



# **Guideline – Agreement for lease in statutory land valuation**

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# Introduction

This guideline provides guidance on the statutory valuation of land where an agreement for lease exists, 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](#)

# Overview

This guideline covers the steps taken and the methodology used when assessing land where an agreement for lease (AFL) is included.

AFLs are a preliminary contract which outline the terms of a future binding lease agreement. It is a legal right on a title that may be considered as a potential economic benefit. Under the current legislative framework and approach to statutory valuations, AFLs that relate to a particular property are not included in the assessment of the site or unimproved value.

The consideration of AFLs becomes particularly important in sales analysis. AFLs may be included in the sale of land. If that is the case, the added value, if any, of this benefit must be considered in the analysis and deducted to allow for site value or unimproved value to be determined. In considering the added value (benefit) of an AFL, it should be viewed in light of what constitutes a normal market, i.e. consider whether the contractual conditions and terms are fair and reasonable.

AFLs play a role within the development landscape, particularly for commercial properties. They may indicate the ripeness or readiness of a site for development, but how they are viewed by a purchaser will vary. A purchaser of land, along with a development proposal, may pay more for a site knowing anchor tenants are in place. However, this must be considered in the context of the site's market readiness for the proposed use - the highest and best use (HBU) and the likelihood of attracting such tenants.

AFLs, or pre-commitments, are often made early in a project to promote the proposed development and secure finance. A prospective developer and/or purchaser acts prudently when researching the viability of a site and in gaining lease commitments before giving an undertaking to buy and/or develop the land. Interest in the site from a desirable tenant indicates their agreement that the site has potential for their prospective trade.

Where a site's location could be suitable for specific types of development, such as shopping centres, fast food venues or childcare centres, significant research is undertaken within the market to identify the HBU of land and the likelihood of attracting tenants. If a prospective purchaser knows such tenants are readily available and they conduct their own research, identifying the site's HBU and its development and profit potential, they are unlikely to pay much, if anything, for the benefit an AFL provides. Any benefit derived from the AFL is capped at cost and considered according to accepted valuation principles, as highlighted in the LVA<sup>1</sup>. Note, any claim for a deduction relating to AFLs must be supported by market evidence through the sales analysis process but capped at the cost of the AFL.

A variety of documents can be considered 'agreements for lease', such as simple letters of interest, intent or offer. Such preliminary agreements outline the terms under which a formal lease will be executed, including the amount of rent, outgoings payable, duration of lease, and obligations of both parties, including any works to be completed before the lease begins.

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<sup>1</sup> Land Valuation Act 2010 (Qld), s. 25

# Valuation considerations

The benefit of an AFL is added value, which only occurs if the AFL has been procured by the vendor and included in the contract of sale. The existence of an AFL does not automatically convey added value.

Purchasers are consulted to ascertain whether a premium has been paid for the land due to the added value of an AFL and, if so, how that premium was calculated. This practice assumes the purchaser wants, or plans, to use the existing AFL, after conducting their own feasibility studies. It does not include a situation where the purchaser has procured an AFL, including as a condition or term of contract for land sale. A level of failure to progress signing the lease is also a consideration and hence, the detail of the arrangement, or level of certainty provided is critical.

Any certainty and added value that may flow from an AFL depends on whether those purchasing the land, and the tenants agreeing to lease the premises outlined in the AFL, agree to it or can make changes after the transaction is finalised.

The individual nature of AFL, and the land they are attached to, mean any agreement must be considered on a case-by-case basis. It should also be noted that under the LVA<sup>2</sup>, the added value of an agreement for lease cannot exceed the actual cost in establishing such an agreement. When considering the actual cost of establishing the agreement, it should be noted that these amounts may include the hard costs of establishing the AFL contract, such as legal costs and the cost of holding the land while obtaining the agreements. The terms and conditions and timing of these contracts must be considered, along with any other development processes, like design amendments, that may be running at the same time.

# Valuation methodology

The LVA<sup>3</sup> requires that land is valued on the assumption that any non-site improvements, such as buildings or other man-made infrastructure, were not made on the land, i.e. the land is in a site improved, vacant state. The added value of an AFL must not be included in site value. In considering the sales that set the basis for site valuation, the added value of an AFL must be excluded where the vendor has obtained the AFL. However, the added value cannot exceed the actual cost in establishing the agreement, as already outlined above.

Sales, including comparable AFLs, must be fully investigated through conversations with vendors, purchasers and other related parties when assessing the impact of AFLs. This information will give a complete understanding of all issues and considerations made when determining the purchase price. Emphasis should be placed on the considerations and development proposed by the purchaser. The following factors should also be considered:

- The demand for the proposed development in the catchment in which the land sits, for example, whether there is a community need based on the growing catchment for a neighbourhood shopping centre, based on economic needs analysis provided by qualified experts and sourced by developers and potential tenants.

<sup>2</sup> Land Valuation Act 2010 (Qld), s. 25

<sup>3</sup> Land Valuation Act 2010 (Qld), s. 25



- The legally permissible and economically viable supply of land for the development's proposed use, i.e., a limited supply of suitable land enhances the ability to attract tenants.
- Whether the AFL's terms and conditions meet market parameters, e.g., the agreed rent and outgoings are market based and economically feasible.
- The level of security the AFL provides, i.e., an AFL scribbled on the back of a serviette versus a formal legal agreement.
- That the purchaser's intentions match that of the tenant, who agreed terms and conditions with the vendor.

Each case must be assessed individually, with consideration given to whether the AFL forms a binding contract, the circumstances around the agreement and the feasibility of any development included in its conditions. This information is used to determine whether the AFL adds value and, if so, how much. Where it is concluded that an AFL adds value, this amount must be deducted in the sales analysis to determine a site value or unimproved value, noting however the added value cannot exceed the actual cost in establishing the agreement<sup>4</sup>.

# Agreement for lease examples

## When the vendor obtains tenants

In situations where the vendor brings committed tenants as part of the site sale, the site has been advertised with tenants and those tenants will sign formal agreements upon completion of the sale, consideration should be given to the added value of the AFLs.

YFG Shopping Centres v Valuer-General<sup>5</sup> Land Appeal Court case, illustrates when added value of an AFL is considered. The 2020 ruling confirmed that '...an existing agreement for lease would affect the price a party may pay for a site and affect the way in which that site would operate as a comparable sale...'

## When the purchaser obtains tenants

If the site purchaser source tenants for the development post purchase or post contract, AFLs are not considered in the statutory valuation as an intangible improvement because the purchaser brought them to the transaction.

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<sup>4</sup> Land Valuation Act 2010 (Qld), s. 25

<sup>5</sup> [CaseLaw record 126357 | Supreme Court Library Queensland](#)



# Glossary

**AFL:** Agreement for Lease

**DA:** Development Approval

**HBU:** Highest and Best Use

## Definitions

**Encumbrance:** 'a burden or claim on property', for example a mortgage, easements, leases and restrictions\*.

\* Denotes Macquarie Dictionary definition.