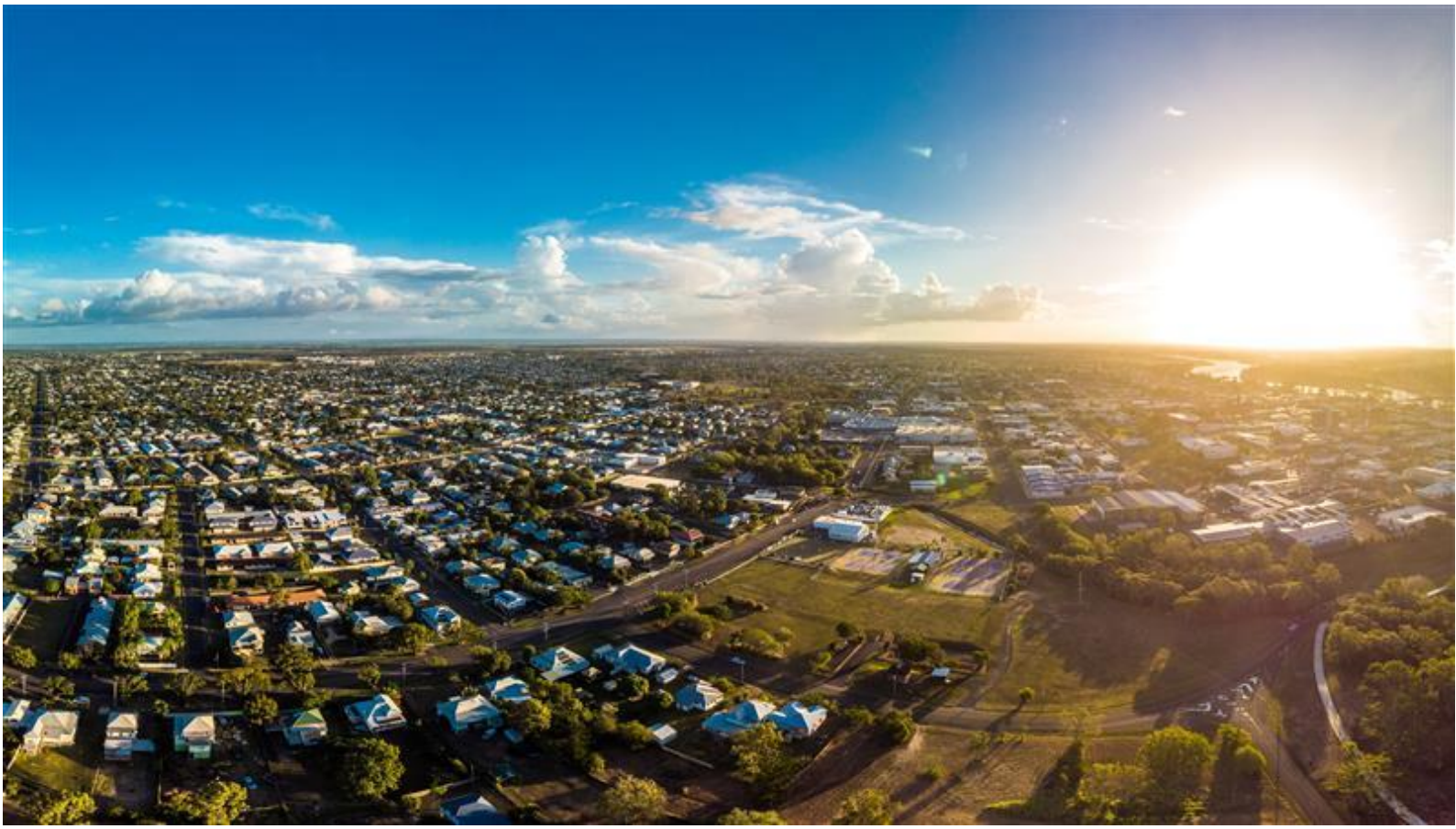
Department of **Natural Resources and Mines, Manufacturing, and Regional and Rural Development**



Guideline - Statutory valuation of contaminated land

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Queensland Government

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Approval

Position	Name	Date
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Introduction

This guideline provides guidance on the statutory valuation of land that has been contaminated, in accordance with the *Land Valuation Act 2010* (LVA).

The Valuer-General's Technical Advisory Panel was established to assist in the development of technical guidance for statutory valuations. Input and advice from industry groups has been welcomed and, where appropriate, incorporated into this document.

Each year, the Valuer-General issues land valuations in local government areas across the state. In accordance with the legislative requirements, the Valuer-General's decision to value Local Government Areas (LGAs) follows consultation with councils, local and industry, stakeholder groups, and consideration of property market survey analysis.

The statutory land valuations data is used for determining state land rentals and is used as an input to rating and land tax considerations by local governments and the Queensland Revenue Office (QRO).

The fundamentals of valuation practice are relatively stable, but the valuation profession and its standards and practices, are evolving to remain contemporary and keep pace with changes in the property market. The challenge of professional practice is to continue to adapt to changes in the property market and operating environment and meet stakeholder expectations.

It is important that landowners and prospective landowners have confidence in statutory valuations. To ensure public confidence in the statutory valuation framework, the following information has been published outlining the approach taken for the valuation of particular property matters.

The LVA is recognised as the primary reference in all statutory land valuation matters. Where any inconsistency or lack of clarity exists in the interpretation of this guideline, the LVA prevails.

This guideline should be viewed as an important link between the legislation, the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development, and the professionals who undertake statutory land valuations. As such, this guideline will be regularly reviewed by the Valuer-General to ensure its contents reflect current practices, procedures and legislation.

Relevant legislation:

Land Valuation Act 2010

Environmental Protection Act 1994

Overview

Land may be contaminated over time through activities relating to the existing site use or a previous use.

Examples of land uses that may result in land contamination include, but are not limited to, service stations, power stations and transformer sites, sites used for extractive industries such as mining and petroleum, and heavy industry. Land contamination can also occur through an isolated incident, such as accidental waste disposal, chemical spill, incorrect storage of materials or spread through environmental factors such as high winds or flood waters.

If the landowner is seeking a reduction in the land's site value due to contamination, it is the landowner's responsibility to notify the valuer of the level of contamination, type of contamination and associated cost to rectify. To remove any doubt, if the use that caused the contamination can continue on the site, then no allowance will be considered.

The management of contaminated land in Queensland falls under the authority of the Department of Environment, Tourism, Science and Innovation (DETSI). DETSI administers the *Environmental Protection Act 1994* (EP Act), which includes investigating, reporting, and managing contaminated land in the state. This department also manages the public land registers where contaminated sites and potential contamination are listed – the Environmental Management Register (EMR) and Contaminated Land Register (CLR).

DETSI's Duty to Notify of Environmental Harm guideline explains the circumstances around when the department should be notified about actual or potential contamination, as well as who is responsible for that notification under the EP Act. Notification of land contamination may result in the land being listed on the EMR or the CLR, or an existing listing in one of these registers being amended.

This guideline uses the definition of contaminated land from the EP Act: 'land contaminated by a hazardous contaminant'[1]. Examples of contaminants include sewage leaks, PFAS (perfluoroalkyl and polyfluoroalkyl substances)-treated materials in landfill or oil spilling from underground storage tanks. Land must be reviewed in its original state and in its contaminated state. The extent of contamination and any works to manage or remedy the contamination must also be considered when assessing land values[2].

[1] Environmental Protection Act 1994 (Qld), sch. 4

[2] Land Valuation Act 2010 (Qld), s. 23

Valuation Methodology

This section outlines key considerations or steps taken when assessing land that has been or is potentially affected by contamination.

Review relevant registers

To determine if a site has been, or will potentially be, affected by contamination, first check the Queensland Government's Environment Management and Contaminated Land registers (as explained above). These registers will help determine if contamination has been reported or if a previous use of the site has, or could, lead to potential contamination.

Note, in some cases, the existence of contamination and/or the extent of that contamination may not be immediately recognised or recorded. A site's exclusion from the land registers does not automatically mean the site is not affected by contamination.

A landowner may also alert a valuer to the existence of contamination and provide a report detailing the level of contamination and an estimate of remediation work and costs.

Effect of contamination on value and land use

Contamination can affect properties differently, requiring the impact of contamination to be assessed on a case-by-case basis for statutory valuation purposes. Contamination issues to consider may include the type and extent of contamination, the property type and location, the past, current and intended use of a property, remediation requirements, market or public perceptions and relevant regulatory requirements.

Highest and Best Use (HBU) - Current use

If the current use of the property is considered the highest and best use i.e. as an existing service station, then typically no allowance for contamination would need to be made.

HBU - Alternate use

Where the HBU is an alternate use that requires a certain level of decontamination, the specific contamination status of the land must be taken into consideration. However, the onus is on the landowner to prove the level and type of contamination. This form of proof is usually provided via a site investigation report, or other reports (as outlined in the EP Act[3]), such as a site management plan, site suitability statement or a validation report.

[3] Environmental Protection Act 1994 (Qld), s. 388-408

The requirement for the landowner to provide proof of contamination was highlighted in the 1996 Land Appeal Court case between Caltex Oil (Australia) and Department of Lands[4]. The Land Court judgement criticised Caltex for not providing a site investigation report to justify its position, stating '... the extent of the reduction (if any) in the unimproved value of the land must be determined by reference to evidence of the actual or probable cost of remediation. Where there is insufficient evident to establish that the land is, or is highly likely to be, significantly contaminated, the allowance made for the effect of the contamination should be small'.

Sites recorded on the EMR

A site recorded on the EMR typically indicates an at-risk current use[5]. It is likely actual contamination of the land is unproven, however there is a possibility the land has been contaminated by a notifiable activity under the EP Act[6].

In this situation, it is expected that a prudent vendor and purchaser would commission a site investigation report prior to sale. As such, the cost of undertaking this reporting process would be a consideration. An allowance for this report is considered appropriate, as outlined in the 1996 Caltex case[7] mentioned above. The removal of tanks and structures will not be considered[8].

Sites recorded on the CLR

A site on the CLR indicates that contamination has been identified on the property[9].

If land has been contaminated, the onus is on the landowner to provide costs for site remediation and undertake the relevant reporting, which will be considered in the assessment (for example, see Caltex case). Again, if the proposed cost allowance derives a land value below that of the current use, an alternate use that does not require such decontamination costs may be the considered alternate HBU.

If the land has been proven to be contaminated and costs to remediate the site are known, the landowner must provide the mandated contamination remediation reports. These reports are used to determine an allowance for the advised costs and time components when assessing the land valuation. If the cost of remediation results in a land value lower than that of an alternate permitted use that does not require such decontamination, then that alternate HBU is considered the appropriate HBU and valued accordingly.

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[4] https://www.sclqld.org.au/caselaw/93178

[5] Environmental Protection Act 1994 (Qld), s. 371

[6] Environmental Protection Act 1994 (Qld), s. 320A

[7] https://www.sclqld.org.au/caselaw/93178

[8] Land Valuation Act 2010 (Qld), s. 24

[9] Environmental Protection Act 1994 (Qld), s. 372

The value should reflect the land's expected realisation, where a purchaser is fully acquainted with the land and has knowledge of the contamination. In general, contaminated sites can lead to reduced valuations due to limits on development potential and remediation costs associated with contamination (refer to remediation section below). The onus of proving contamination and any associated remediation requirements and costs relating to the site's contamination lies with the landowner. It is important to seek out relevant expertise or reliable information on the specific contamination issue, rather than attempting to quantify the type and extent of the contamination without such advice.

The land value assuming the property is free from contamination must be determined first, and then appropriate adjustments regarding contamination issues are made. The existing use value and any potential change in use of the property should also be considered, as these factors can influence whether a site needs remediation, what level it must be remediated to and any relevant allowances that would affect the land value.

When the existing or continuing use of the site is not the HBU of the land, this must be included in the assessment, noting whether contamination limits the HBU and referencing the site suitability report. If contamination impacts the HBU of the land, and the existing use is not the best use of the land, allowances for remediation must be made.

It should be noted that some land uses will not require full or even partial remediation, while others will. For example, human uses, such as residential development and childcare centres, will require remediation. In contrast, commercial uses that are similar to the land's existing use may not require any remediation — capping the site or covering it with buildings and a hardstand to seal the site. Consideration must also be given to whether or not decontamination costs have been offset by the proposed development. For example, if a residential high-rise development requires excavation for basement car parking, the cost of any decontamination during the excavation may already be considered in costings. In such cases minimal or no, allowance is permitted.

If it has been determined that the contamination does not impact the existing or continuing use of land, and that use is considered the HBU for that site, then the land valuation will reflect that use without allowances for contamination. For example, this may apply to a service station site where potential contamination does not impact the land's existing and continuing use as a service station.

Assessing remediation requirements

Any known land contamination will be considered as part of the statutory assessment, using the relevant valuation method (site value or unimproved value). This assessment will include the severity of contamination, investigating the ability to remediate the land contamination, the types of remediation, the level the land can realistically be remediated to, and how those factors will impact the site's HBU.

It is also worth noting that contamination can, at times, be permitted within defined levels for some land uses and locations. Given the variability of these factors and their potential influence on the market value of a property, land affected by contamination is treated on a case-by-case basis.

Guidance around costs for remediation can be sourced from reports supplied by the landowner, as mentioned above. These reports are defined within the EP Act[10] as contaminated land investigation documents and include site investigation, site management plan, site suitability statement and validation reports. They are prepared by a professional deemed suitably qualified under the EP Act[11] and certified by an independent contaminated land auditor[12], as listed on the Queensland Government website. Website research may also be conducted and environmental or industry experts consulted regarding remediation for more general advice. Once specific remediation needs for the site are known, cost estimates can be sourced within the industry as well as through the landowner and the relevant local government authorities.

[10] Environmental Protection Act 1994 (Qld), s. 389

[11] Environmental Protection Act 1994 (Qld), s. 564

[12] Environmental Protection Act 1994 (Qld), s. 564

Glossary

CLR: Contaminated Land Register

EMR: Environmental Management Register

HBU: Highest and Best Use

Definitions

Contamination: '...the release (whether by act or omission) of a contaminant into the environment'*.

Contaminant: '...a gas, liquid or solid; or an odour; or an organism (whether alive or dead), including a virus; or energy, including noise, heat, radioactivity and electromagnetic radiation; or a combination of contaminants'+.

Highest and best use: the use that would produce the highest value that is physically possible, legally permissible, and financially feasible.

Site value: what the land would be expected to sell for in its current condition, including any work undertaken, or materials used, to improve the physical nature of the land to prepare it for development.

Unimproved value: the value of the land in its natural, undisturbed condition, without physical improvements such as houses, fences, clearing, levelling, and earthworks.

* Denotes definition from *Environmental Protection Act 1994* (Qld), s. 10

+ Denotes definition from *Environmental Protection Act 1994* (Qld), s. 11