

## Valuer-General's Policy

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VGP 08/2020

Open Space, Recreation and Restricted Land Use

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Approved 27 August 2020

## CONTENTS

PURPOSE .....	3
SCOPE .....	3
BACKGROUND AND CONTEXT .....	4
ASSUMPTIONS AND CONSIDERATIONS .....	5
Site Value .....	5
Valuation Assumptions .....	5
Valuation Considerations .....	6
Further Considerations .....	7
SV Valuation .....	7
Methods and Sales Analysis .....	7
Capital Value .....	10
Valuation Assumptions .....	10
Valuation Considerations .....	11
Further Considerations .....	13
CV Valuation .....	13
Methods and Sales Analysis .....	13
REFERENCES .....	18
Definitions .....	18
Legislation .....	26
Case Law .....	26
Policy .....	26
Standards and References .....	27
DOCUMENT CONTROL .....	28
Version .....	28
Approval .....	28
Next Review .....	29

**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* zoned or set aside for recreation or open space purposes or that is restricted in use in a manner that can be considered under this policy.

This policy replaces the '*Valuation of Restricted Open Space (Passive Recreation) Directive*' of September 2010 and supersedes the VGP 05/2019 Open Space Recreation and Restricted Land Use Policy of May 2019.

## SCOPE

This policy relates to the category of *land* that is *encumbered* by:

1. The following broad zoning categories:
  - Recreation;
  - Public Purpose;
  - Linear Park;
  - Moss (Rec);
  - Special Use (open space character); and
  - Open Space (OS).
2. A proclamation to preserve the land as open space (s 62(1) *Planning Act 1982 [repealed]*). Commonly referred to as *proclaimed open space*.

This policy is also to be used when directed to by other Policy, Direction or Guideline.

## Example

Examples of land uses that fall within the above categories include golf courses, racecourses, and other extensive recreation uses.

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## BACKGROUND AND CONTEXT

Land within the scope of this policy does not transact frequently in urban or metropolitan locations, consequently available market evidence is limited, if available at all. The valuation of this category of property is a specialised activity requiring considerable research to be undertaken and professional judgement to be applied.

The appropriate valuation methodology to be considered in valuing such land has been the focus of various valuation articles and court precedent. A brief summary is provided as follows:

- *Corrie and Another v McDermott*

Land subject to restrictions needs to be valued with the effect of those restrictions taken into consideration. The valuer needs to determine the amount the market value of the land should be reduced by to adequately reflect the extent of the restrictions. This will require not only consideration of the restrictive use itself, but also whether a potential exists for the restriction(s) to be removed.

- *Port Macquarie West Bowling Club v The Minister*

His Honour Mr. Justice Else-Mitchell said:

*“There can be little doubt that the task of valuing lands which are subject to restrictions under a prescribed planning scheme ordinance bristles with difficulties if sales data of land subject to similar restrictions are not available for comparison.... It was common ground that there were no sales of land similarly zoned and that left little option to the valuers but to use sales of land differently zoned, subject to a deduction for such differences as a basis for determining the value or price of the subject land.”*

## ASSUMPTIONS AND CONSIDERATIONS

### Site Value

#### Valuation Assumptions

In line with the definition of *site value* under s 5(1) of 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 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 *willing buyer* and *willing seller* are hypothetical.
- 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.
- 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.

### Valuation Considerations

The following considerations as at the *date of valuation* must be reflected in the *valuation*:

- The *highest and best use* of the *land*.
- The physical condition, location, surroundings and all interests or restrictions imposed by generally applicable legislation on the *estate in fee simple* in the *land*.

In this case the category of land that falls within the scope of this policy is *encumbered* at general law by restrictive zoning or proclaimed open space (and in some cases both), and the consequential depreciatory effect on value cannot be ignored.

The physical aspects of the land for this category must always be considered carefully, as these will have a significant effect on the level of *value*.

### Example

Land which forms part of a waterway or creek will have a lower value than that of a level allotment that can be utilised for a variety of recreational related uses.

- Where the *land* is on a State/local heritage list take into account the fact that the *land* is on a heritage list in the *valuation*, including disregarding any potential use of the land that is inconsistent with its preservation as a place of State or local heritage significance or value (s 22B VL Act).

- Consideration must be given to any site contamination on or in the land, even those brought about by the use of the land associated with the improvements.

### Further Considerations

Where the *land* is subject to *proclaimed open space* the *valuation* of the *land* must be assessed on the basis that the *land* cannot be divided or used for any purposes not in keeping with its character as an open space (s 62(3)(b) *Planning Act 1982* [repealed]).

### SV Valuation Methods and Sales Analysis

*Valuation by Direct Comparison* is the preferred method to value this category of *land*. Care must be taken in comparing the subject land with *Comparable Sales* evidence of other recreation, open space and restricted land where the level of restrictions are different.

Where directly comparable sales evidence is not available, a *Discount Methodology* can be utilised.

This methodology starts by adopting an **initial value** for the *land* based on a higher and better alternative use, then applying a **discount**.

### **Initial Value**

In establishing the initial value for the *land*, consideration must be given to:

1. Establishing the alternative higher and better use, which is done by having regard to the prevailing use of the surrounding area as at the *date of valuation*.

#### **For Example**

Alternative higher and better uses can comprise residential, commercial, industrial and rural.

2. Determining a *value* of the *land* as at the *date of valuation* for this alternative higher and better use, utilising *Direct Comparison*.

*Comparable Sales* evidence that indicates the value level of this alternative use must then be considered and should reflect a similar area, nature, location and use. Where the *land* is of the size that it would have subdivision potential as this alternative use, the evidence will incorporate *In Globo* land sales relevant to the *date of valuation*.

#### **For Example**

A small reserve of 600 square metres, surrounded by residential housing, would suggest the prevailing alternative higher and better use is residential. The initial value of this land must be undertaken on *Direct Comparison*, and the *Comparable Sales* evidence would be comparable house blocks based on considerations such as size, location and physical attributes.

The *initial value* for the *land* will have regard to *site works*.



### **Discount**

The amount of discount to be applied will fit in the range of 70% to 95%.

The decision as to where the discount will sit within this range will depend on the valuer's professional judgement as to the severity of the restriction on the use of the land and its effect on value as a consequence of:

1. Zoning;
2. *Open Space proclamation*;
3. An alternative restriction referred to in another policy, guideline or directive that references this policy to be applied;
4. A combination of the above; and
5. The observable potential as at the *date of valuation* for the restrictions in place to be lifted, and the level of difficulty of removing the restriction itself.

The less likelihood of the restriction being lifted will require a higher discount rate to be applied, with each restriction in place being assessed on its own merits.

The value arrived at following the calculation of [*initial value* x (1-*discount*)] is inclusive of any value associated with site works.

Where the *land* comprises a portion of its area affected by restrictions inside the scope of this policy, and the balance not so restricted, then the *valuation* of the *land* can be undertaken on a *piecemeal* approach, where the balance will be valued:

1. Using *Direct Comparison* for that portion of the balance of the land that has no ground rental income associated with a right to separate physical occupation over that portion.

And

2. Where there is a portion of the balance of the *land* that has a ground rental income associated with a separate physical occupation, that is:
  - not temporary; or
  - seasonal in nature; and
  - is inconsistent with a recreational use.

that portion of land is to be valued utilising *Capitalisation of Income Approach*.

## Capital Value

### Valuation Assumptions

In line with the definition of *capital value* under s 5(1) of 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 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.

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.

- The *willing buyer* and *willing seller* are hypothetical.

### Valuation Considerations

The following considerations as at the *date of valuation* must be reflected in the valuation:

- The *highest and best use* of the *land*.
- The physical condition, location, surroundings and all interests or restrictions imposed by generally applicable legislation on the *estate in fee simple* in the *land*.

In this case the category of land that falls within the scope of this policy is *encumbered* at general law by restrictive zoning or proclaimed open space (and in some cases both), and any consequential depreciatory effect on value cannot be ignored.

The physical aspects of the land for this category must always be considered carefully, as these will have a significant effect on the level of *value*.

### Example

Land which forms part of a waterway or creek will have a lower value than that of a level allotment that can be utilised for a variety of recreational related uses.

- Where the *land* is on a State/local heritage list take into account the fact that the *land* is on a heritage list in the *valuation*, including disregarding any potential use of the land that is inconsistent with its preservation as a place of State or local heritage significance or value (s 22B VL Act).
- Consideration must be given to any site contamination on or in the land.
- 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).
- 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
- 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 undertaking<sup>1</sup> to the supply or provision of such services must not be taken into account in the *valuation* of the *land*, unless:

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<sup>1</sup> Whether or not an agency or instrumentality of the Crown

- 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.

### Further Considerations

Where the *land* is subject to *proclaimed open space* the *valuation* of the *land* must be assessed on the basis that the *land* cannot be divided or used for any purposes not in keeping with its character as an open space (s 62(3)(b) *Planning Act 1982* [repealed]).

### CV Valuation Methods and Sales Analysis

#### No Improvements

For *land* where there are no improvements or structures other than those considered to be *site works*, the *capital value* is determined on the same basis as *site value*.

#### Non-Compliant Existing Use – Is Highest and Best Use

Where there is an existing non-complying use for the whole of the *land*, which is:

1. associated with the use of *fixtures* (improvements) on the land; and
2. is considered the *highest and best* of the *land* based on existing use rights.

then the *capital value* is determined utilising the most appropriate methodology for that use. For commercial and retail activities it is expected that this will be the *Capitalisation of Income Approach*. Where *valuation by Direct Comparison* is the preferred methodology care must be taken in comparing the subject land with *comparable sales* evidence.

### Example

An old hotel is situated upon *land* that is zoned Moss (Rec), which is trading successfully.

While the use of the land to run a hotel is non-compliant based on the current zoning of the land, it continues to operate based on existing use rights. This commercial use of the land is considered to be the highest and best use of the land and the capital value is to be determined on the *Capitalisation of Income Approach*.

In contrast the site value requires the assumption that the improvements associated with the old hotel had not been made, and the value is determined having regard to the restrictive zoning as outlined under the heading SV Valuation Methods and Sales Analysis.

### **Use of Improvements Are Consistent with Restrictions**

Where there are improvements and structures on the land considered to be fixtures and are not in the nature of *Site Works*, which are being utilised for a use consistent with the purpose of the restrictions, the *valuation* of the *land* can be undertaken on a *Summation Method*, where:

- a) the land component can be calculated on the approach outlined under the heading **SV Valuation Methods and Sales Analysis**; and

- b) the added value of fixtures can be determined utilising *DRC*.

But

- c) Where there is a portion of the land that sits outside the scope of this policy, where the highest and best use is subdivision potential or redevelopment to an alternative higher use, then careful consideration must be given to the added value of fixtures if any.
- d) Where fixtures are the subject of separate physical occupation, that is:
- not temporary; or
  - seasonal in nature; and
  - inconsistent with a recreational use

then the market rental income for that occupation is utilised in valuing the occupation based on the *Capitalisation of Income Approach*, which becomes one component of the *Summation Method*. In this case the area of land associated with this occupation is removed from the calculation at a) and the improvements associated with this occupation are not incorporated in the calculations at b).

### Example

A 45-hectare golf course, zoned special use and proclaimed open space.

Capital improvements consist of a 25-year old 400 square metre brick and galvanised iron clubrooms, and machinery shed. The prevailing surrounding land use is low to medium density residential. *Comparable Sales* evidence of *In Globo* residential land of this nature indicates a value of \$160 - \$180 per square metre.

A discount factor of 90% is considered appropriate in this instance given the level of zoning restrictions, and the impact of the proclamation. This rate is inclusive of an allowance that recognises the site's open character.

#### Capital Value Calculation

##### *Initial Value for Land Component*

– 450 000m<sup>2</sup> @ \$160/square metres: \$72 000 000

##### *Discount*

– 90% allowance for restrictions: \$64 800 000

##### *Value of Land Component*

– initial value x (1 – discount): (A) \$ 7 200 000

##### *Structural Improvements*

– DRC of Clubrooms 500 sq m x \$500: \$ 250 000  
– DRC of Sheds: \$ 50 000

Total improvements: (B) \$ 300 000

##### *Capital Value Calculation*

– Land (A) + Improvements (B): \$7 200 000 + \$300 000  
= \$ 7 500 000

#### Capital Value Calculation (with phone tower)

Where there is a phone tower on the land, occupying 50 square metres on a ground rental of \$10 000 nett per annum, with a capitalisation rate of 15% as derived from sales evidence, the separate physical occupation will add further value in line with the *Capitalisation of Income Approach*.



VGP 08/2020

## Open Space, Recreation and Restricted Land Use

### *Initial Value for Land Component (excluding area occupied for phone tower use)*

- 449 950m<sup>2</sup> @ \$160/square metres: \$71 992 000

### *Discount*

- 90% allowance for restrictions: \$64 792 800

### *Value of Land Component*

- initial value x (1 – discount): (A) \$ 7 199 200

### *Structural Improvements*

- DRC of Clubrooms 500 sq m x \$500: \$ 250 000
- DRC of Sheds: \$ 50 000

Total improvements: (B) \$ 300 000

### *The Added Value of Phone Tower Occupation*

- Capitalisation of Income Approach:
 

rental/  
capitalisation rate  
10 000/.15  
= \$66 667

say (C) \$67 000

### *Capital Value Calculation*

- Land (A) + Improvements (B) \$7 199 200 + \$300 000 +  
+ Occupation (C): \$67 000  
= \$7 566 200

Say for Capital Value \$7 565 000

## REFERENCES

### Definitions

<b>Area</b>	Has the meaning given to that term under s 5(1) of the VL Act.
<b>BC Act</b>	The <i>Burial and Cremation Act 2013</i> .
<b>Capital Value</b>	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.
<b>Capitalisation of Income Approach</b>	A permitted valuation methodology in accordance with the LSA, described as Income Approach as outlined under page 63, part 3.2.4.21 of the Valuation Services Manual, LSA.
<b>Comparable Sales</b>	<p>Are market transactions (sales) that have similarity to the <i>Land</i> to which the <i>value</i> is being determined.</p> <p>In considering the weight to be given to the evidence of sales of other lands when determining such <i>value</i>, regard shall be given to the time at which such sales took place, the terms of such sales, the degree of comparability of the lands in question and any other relevant circumstances.</p> <p>The following, an extract from the most recent Supreme Court Decision in the Jam Factory case, refers to comparable sales.</p> <p>As is implicit in the essence of the valuation process is the assessment of comparable sales, making adjustments to the extent necessary so that the process is one which involves, as nearly as possible, comparing “like with like”. This process was helpfully discussed by Morris J (sitting as President of VCAT) in <i>ISPT Pty Ltd v City of Melbourne</i>:</p>

“It is sometimes thought that sales are either comparable or not comparable: that is, a binary paradigm should be used to classify sales. In my opinion, this is a flawed approach. Rather there will be gradations of comparability: from identical to irrelevant. As this scale of comparability approaches the irrelevant end, there will be many sales that offer so little assistance that they ought be disregarded. Further, there will be circumstances where there is a sale or sales that are strongly comparable; in which case there will be no need to closely analyse other sales, even though these may be comparable in some way.

The comparable size, location and condition of land must also be taken into account in a similar way. Similarly, the use to which land might be put must be considered. This exercise might produce the result that a sale is so dissimilar that it should be disregarded; or it might produce the outcome that a sale needs to be adjusted before being applied; or it might produce the outcome where a sale is given more or less weight in the exercise of a valuation judgment.”

**CV Guideline**

Means Capital Value Guideline. It provides instruction on an acceptable approach to the valuation of the *land* for the purposes of determining a *capital value*.

**CV Valuation  
Methods and Sales  
Analysis**

Capital Value Valuation Methods and Sales Analysis

**Date of Valuation**

A *value* assigned to the *land* must be as at a date.

For the purpose of a *general valuation* made under s 11 of the VL Act, the date of valuation is determined by the *Valuer-General* under s 12 of the VL Act. Currently the date of valuation for this purpose is 1 January each year.

For the purpose of a *valuation* made under the s 15 *discretions* of the VL Act it is the date the determination of *value* is made, which can be different for the date of valuation for the *general valuation*.

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<b>General Valuation</b>	Has the meaning given to that term under s 5(1) of the VL Act. It is the process by which all <i>land</i> within an area is valued, in so far that value is required for rating and taxing under provision of any <i>rating and taxing Act</i> , in accordance with s 11 of the VL Act
<b>DRC</b>	Depreciated Replacement Cost. A permitted valuation methodology in accordance with the LSA, described under Cost Approach as outlined under page 64, part 3.2.4.21 of the Valuation Services Manual, LSA.
<b>Direct Comparison</b>	<p>A permitted valuation methodology in accordance with the LSA, described as Market Approach as outlined under page 64, part 3.2.4.21 of the Valuation Services Manual, LSA.</p> <p>The Market Approach provides an indication of value by comparing the asset with identical or comparable (that is similar) assets for which price information is available.<sup>2</sup></p> <p>In the case of this policy the asset is land.</p>
<b>Discount Methodology</b>	A methodology that starts by adopting a value for the restricted <i>land</i> based on a higher and better alternate use, then applying a discount that reflects the restricted use of the land, while also having the potential for the restrictions in place to be lifted.
<b>Encumbered</b>	<p>Is where the <i>estate in fee simple</i> 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 <i>land</i>.<sup>3</sup></p> <p>Both site value and capital value require the valuation to be of the unencumbered estate in fee simple in the land.</p>

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<sup>2</sup> See 20.1, *Market Approach*, under International Valuation Standards (IVS) Effective 31 January 2020.

<sup>3</sup> *CSR Limited v The Valuer-General*.

**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*.

**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.

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 participant<sup>4</sup> 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

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

the current use, the costs to convert an asset to its highest and best use would impact the value.<sup>5</sup>

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

A participant in this case are the market participant.

**In Globo**

Is a term frequently applied to land which, although not subdivided, would find a market if subdivided into a number of allotments or small areas.<sup>6</sup>

**Open Space,  
Recreation and  
Restricted Land Use  
Policy**

Valuer-General's Policy VGP 08/2020.

**Piecemeal**

Is a valuation approach that looks to value each component of the land using appropriate valuation approaches and methods, and then add the value of each component together to arrive at the value of the land as a whole.

**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

**Rating and Taxing Act**

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

**Relevant Authority**

For a cemetery this means the cemetery authority, or for a natural burial ground this means the person or body for the time being is responsible for the administration of the natural burial ground, or for a crematorium this means the person or body for the time being in charge of the crematorium.

<sup>5</sup> See 140, *Premise of Value – Highest and Best Use*, under International Valuation Standards (IVS) Effective 31 January 2020.

<sup>6</sup> Page 552, *'Land Valuation and Compensation in Australia'*, Rost and Collins.

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### **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.

### **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 *land* assuming structures and improvements had not been made, other than *site works*.

### **Site Works**

Improvements and structures comprising:

- 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.

### **Summation Method**

A permitted valuation methodology in accordance with the LSA, described under Cost Approach as outlined under page 64, part 3.2.4.21 of the Valuation Services Manual, LSA.

The Cost Approach includes the summation method, which is a method that calculates the value of an asset by the addition of the separate values of its component parts.<sup>7</sup>

In the case of this policy the asset is land.

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<sup>7</sup> See 70.1(c), under *Cost Approach Methods*, within International Valuation Standards (IVS) Effective 31 January 2020.

<b>SV Guideline</b>	Means Site Value Guideline. It provides instruction on an acceptable approach to the valuation of the <i>land</i> for the purposes of determining a <i>site value</i> .
<b>SV Valuation Methods and Sales Analysis</b>	Site Value Valuation Methods and Sales Analysis
<b>Unencumbered</b>	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. <sup>8</sup>
<b>Value</b>	Has the same meaning as defined in the <i>VL Act</i> , which is the <i>site value</i> , <i>capital value</i> , other values required under the <i>VL Act</i> , or any one or more of these values.
<b>Valuer-General</b>	A statutory officer appointed by the Governor and accountable to Parliament who has the general administration of the <i>VL Act</i> , 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.
<b>Valuation, to value, determination of value and valued</b>	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> .
<b>VGD</b>	Valuer-General Direction – an instruction for a task to be undertaken in a particular manner, or the way an issue is to be addressed.

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<sup>8</sup> 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.



<b>VGG</b>	Valuer-General Guideline – aimed at providing guidance around a particular issue or an aspect of a policy.
<b>VGP</b>	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.
<b>VL Act</b>	<i>Valuation of Land Act 1971</i>
<b>VL Reg</b>	<i>Valuation of Land Regulations 2020</i>
<b>Willing Buyer and Willing Seller<sup>9</sup></b>	<p>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”.</p> <p>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.</p>

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<sup>9</sup> International Valuation Standards (IVS) Effective 31 January 2020, paragraph 30.2, page 18.

## Legislation

- *Valuation of Land Act 1971*
- *Valuation of Land Regulations 2020*
- *Section 62 of the Planning Act, 1982 [repealed]*

## Case Law

- *Harry v The Valuer-General & The State of South Australia* (1975) 12 SASR.
- *Trust Company of Australia v Valuer-General; Perpetual Trustee Company Ltd v Valuer-General* (2008) 101 SASR.
- *Corrie and Another v McDermott* [1914] AC 1056 (“Corrie’s Case”).
- *Port Macquarie West Bowling Club v. The Minister.*
- *Royal Sydney Golf Club v. Federal Commissioner of Taxation* [1955].
- *Blacktown City Council v. Roads and Traffic Authority of NSW* [2006].
- *City of Brighton v. Road Construction Authority* [1985].
- *CSR Limited v The Valuer-General* (1977) 17 SASR 446.

## Policy

- This policy replaces the ‘*Valuation of Restricted Open Space (Passive Recreation) Directive*’ of September 2010.
- This policy supersedes the VGP 05/2019 Open Space Recreation and Restricted Land Use Policy of May 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

VGP 08/2020


Open Space, Recreation and Restricted Land Use

## 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 05/2019 Open Space, Recreation and Restricted Land 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
Katherine Bartolo <b>Valuer-General</b>	 27 August 2020

This policy replaces the '*Valuation of Restricted Open Space (Passive Recreation) Directive*' of September 2010 and supersedes the VGP 05/2019 Open Space Recreation and Restricted Land Use Policy of May 2019 as at the date of approval.

Office of the Valuer-General

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Approved: 27 August 2020

Page 28 of 29

VGP 08/2020

Open Space, Recreation and Restricted Land Use

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### Next Review

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