LAND VALUATION AMENDMENT BILL 2023

Submission No: 13

Submitted by: RAM

Publication:

Attachments: See attachment

Submitter Comments:

Submission to the committee

21 September 2023

Committee Secretary
Transport and Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Secretary

RE: Land Valuation Amendment Bill 2023

I am writing to object to the Land Valuation Amendment Bill 2023 (**Bill**) and the proposed amendments to the *Land Valuation Act 2010* (**LVA**).

Background

The Explanatory Notes to the Bill say that "the objectives of the Bill are to improve the administration and operation of the statutory land valuation framework by amending the Land Valuation Act to ensure:

1. it is responsive to changes in the property market and operational environment and transparent in its operation;

2. valuations are consistent and defensible, and the supporting processes such as objections and appeals are effective and efficient; and

3. a clear and consistent framework for determining when land is valued separately or combined based on land use and occupation."

The Bill does not achieve those objectives. The amendments that are to be made to the LVA, if the Bill is passed, will instead:

1. likely result in higher land tax and rates for landowners (which is likely to affect the appetite for investment in property in Queensland); and

2. materially diminish the transparency and consistency (which is already lacking) in the way that the Valuer-General makes valuations of land in Queensland.

Objections to major proposed changes to the LVA

<u>Power to make statutory guidelines</u>

If the Bill is passed, the Valuer-General will be permitted to make 'statutory guidelines' about the administration of the LVA or the valuation of land. The Bill makes clear that the guidelines will be binding in relation to the valuations to which they apply.

The Explanatory Notes clearly indicate that the Valuer-General can make guidelines about the valuation methodology to be applied when valuing particular types of land or land used for particular purposes, and gives the example of volumetric lots, shopping centres, land affected by heritage restrictions and childcare centres. That power would allow the Valuer-General to overturn accepted valuation practice and/or judicial precedent simply by publishing a guideline on the Department's website.

The Committee should be concerned about the proposal to give the Valuer-General the power to make guidelines because it will not ensure that the LVA is transparent in its operation or that valuations are consistent and defensible. The proposal may have the opposite effect. The proposed power is likely to restrict landowners' ability to object to a valuation made under the LVA or appeal against a decision on objection for the following reasons:

1. In an appeal to the Land Court about a valuation made under the LVA it is necessary for an appellant to demonstrate that error was made by the Valuer-General in making the valuation as part of the 'two-step' test.

2. The guidelines are to be binding. So, if the Valuer-General makes a guideline and it is clear that she has (through her delegate) applied the relevant guideline in making the valuation, it will be difficult for a landowner seeking to appeal that valuation to demonstrate error (even if the guideline is wrong in principle).

3. The errors that could be shown by a landowner would be limited to the Valuer-General not correctly applying the guideline, applying the wrong guideline or failing to apply a guideline where it should have been applied.

4. The fact that any guideline made would be binding seems to mean that the Land Court would also be bound by a guideline (or guidelines) even if the guideline(s) were wrong in principle. The Land Court would still have to apply the guideline.

The Committee should be concerned that the power to make guidelines will affect the Land Court in the exercise of its powers.

The Committee should also be concerned about the lack of consultation before the Valuer-General can make a guideline. There is also limited oversight proposed by the Bill in respect of the Valuer-General's power to make guidelines. This should be particularly concerning to the Committee given that there is no requirement for consultation.

If the Bill is passed in its current form, guidelines made by the Valuer-General are to take effect immediately when they are published on the department's website. The Valuer-General will be required to table guidelines in Parliament within 14 sitting days, which provides little oversight considering that Parliament does not sit all the time.

This should be concerning to the Committee because if the Valuer-General made a guideline that she should not have made, then it might be many weeks or months before the guideline is considered by Parliament (and any disallowance motion made). Even if the guideline is disallowed, the operation of s 51 of the *Statutory Instruments Act 1992* means that anything done or suffered under the guideline before it ceased to have effect would be unaffected by the disallowance.

Practically speaking, the proposed amendment may mean that landowners face increased cost in objecting to or appealing against valuations made under the LVA and that those valuations will be artificially inflated, leading to higher rates and land tax payable by landowners. High rates and land tax will discourage investment in land and its development for residential, retail and commercial uses.

<u>Amendment of s 17(2) of the LVA</u>

The Bill proposes that the definition of "unencumbered" in section 17(2) of the LVA be amended to exclude agreements for lease (**AFL**).

The Explanatory Notes say that this is because "often there is no evidence an agreement for lease enhances or detracts from the value, making it an inappropriate inclusion as an encumbrance" and indicate that the amendment will allow the Valuer-General to include the value of an AFL in the unencumbered value of land unless there is some evidence that the AFL was of particular value.

The Committee should be concerned about this because the automatic inclusion of AFLs in the value of land is consistent with the Court of Appeal's decision in *Chief Executive, Department of Natural Resources and Mines v Kent Street* [2009] QCA 399 (and subsequent decisions by the Land

Appeal and Land Courts that have applied that decision). Further, the amendment does not provide certainty about the approach to be taken to AFLs and may lead to an inconsistent approach being taken by the Valuer-General (and therefore leading to less transparency in the way the LVA operates and valuations which are subject to greater challenge).

Practically speaking, the proposed amendment may mean that landowners face increased cost in objecting to or appealing against valuations made under the LVA and that those valuations will be artificially inflated, leading to higher rates and land tax payable by landowners. High rates and land tax will discourage investment in land and its development for residential, retail and commercial uses.

Amendment of process for making applications for deductions for site improvements and non-adjoining farm land

The Bill proposes to amend the processes by which deductions for site improvements may be made and non-adjoining farm lots are included in the same valuation.

The deduction application process is to be separated from the objection process, and must instead be made using a form prescribed by the Valuer-General.

The Explanatory Notes say that the reason for the change is to "encourage landowners to make deduction applications as soon as practical following the making of site improvements when documentary evidence is readily available".

The change to the process is misguided. Separating deduction applications from objections is likely to increase costs for landowners. Instead of making one application, landowners will be required to make two separate applications to seek a deduction and object to a valuation issued by the Valuer-General.

Similarly, the Bill proposes to require that landowners make an application to combine non-adjoining farm lots or parcels in the approved form.

These changes will simply lead to increased costs for landowners in dealing with the Valuer-General.

Changes to objection process

The Bill proposes a raft of changes to the objection process, including:

1. the Valuer-General no longer being required to offer an objection conference where an objection concerns land with valuation of more than $5 million (or at all);

2. the requirement for the chairperson of the objection conference to provide a report which can then be relied on in deciding the objection, or in hearing an appeal against a decision on objection;

3. new disclosure obligations for objection conferences which extend disclosure obligations to the parties' agent or representative and require that the objection conference not be held unless the disclosure obligations have been satisfied; and

4. the ability for parties to rely upon documents disclosed in a proceeding about the valuation.

The Committee should be concerned about the proposed amendments to the objection process because the amendments:

1. are likely to result in increased cost for landowners because of the more onerous disclosure obligations;

2. may result in a more adversarial approach being taken to objection conferences;

3. may result in the Valuer-General offering fewer (or no) objection conferences; and

4. may mean that fewer objections can resolved at or in connection with an objection conference, leading to increased costs for landowners and increased strain on the Land Court's time and resources.

Practically speaking, the proposed amendment may mean that landowners face increased cost in objecting to or appealing against valuations made under the LVA.

The amendments proposed to be made to the Act will:

1. inevitably result in higher land tax and rates for landowners (which is likely to affect the appetite for investment in property in Queensland); and

2. severely affect the transparency and consistency (which is already lacking) in the way that the Valuer-General makes valuations of land in Queensland.

Thank you for considering this submission. I am happy for the submission to be published on the Committee's website.

Yours sincerely

Chris Singh
Portfolio Manager

T (61) 7 3067 7278
M [redacted]
A Level 20, Riverside Centre, 123 Eagle Street, Brisbane QLD 4000
P GPO Box 3177, Brisbane QLD 4001