered a *State Heritage Place*.

Ground Rental

Refers to regular payments made by a holder of a leasehold interest to the owner or a superior leaseholder, for the right to separate physical occupation of the Land, but not associate with the use of any improvements upon the Land.

⁶ *CSR Limited v The Valuer-General*.

Example

The owner of the Land provides the opportunity for a lessee to occupy the Land for a ground rental to graze the land, store machinery, erect a communication tower, or build other improvements that the lessee owns and uses.

Highest and Best Use

Highest and best use is the use, from a participant⁷ perspective, that would produce the highest value for an asset. The highest and best use must be physically possible (where applicable), financially feasible, legally allowed and result in the highest value. If different from the current use, the costs to convert an asset to its highest and best use would impact the value.⁸

The asset in the case of this policy is the *land*.

A participant in this case are the market participant.

Land

The land comprised within a valuation assessment, or valuation record (see page 80, part 3.7.1.1 of the Valuation Service Operations Manual, LSA.

LSA

Land Services Agreement.

LSSA

Land Services SA, the Valuer-General's service provider.

Rating and Taxing Act

Has the meaning given to that term under s 5(1) of the VL Act.

S 15 Discretion

The Valuer-General may at any time, value or cause to be valued any *land* if the *land* has not previously been valued or separately valued under the VL Act, or if in the opinion of the Valuer-General the value of the *land* has been materially enhanced or diminished, or such a valuation is, for any reason whatsoever, necessary or expedient.

⁷ In this case they are the market participant. See 20.8, *Participant*, under International Valuation Standards (IVS) Effective 31 January 2020.

⁸ See 140, *Premise of Value – Highest and Best Use*, under International Valuation Standards (IVS) Effective 31 January 2020.

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|-----------------------------|---|
| SCAP | State Commission Assessment Panel. |
| Site Value | Has the meaning given to that term under s 5(1) of the VL Act. It is a statutory valuation used for the purposes of rating and taxing, and is the value of the <i>land</i> assuming structures and improvements had not been made, other than <i>site works</i> . |
| Site Works | Improvements and structures comprising: <ul style="list-style-type: none">– reclamation of the <i>land</i> by draining or filling, and any retaining walls or other structures or works ancillary to that reclamation;– the excavation, grading or levelling of the <i>land</i>;– the removal of rocks, stone, sand or soil from the <i>land</i>; and– the clearing of timber, scrub or other vegetation |
| State Heritage Place | State heritage places are established through the Heritage Places Act 1993 and are listed in the South Australian Heritage Register. |
| Unencumbered | For the purpose of assessing the value of the estate in fee simple in the land, the valuer ignores other interests in or restrictions on use of the land which are depreciatory of its value other than restrictions imposed by virtue of generally applicable legislation such as planning legislation. ⁹ |
| Value | Has the same meaning as defined in the VL Act, which is the <i>site value</i> , <i>capital value</i> , other values required under the VL Act, or any one or more of these values. |

⁹ With reference to *Trust Company of Australia v Valuer-General; Perpetual Trustee Company Ltd v Valuer-General* (2008) 101 SASR 110 at [58] per Bleby J with whom Duggan and Anderson JJ agreed.

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| Valuer-General | A statutory officer appointed by the Governor and accountable to Parliament who has the general administration of the VL Act, who will in valuing any land, or performing any statutory functions as Valuer-General, exercise an independent judgement and not be subject to direction from any person. |
| Valuation, to value, determination of value and valued | Has the same meaning as defined in the <i>VL Act</i> , which includes the meaning that it is the determination or assessment of <i>site value</i> or <i>capital value</i> , or other value as required under the <i>VL Act</i> . |
| VGD | Valuer-General Direction – an instruction for a task to be undertaken in a particular manner, or the way an issue is to be addressed. |
| VGG | Valuer-General Guideline – aimed at providing guidance around a particular issue or an aspect of a policy. |
| VGP | Valuer-General Policy – sets the approach in which the powers and functions of the VL Act are to be undertaken, or the conduct and procedures within the Office. |
| VL Act | <i>Valuation of Land Act 1971.</i> |
| VL Reg | <i>Valuation of Land Regulations 2020.</i> |
| Willing Buyer & Willing Seller¹⁰ | A willing buyer refers to one who is motivated, but not compelled to buy. This buyer is neither over eager nor determined to buy at any price. This buyer is also one who purchases in accordance with the realities of the current market and with current market expectations, rather than in relation to an imaginary or hypothetical market that cannot be demonstrated or anticipated to exist. The assumed buyer would not pay a higher price than the market requires. The present owner is included among those who constitute “the market”. |

¹⁰ International Valuation Standards (IVS) Effective 31 January 2020, paragraph 30.2 (d) and (e), page 19.

A willing seller is neither an over eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be. The factual circumstances of the actual owner are not a part of this consideration because the willing seller is a hypothetical owner.

The asset in the case of this policy is the *land*.

Legislation

- *Valuation of Land Act 1971*
- *Valuation of Land Regulations 2020*

Case Law

- Spencers case (1907) 5 CLR 418
- *Equity Trustees Executors and Agency Co Ltd v Melbourne and Metropolitan Board of Works* (1993) 81 LGERA 86
- *Park v Allied Mortgage Corporation Ltd* (unreported, FCA, 5 July 1995)
- *Trandos v Western Australian Planning Commission* (2001) 117 LGERA 257
- *ISPT Pty Ltd v City of Melbourne* [2007] VCAT 652

Policy

- This policy supersedes the VGP 06/2019 Highest and Best Use Policy of June 2019.

Standards and References

- International Valuation Standards – Effective 31 January 2020, International Valuation Standards Council.
- Rost RO and Collins HG, *Land Valuation and Compensation in Australia*, Australian Institute of Valuers and Land Economists (incorporated), Third Edition reprinted 1991, Southwood Press Pty Ltd.

DOCUMENT CONTROL

Version

| Version | Status | Date | Prepared By | Comments |
|---------|--------|----------------|-------------|--|
| 2.0 | Final | 27 August 2020 | S Howson | <p>A Smit prepared document.</p> <p>Supersedes v1.0 VGP 06/2019 Highest and Best Use.</p> <p>Updates made to Valuation of Land Regulations references to reflect 2020 not 2005.</p> <p>Updates made to International Valuation Standards to reflect 2020 not 2017.</p> |

Approval

| Name and Position | Signature and Date |
|--|---|
| <p>Katherine Bartolo Valuer-General</p> |  <p>27 August 2020</p> |

This policy supersedes the VGP 06/2019 Highest and Best Use Policy of June 2019 as at the date of approval.

Next Review

| Date | Comments |
|----------------|---|
| 27 August 2022 | Bi-Annual policy review. May be reviewed sooner following release or as needed. |