

Valuer-General's Policy

VGP 10/2022

Open Space, Recreation and Restricted Land Use

Approved: 28 October 2022

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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 Valuer-General's Guideline VGG 05/2022 - Glossary of Terms and Definitions

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 supersedes the VGP 08/2020 Open Space Recreation and Restricted Land Use Policy of August 2020.

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 (Part 15, s 37) *Planning, Development and Infrastructure Act 2016*. 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.

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 consider 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 (Part 15, s 37) *Planning, Development and Infrastructure Act 2016*.

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 restriction is 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*.

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*.

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 consider 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 wildlife must not be considered in the *valuation* of the *land* Reg 10(1)(c) *Valuation of Land Regulations* 2020 (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 considered 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 undertaking¹ to the supply or provision of such services must not be considered 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.

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 (Part 15, s 37) *Planning, Development and Infrastructure Act 2016*.

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 Whether or not an agency or instrumentality of the Crown

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 Depreciated Replacement Cost (*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.

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Capital Value Calculation*Initial Value for Land Component*

- 450 000m² @ \$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*.

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

- 449 950m² @ \$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

Legislation

- *Valuation of Land Act 1971*
- *Valuation of Land Regulations 2020*
- *Planning, Development and Infrastructure Act 2016*
- *Electricity Corporations (Restructuring and Disposal) Act 1999*

Case Law

Whilst not directly referenced in this VGP, the following case law findings are relevant to open space recreation and restricted *land* uses.

- *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.

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Policy

- This policy supersedes the VGP 08/2020 Open Space, Recreation and Restricted Land Use Policy of August 2020.
- VGG 05/2022 – Glossary of Terms and Definitions

Standards and References

N/A

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Open Space, Recreation and Restricted Land Use

DOCUMENT CONTROL


Version

Version	Status	Date	Prepared By	Comments
2.0	Biennial Review	30 August 2022	Jarrad Laws	Reviewed - Supersedes v2.0 VGP 08/2020 Open Space, Recreation and Restricted Land Use. Minor changes required.
2.1	First Draft	30 August 2022	Jarrad Laws	Removal of definitions. Minor formatting and grammatical changes.
2.1	Review of v2.1	12 September 2022	Selina Howson	Reviewed and feedback to v2.1 provided.
2.2	Second Draft	13 September 2022	Jarrad Laws	Amended to current legislation and approval month.
2.2	Review of v2.2	23 September 2022	Selina Howson	Reviewed and feedback to v2.2 provided.
2.3	Final Draft	30 September 2022	Jarrad Laws & Selina Howson	Final edits.
3.0	Final	28 October 2022	Selina Howson	Draft watermark removed and v3.0 approval received.

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Open Space, Recreation and Restricted Land Use

Approval

Name and Position	Signature and Date
Katherine Bartolo Valuer-General	 28 October 2022

This policy supersedes the VGP 08/2020 Open Space Recreation and Restricted Land Use Policy of August 2020 as at the date of approval.

Next Review

Date	Comments
28 October 2024	Biennial policy review. May be reviewed sooner following release or as needed.