LAND VALUATION AMENDMENT BILL 2023

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SHOPPING CENTRE
COUNCIL OF AUSTRALIA

LAND VALUATION AMENDMENT BILL 2023

SUBMISSION TO THE TRANSPORT AND RESOURCES COMMITTEE

We greatly appreciate the opportunity from the Committee to comment on the *Land Valuation Amendment Bill 2023* (the Bill), as tabled by the Hon Scott Stewart MP, Minister for Resources, on 23 August 2023.

The Shopping Centre Council of Australia (SCCA) represents major owners of shopping centres.

This includes listed (public) companies such as Scentre Group (Westfield), Vicinity Centres and Region Group; along with family and other companies.

We were consulted by the Department on the preparation of the changes contained in the Bill, as noted by Department officials at the Committee's public briefing on 11 September 2023. We acknowledge the Department for their engagement, courtesy and professionalism.

To be clear, the Property Council of Australia (PCA) does not represent the shopping centre industry, shopping centre owners or speak on their behalf including in relation to statutory valuation issues. If any representations are made by the PCA to this extent, we request that the Committee disregards their representations.

In its current form, **we recommend that the Amendment Bill not be passed by the Parliament** (see comments below).

Amongst several material issues, the **proposed 'binding' guideline is an objectionable feature of the Bill** insofar that it is 'binding' (which gives rise to several concerns); that consultation is not guaranteed; and that it seeks to (as per the Explanatory Note) '*limit the grounds of potential objections and appeals…*'.

Noting the above, it is alarming that the Department's Consultation Paper (May 2023) titled *Proposed Amendments to the Land Valuation Act 2010*, provided to us earlier this year, expressly notes that '*the Department is currently working on a draft of the Guideline*'.

The above is particularly concerning for our industry given Department officials, at the Committee's 11 September 2023 public briefing, expressly noted (refer to Transcript) that the guidelines would be used for complex property such as shopping centres.

Given the complex nature of shopping centre valuation, including that there is not a significant amount of market information, we have a longstanding deep involvement in the statutory valuation process in Queensland, as is outlined in more detail below.

This submission has been prepared with our longstanding statutory valuation (and rating and taxation) advisers, Urbis. Urbis advise on the statutory valuations for many of our members.

We were heavily involved in the 2009 and 2010 reforms, which followed a series of litigation (including what is known as the 'Pacific Fair' case, handed down by the Court of Appeal in December 2009) which we were also involved with on behalf of our members.

Our advisers, Urbis, were the valuers involved in those cases.

Post the 'Pacific Fair' case, the SCCA and the Valuer-General agreed a process to provide greater accuracy and relativity for shopping centre statutory land values.

The process is necessary given a paucity of truly comparable sales in our market, and the complex/specialised nature of shopping centre valuations (again, as noted by Department officials at the 11 September 2023 public hearing).

The parties entered into a Memorandum of Understanding (MoU) in 2010 which enabled a detailed information exchange and consultation process – in good faith - to ensure shopping centre statutory valuations were fully informed and properly based.

The above process, alongside the existing *Land Valuation Act 2010* (the Act), is considered best practice by the SCCA and Urbis nationally.

We have therefore considered the proposed amendments in the Bill very carefully to ensure what we deem best practice is not eroded.

OVER-ARCHING COMMENT ON THE AMENDMENT BILL

In its current form, we recommend that the Amendment Bill not be passed by the Parliament.

With substance, we are deeply concerned with the Amendment Bill, and strongly believe that changes must be made ahead of any further consideration and potential passage by the Parliament.

Some of the proposed amendments, intended to deliver process improvement, enhanced clarity etc., will have unforeseen consequences; negatively impacting the fairness and quality of the statutory valuation system.

It is also important to note some of the proposed changes to the Bill are contrary to those advised during the Department's consultation process.

COMMENTS AND RECOMMENDATIONS

We have the following comments and recommendations on the Bill:

Valuer-General may make guidelines – Insertion of new Section 6A

- The Bill in Section 6A introduces a new head of power for the Valuer-General to make guidelines to give guidance about any matter relating to the administration of the Act and valuation practice.
- We note from the Explanatory Notes (page 8) that these guidelines *"are intended to ensure consistency in decision-making and establish consistent state-wide valuation practices for complex property types"* including shopping centres.
- It is long-established practice across most states in Australia that the Valuer-General will publish guidelines or practice notes based on the legislation and case-law. We generally support this approach subject to these guidelines being developed in conjunction with relevant stakeholders and industry bodies.

Our key concerns are that, without changes, the Bill will:

- Provide the Valuer-General with the power to prescribe binding valuation methodology that may depart from existing and established valuation practice, legal precedent and (as currently drafted) the Act itself.

  This is contrary to long-established practice across all states in Australia whereby such guidelines are non-binding practice notes based on the legislation and case-law.
- Seek to limit the grounds for objections and appeals which removes a landowner's right to 'fair and natural justice' through the objection and judicial process.

Consultation must be guaranteed

- During the May/June 2023 consultation, the Department's consultation paper expressly referenced that '*the guidelines and future revisions* <u>*will*</u> *be made in consultation with stakeholders'* (our emphasis).
- However, the Bill only provides that the Valuer-General <u>*may*</u> consult with stakeholders (our emphasis).
- The Bill fails to provide the anticipated certainty and protection that stakeholders will be consulted, on both the guidelines and future revisions.
- We are also concerned that the original Consultation Paper in May 2023 referenced that the Department is *"currently working on a draft of the guideline"* however no consultation has been commenced with the SCCA to date.

Guidelines have shifted to become a 'binding' document

- The Explanatory Notes of the Bill reference the following policy objective:

  "A key component of the improvements will allow the Valuer-General to make statutory guidelines to provide direction to registered valuers on processes, practices and considerations to be applied in the preparation of statutory land valuations. The need for such guidelines particularly relates to situations where there are complexities associated with the subject land." (our emphasis)

- The objective to 'provide direction' is consistent with the intent expressed during the May/June 2023 consultation whereby the Department's consultation paper referenced the following objective:

  "The guidelines are intended to enhance consistency and transparency of statutory valuation processes, provide clear and consistent criteria, methods and examples in relation to valuation practice for complex property types and operational practice used to determine the land valuation".

- However, the Bill provides that the guidelines are binding in relation to the valuations to which they apply.

- Further, the Explanatory Notes state:

  "If the guidelines mandate a particular valuation methodology for a particular property type, this will limit the grounds of potential objections and appeals against valuations to consideration of whether the guidelines have been properly applied in determining the subject valuation."

- The ability to create binding guidelines in relation to valuation practice is particularly objectionable as it provides the Valuer-General with the power to explicitly prescribe valuation methodology that may depart from existing and established valuation practice, legal precedent and (as currently drafted) the Act itself – noting that whilst the Explanatory Note explicitly states that *"the guideline must be consistent with the Act"*, this not stated in the drafting of the Bill.

- Even if this were stated in the Bill, it would not address our concern with the guidelines being 'binding' noting the guidelines would be based on the Valuer-General's interpretation of the Act and/or legal precedent.

- The proposal for the guidelines to be 'binding' is also a direct departure from the existing Act at Section 54 which explicitly states the guidelines in this application … "*must be consistent with the Act, are not subordinate legislation and the Valuer-General may consider, but is not bound by, the guidelines*". The Bill omits this existing Section.

- Further, the proposed limitation on the grounds for objections and appeals removes a landowner's right to 'fair and natural justice' through the objection and judicial process.

- Consistent with long-established practice across Australia, these guidelines can only be published as non-binding practice notes. This is critical to maintain the independence of the Valuer-General function and to ensure fair process for landowners.

- Section 6A should also be amended to guarantee consultation in relation to a guideline (and any revisions) and stipulate that any guideline must be consistent with the Act and non 'binding' i.e. not subordinate legislation. The consultation process should be defined as below.

  - *Before making a guideline, including any updated or replacement guideline, the Valuer-General must consult with, and have regard to the views of, sector representatives the subject of the proposed guidelines and any other person the Valuer-General considers appropriate.*

  - *Any consultation must be subject to public notification for a period of at least 30 days.*

Removal of ‘agreements for lease’ from definition of ‘unencumbered’

- The Bill amends the definition of unencumbered in Section 17 to omit an ‘agreement for lease’.
- The Explanatory Notes of the Amendment Bill state as follows:

  ”Removal of agreement for lease from the definition will not change the operation of the Act or operational practice. It will, however, remove the expectation that a deduction is made simply because an agreement for lease is in place when a property is sold. It will not prevent a landowner from claiming that they paid more for the property because an agreement for lease was in place. Where it can be demonstrated that it impacts the value of the land, an allowance will be made to reflect that, consistent with current practice.”

- We do not consider this amendment is necessary noting its intent is not to change the operation of the Act or current valuation practice based on long-established legal precedent i.e. it is the added value that must be deducted when analysing comparable sales.
- In our view, the proposed amendment is not required and has the potential to create inconsistency of interpretation and application if enacted.

Making a Deduction for Site Improvements application

- The Bill makes a series of amendments to the application process and objection/appeal rights for deductions for site improvement costs (DSI claims).
- We expect these amendments have inadvertently overlooked a number of fundamental process, valuation and equity principles.
- The proposed new Section 41 fails to identify when a DSI claim can be made whereas the timing under the existing Act expressly states as part of an objection or at any other time.
- Whilst the proposed new Section 44 requires the Valuer-General to decide the added value of the site improvements, the proposal to omit Sections 105(5) and 113(2) removes the right of the landowner to object to the Valuer-General's assessment of the added value under Chapter 3 of the Act (Objections to valuations).
- The related proposed omission of Section 157 removes a landowners’ appeal rights to the Land Court in respect of DSI claims.
- The development and expansion of shopping centres typically includes significant site works investment and, accordingly, DSI claims are commonplace amongst our members.
- These claims can run into tens of millions of dollars and are often critical in supporting development feasibilities.
- This proposal significantly erodes the rights of landowners and the equity of the process and therefore we strongly oppose the suggested amendment.
- The proposal to facilitate a review of a DSI decision by the Valuer-General outside of the Land Court process via an internal or external (QCAT) review under Section 175 of the Act also overlooks that DSI claims are a matter of valuation - i.e. the added value of the works.

Amendment of Sections 56, 57 and 58 to include ‘parcels’

- The Bill expands the application of Sections 56, 57 and 58 to include 'parcels’ in addition to ‘lots’.
- We strongly oppose this amendment as it could have unintended consequences that change the way that larger or mixed use properties in single ownership are valued.
- Specifically, we are concerned that these amendments provide the Valuer-General with the ability to declare separate parcels for parts of larger or mixed use properties.
- This application would deliver artificial valuation outcomes and be inconsistent with long-standing legal precedent and established valuation practice nationally.

Exceptions to annual valuation requirement

- As raised in the consultation process with the Department, it is our view that all Local Government Areas (LGA) should be revalued on an annual basis which is consistent with the intent of the Act and best practice nationally.
- Providing the Valuer-General with arbitrary discretion to exclude certain LGA's for the annual valuation process has provided inequitable outcomes for landowners.
- The Explanatory Note references it may not be appropriate to make an annual valuation due to an unusual circumstance and specifically references flooding. Whilst it is our position that all LGA's should be revalued annually, if the unusual circumstance impacts the value of properties (which flooding can) we cannot follow the logic that it would not be appropriate to make an annual valuation.

Objection Conferences

- The Bill removes the requirement on the Valuer-General to offer an objection conference when a valuation is greater than $5M (Clauses 37 and 38).
- The Explanatory Notes state *"this will enable the allocation of resources to offer conferences based on complexity"*. Whilst shopping centres are referenced in the Explanatory Notes as a *"complex property type"* and therefore meet any threshold test for 'complexity', we are concerned that the offer of on objection conference will now solely be at the discretion of the Valuer-General.
- The Bill also requires the Chairperson to provide a written report (Clauses 43 and 49) and amends the existing disclosure requirements (Clauses 44, 47, 51 and 52).
- We do not consider these amendments necessary as we consider the current objection process in Queensland to reflect best practice nationally.
- Specifically, we consider the proposal for the Chairperson to provide a written report in the context proposed to detract from the independence of the role and process.
- Further, the suggested disclosure requirements have the potential to breach third-party confidentiality obligations.

CONTACT

Thank you for the Committee's consideration of this submission.

As we note above, we recommend that the Amendment Bill not be passed by the Parliament in its current form.

Changes are needed to several aspects of the Amendment Bill.

We would welcome any opportunity to discuss this submission with the Committee.

Angus Nardi

Chief Executive