LAND VALUATION AMENDMENT BILL 2023

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Committee Secretary

Transport and Resources Committee

Parliament House

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Dear Committee Members,

RE: *Land Valuation Amendment Bill 2023 (Bill) and proposed amendments to the Land Valuation Act 2010 (Act).*

Thank you for the opportunity to provide feedback on the *Land Valuation Amendment Bill 2023 (Bill) and proposed amendments to the Land Valuation Act 2010 (Act).*

The Property Council is the leading advocate for Australia's property industry. Here in Queensland, over 400 companies are members of the Property Council of Australia. Our members represent a cross-section of the property sector and are spread across all real property asset classes, including, but not limited to, build-to-rent, residential, purpose-built student accommodation, commercial, office, and industrial.

Our members invest in, design, build and manage places that matter to Australians. They have a long-term interest in the future of our places and spaces, and are committed to creating great cities, strong economies, and sustainable communities.

The Property Council supports smarter planning, better infrastructure, sustainability and globally competitive investment and tax settings, which underpin the contribution our members make to the economic prosperity and well-being of Australians.

When the Bill was introduced, it was highlighted that:

> *"These changes will have no material impact on rates and property taxes. These legislative improvements were identified in consultation with key industry stakeholders, continuing the government's work to improve statewide valuation services."*

During the Department's briefing to this Parliamentary committee, it outlined again that:

> "The *amendments contained in this bill do not change the role of the Valuer-General; nor do they change fundamental requirements associated with how land is valued. To*

be very clear, the proposed amendments will have no material impact on either rates or property taxes."

Throughout the consultation process, we have raised concerns around some of the proposed changes and clearly and consistently maintained that they are in fact, more than administrative in nature; we have reiterated that some of the proposed changes, are in fact systemic changes, and have the potential to result in material changes and in some cases significant departures in the way valuations are conducted across Queensland. Consequently, there is no doubt that the proposed amendments will fundamentally change how land is valued in Queensland and will have a material impact on both rates and property taxes for various asset classes.

It is the view of our members that some of the proposed changes have the capacity to undermine well understood and long-standing valuation practices. Furthermore, whilst the function of applying Land Tax and Council rates does sit outside of the Department of Resources, the statutory value given to land is the critical element on which these taxes and rates are levied.

Our submission seeks to outline our members specific concerns relating to aspects of the proposed amendments.

Binding Statutory Guidelines (Clause 5)

Of particular concern is the introduction of new powers to allow the Valuer-General to make binding statutory guidelines. Whilst acknowledging that the ability to make guidelines to support the administration and operation of an Act is relatively common and uncontroversial, the power to make guidelines is usually vested in the Minister or chief executive administering the relevant Act.

What is proposed within the draft legislation is a departure from this and takes the unusual approach of allowing for a statutory office holder to have the power to make guidelines about the administration of an Act.

Further consultation is usually required before making a guideline, in many cases, this is subject to formal public notification requirements. Before taking effect, a guideline must also typically be notified by publication in the gazette or by regulation.

The Bill departs from this approach, with the proposed statutory guidelines taking effect upon simply being published on the department's website.

This causes great concern for our members because as the Bill is drafted it will mean they will not need to be consulted prior to the statutory guideline being created, and therefore have no capacity to provide input as to the practical applications of any guideline prior to its finalisation and publication.

These guidelines will then be legally binding in their operation.

The ability to make a guideline about the administration of the Act (proposed s 6A(1)(a)) is not objectionable. However, the ability to make a guideline about the valuation of land that is legally binding is highly objectionable and is strongly opposed (proposed ss 6A(1)(b) and (9)).

A guideline is typically used to assist the exercise of a discretion in decision making and is not used in a mandatory way (e.g. not as delegated legislation).

The approach proposed in the Bill is inconsistent and contrary to the usual operation of a statutory guideline and in this case is seeking to impose mandatory (binding) directions on the valuation of land. It is our members view that the proposed Bill is therefore seeking to devolve what is in effect a legislative power from the Parliament to the Valuer-General to determine the valuation of land beyond the terms sets out in the Act.

As the Bill is drafted, a guideline about the valuation of land could seek to impose mandatory requirements for the valuation of land which could potentially change and/or be inconsistent with existing valuation standards and practices, legal precedent, or the Act itself.

Further, there is no direction in the Act as to how a guideline may be used in the valuation of land and there are no consequential amendments to the Act which reference any use of a guideline in the valuation of land under the Act (i.e. the Act is silent on how a guideline would be used and it is not a relevant consideration to any exercise of decision making about the valuation of land under the Act).

The purpose of the Act is to provide how land is to be valued for particular other Acts (for example taxation purposes). *The Land Valuation Act 2010* itself is concerned about the way in which land is to be valued and contains a comprehensive framework around the legal concepts and processes that apply to the valuation of land in Queensland for Statutory purposes.

Given the implications of how land is valued on landowners and governments, it is essential and appropriate that the fundamentals of the valuation framework are prescribed in legislation. This is what provides certainty, accountability and transparency. It follows that any subordinate rules (including guidelines) about the valuation of land must be consistent with the statutory framework of the Act as adopted by the Parliament (and not derogate from the legislative framework).

The ability for the Valuer-General to make binding guidelines about the statutory valuation of land is effectively subverting the parliamentary process and undermining the legislative framework as the Valuer-General, being an unelected and unaccountable statutory office holder established under the *Land Valuation Act 2010*, is effectively being given the power to usurp the legislature and courts.

Presently the Valuer-General is established under the Act and required to value land in accordance with the Act (i.e., the Valuer-General is subordinate to the Act). However, under the proposed amendments, the Valuer-General is effectively being given a new power to 'write the rules' that apply to the valuation of land for Statutory purposes, so that the Valuer-General is not just subject to the Act's valuation framework but can create new rules that

could change or conflict with the Act (i.e. the Valuer-General is being empowered to set the rules, not just apply the rules).

If the amendments have been proposed to alleviate concerns around the efficacy and appropriateness of the valuation framework under the *Land Valuation Act 2010*, the proper approach would be to amend the legislative framework rather than circumvent the system using guidelines to change the operation of the Act. Whilst it is noted that the Explanatory Notes state the intent is 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 direction has not been demonstrated and the utility of such direction has not been substantiated (e.g. how will the provision of guidelines to valuers assist in the implementation of the Act?).

Further, the drafting of the Bill is inconsistent with the intent stated in the Explanatory Notes as a guideline applying to the valuation of land is not limited in effect to a 'registered valuer' nor is it limited to 'processes, practices and considerations'.

To the extent that there is a need for supplementary guidance to valuation practitioners to assist in the implementation of the Act, this could take the form of either administrative (non-statutory guidance) from the department, or if the need is substantiated for the role of more formal guidance, through a statutory guideline but such guidance must be strictly confined to a supporting role consistent with legal principles and precedent and the Act itself. Furthermore, such 'guidance' would need to be truly of the nature and character of a guideline based on principles and practices, allowing discretion and not being mandatory (binding) in nature.

Further, while the Bill proposes that a guideline in relation to the valuation of land will be binding (proposed s 6A(9)), it is not clear on whom the guideline will be binding. For example, will a guideline being binding on the courts and what will be the legal effect of a failure to comply with a guideline by either the Valuer-General or a landowner. Seeking to impose binding guidelines on the valuation of land will potentially open new grounds for legal challenges and create new and unnecessary legal uncertainty and conflicts for landowners and the government.

Refer to **Annexure One** for recommendations for changes to the Bill that would alleviate industry concern.

Agreements for Lease (Clause 6)

A fundamental concept underlying the valuation of land in Queensland is that land is required to be valued on the basis that it is unencumbered by any lease, agreement to lease, mortgage or other charge (s 17).

Clause 6 of the Bill proposes to amend the definition of 'unencumbered' in s 17(2) of the Act to remove 'agreement for lease' thereby permitting the added value of an agreement to lease to be included in the statutory value of land.

It is submitted that this is a fundamental policy change to the way that land has been valued in Queensland since the commencement of the Act in 2010 and will directly result in a higher valuation being applied to land subject to an agreement to lease which will have a flow-on effect on the tax liability attached to such land.

Further, the removal of agreements to lease from the definition of unencumbered in the Act is likely to lead to a repeat of extensive disputes that arose under the former *Valuation of Land Act 1944*.

Our members are greatly concerned that if agreements to lease are removed from the definition of 'unencumbered' in the Act, this will cause a significant shift away from the valuation of land to the valuation of business activities associated with land and will undermine the consistency and defensibility of valuations under the Act.

Property valuations can be extremely complex in nature, and agreements to lease in relation to valuations are in particular complex and need to be addressed on a case-by-case basis. It is the view of industry that this amendment is contradictory to the intent of the Bill, that is to improve the administration and operation of the statutory land valuation framework. The proposed amendment is not only likely to add to the administrative burden of both the Department and industry, it will add great confusion and result in more cases seeking legal avenues to affect a fair and reasonable outcome.

Deductions for Site Improvements (DSI) (Clause 11)

One of the simpler methods of making an application for a DSI is to do so at the time of making an objection or simply as the sole ground for objection. There seems to be no valid reason why this avenue is to be removed. Whilst the costs associated with improvements to the land are a consideration, it is the value the improvements add to the land that is the allowance. It is value related and, the value often has regard to the Site Improved Value first. The added value is the difference between the Site Value and the Unimproved Value. Therefore, the two are inextricably tied together and therefore should remain so.

S. 43 of the Act provides that a DSI applies to a 'relevant valuation' which is defined as either the valuation objected to or the next issued valuation. Therefore, it is the case that an owner may only lodge a DSI, not part of an objection before an assessment of the Site Value is made which may be delayed for a number or years.

Prima facie it is apparent that the underlying reason for this amendment is to facilitate the Valuer-General being encouraged to amend the Site Value based on information being provided in the DSI before making the deduction for Site Improvements and thus transparently making the adjustment.

It is therefore important that both the Site Value that applies before the DSI is applied and the DSI can be considered concurrently.

Further, the provision that challenges to be made to QCAT, rather than the Land Court, fails to consider that QCAT does not have the requisite understanding of valuation. The appropriate jurisdiction is the Land Court where that understanding is a requisite of the court.

Industry acknowledges that the approach to DSI needs refining, but in order to strike an appropriate balance further consultation is required. In the consultation with the Department of Resources at no time were changes to how DSI's are assessed raised.

Changes to Definition of Lot / Owner (Clause 16)

Clause 16 of the Bill proposed to amend s 53 of the Act to change when the Valuer-General can separately value leased land. This is stated in the Explanatory Notes to be no change to existing practice.

As has been previously flagged with the Department, this change poses many unintended consequences and is likely to result in revenue generation.

Of particular concern is the potential change this definition will have on the valuation approach to mixed use buildings. For example, in the case of a building that incorporates, office, retail and residential apartments, this could result in a separate parcel being declared for every single level, resulting in increased Site Value and therefore higher rates and taxes, but lower Capital Value.

Properly Made Objections (Clause 31 and 32)

At the current time it is only necessary for an objection to include 1 valid ground. Often, in an attempt to provide information a ground may not be deemed valid by the clerical staff delegated the authority to make that decision. The Bill proposes to omit s 112(4) which says to the effect only 1 valid ground is necessary for an objection to be properly made.

In section 113 there is an addition that says an objection must include a valid ground. This does not appear to have the same weighting that in in s 112.

We are concerned that the proposal is that the partial compliance provision is to be removed which could result in objections being deemed not properly made and therefore not considered by a qualified valuer.

Valuer-General may invite an objector to participate in conference (Clause 37)

Under the proposed new s 121 of the Act, the Valuer-General may invite an objector to participate in an objection conference. Coupled with the removal of the $5,000,000 threshold for which the Valuer-General must presently offer an objection conference (s 123) and removal of the ability to agree to an objection conference if the valuation is less than $5,000,000 (s 122), the decision to offer an objection conference will be entirely vested in the Valuer-General under the proposed amendments.

It is widely acknowledged by the Department and stakeholders that objection conferences are an efficient and effective process for resolving valuation objections and reduce the number of disputes that proceed to the Land Court.

The Property Council therefore proposes that the ability to initiate an objection conference should also be given to an objector and that the Valuer-General should be obliged to participate in an objection conference if requested by an objector.

This may have some resourcing implications for the Department, but it is submitted that the benefits will clearly outweigh any costs. An objector is unlikely to request an objection conference unless it believes this will assist in the resolution of the objection and the objector has a genuine willingness to resolve the matter.

As noted by the Department, the value of land is not the sole factor that affects the complexity of an objection or the nature of the issues in dispute, and given it is the responsibility of the objector to set out the grounds of the objection, an objector is well placed to judge whether an objection conference is appropriate in the circumstances.

The ability for an objector to initiate an objection conference will also ensure that where desired an objector will have the benefit of an independently chaired conference which will provide fairness and equity to the objection process.

Independently Chaired Conferences (Clause 38)

At the current time the criterion for offering an Independently Chaired Conference (ICC) is when the value is over $5,000,000. Whilst this single factor does not cover all the complexities that could lead to the need for the ICC it does take into account many of those criteria.

The Property Council believes that this threshold is a reasonable trigger and provides certainty as to when an objection conference must be offered. The Property Council also does not support any measures that will reduce access to an objection conference.

If an objector is given a right to initiate an objection conference, the existing threshold is not required and can be deleted. However, if the decision to offer an objection conference is to be confined to the Valuer-General, it is submitted that the requirement to offer an objection conference where the valuation is more than $5,000,000 must be retained to provide certainty to objectors.

Otherwise, there is a significant risk that objections that currently qualify for an objection conference will lose access to this process which will undermine the stated intent of the Bill to improve the operation of the objection process.

Written conference report (Clause 43 and 49)

The requirement for the chairperson to give a written report about the conference to the parties is not supported and is considered to be contrary to the role of the chairperson under the Act.

As is plainly acknowledged by the Bill and Explanatory Notes, an objection is decided by the Valuer-General and not by the independent chairperson or parties reaching or negotiating an outcome at the objection conference.

The view of the independent chairperson on the merits of the objection is irrelevant to the determination of the objection and is not binding on the parties. The imposition of a requirement on the chairperson to prepare a report addressing the chairperson's assessment of the objection grounds, the information provided by the parties, or the merit of the objection therefore serves no purpose and is of no utility.

It is submitted that this unnecessarily and unreasonably imposes an onus burden on the chairperson without any practical benefit.

The Explanatory Notes state this amendment is intended to improve conference outcomes by expanding the functions of the chairperson to ensure that the chairperson has the powers necessary to facilitate the resolution of an objection. However, as noted above, this is contrary to the stated powers and role of the chairperson and objection process that objections are not resolved by agreement between the parties.

The chairperson is also not responsible for the adjudication of an objection. Therefore, the view of the chairperson has no legal effect and is not binding on the parties, especially the Valuer-General who must decide the objection.

An objection conference occurs within the objection process and is not a separate or independent process for determining an objection. Requiring the chairperson to provide a written report to the parties who are the participants in the objection conference serves no utility. The parties will directly be aware of the issues raised in the objection conference and any recommendations about matters made by the chairperson.

Requiring the chairperson to prepare a written report will simply delay and add to the administrative burden associated with the objection conference process and is incompatible with the role of the chairperson.

Disclosure (Clause 44, 47, 51 and 52)

Clause 44 of the Bill proposes to amend s 127 of the Act to extend the obligation of disclosure to an objector's agent or representative (s 127(1)(b)). Clauses 47, 51 and 52 of the Bill propose similarly amendments for a chairperson or the Valuer-General to require disclose of information held by an agent or representative of a party.

An agent or representative of a party is not a party to an objection and will be a separate person (individual or corporate entity) to the objector. An agent or representative will typically be a valuer or lawyer engaged by the objector (although representation is not limited to a valuer or lawyer).

While it may be reasonable for an objector to provide relevant information in its possession, this does not extend to information held by an agent or representative that does not belong to the objector. A lawyer, valuer or other professional acting as an agent or representative for an objector will typically owe a duty of confidentiality to individual clients and in the case of lawyers, may owe further duties in relation to legal professional privilege.

Agents representing owners are often in possession of confidential information relating to different clients. That information must be kept confidential from other clients. For instance, an agent may have access to turnover information on different businesses for different clients who are in competition. The clients have confidence in the agent not to disclose confidential information. The proposed changes are such that for an objection to be considered the agent may be compelled to provide turnover information relating to both clients.

There are well understood and utilized professional codes of conduct in place that outline what information can and cannot be disclosed by valuers. This proposed changed is a departure from this and likely to put the profession in an ethical and legal predicament.

Lawyers are similarly subject to a range of obligations in relation to the protection of client information under professional rules and general law.

The Property Council of Australia supports the objection process under the Act and believes that the existing process is generally providing an efficient and effective means for resolving disputes. Based on the experience of our members, there is no need to impose further burdens in relation to the disclosure of information and the changes proposed in the Bill in relation disclosure in objection conferences will, if implemented, have the unintended and undesired effect of reducing the utility of the objection conference process resulting in more, rather than less, decisions on objections being appealed to the Land Court.

The proposed amendments in relation to disclosure of information in the custody, possession or power of an agent or representative of a party should be deleted from the Bill.

Admissibility of evidence (Clause 50)

Presently, under s 131 of the Act, evidence of anything said or done about an objection in an objection conference is inadmissible in any proceeding.

Under clause 50 of the Bill, it is proposed to retain the protection against admissibility about anything said by a person in an objection conference, but this protection is not applied to the admissibility of a document or information given to the chairperson under ss 127 or 128A.

The purpose of this change as stated in the Explanatory Notes is to ensure that if a matter is appealed, the Land Court has access to all information that informed the parties' position.

It is submitted that the distinction applied to things said in an objection conference and documents or information given in an objection conference is an artificial and illogical distinction and will frustrate the intention of an objection conference to assist in the resolution of an objection.

It is also submitted that the justification provided in support of the change is misguided and misrepresents the role of the Land Court. In an appeal, the scope of the appeal is determined by the grounds of appeal filed by the objector. The 'reasons' for the decision of the Valuer-

General on the objection, including the information provided in the course of an objection conference are not the subject of the appeal.

Whether or not information provided in an objection conference is relevant to a ground of appeal in the Land Court will depend on the facts and circumstances of each individual case.

There is a strong public policy interest in ensuring that anything said or done in an objection conference is inadmissible in any proceedings to promote the full and frank of disclosure of information to assist the resolution of an objection.

Providing that information or documents given in an objection conference are potentially admissible in any proceeding will likely deter parties from providing information that may be commercially sensitive or confidential in nature.

Flooding

When an owner's interest in a property is affected by flood and that flood has an impact on the land, the land should be valued to ensure the value on which rates and land tax are payable is based on the post flood impact. The Act currently provides this will happen unless it is not possible.

There should be no other contemplation as to it not being appropriate. That then relates to an opinion which could incorporate, "it is not appropriate to make a decision that has the effect of reducing the land tax payable by the owner."

Conclusion

Property transactions by nature are complex, and as a result so are valuations, as outlined above the industry holds great concerns around the unintended consequences of changes deemed administrative in nature.

Despite its extended duration, the consultation period has proven to be less than intensive. Post the meeting in May of this year, we wrote to express our concerns that there was not enough detail within the information supplied for a comprehensive position to be established. Further we cautioned against the introduction of hastily implemented changes without extensive consultation, as it would result in unintended consequences.

Property Council has always maintained the position that any proposed changes must be revenue neutral and policy changes need to be clearly identified and justified. Furthermore, the premise of the changes should always be done so on the basis it is to achieve a procedurally fair and clear framework.

Please don't hesitate to contact me on [redacted] to discuss.

Yours sincerely,

Jess Caire
Queensland Deputy Executive Director

Annexure 1. Recommendations for Changes to the Bill

To alleviate industry concerns we have outlined a series of proposed changes;

Proposed amendments to the Act	**Proposed Changes / Comment**
1. S 6A(1)(b) 2. S 6A(9)	Delete the proposed amendments. Removing these proposed amendments will limit the guideline making power to administration of the Act. While the balance of the proposed section about the process for making of a guideline is minimal, it is potentially acceptable having regard to the reduced scope of the section. However, best practice is still to be include more comprehensive requirements for consultation and notification before making a guideline. If the Parliament considers it essential to provide for the ability to make a statutory guideline about the valuation of the land to provide direction to registered valuers about the statutory of valuation of land, the following amendments are considered to be essential: 1. A guideline about the valuation of land **must be consistent with the Act**; 2. A guideline about the valuation of land must be subject to **public notification** before being made (minimum notification period of 40 business days); 3. A guideline must not take effect before being notified in a regulation (preferred) or published in the gazette (minimum).
s 6A(9)	Delete this section a guideline about the valuation of land **must <u>not</u> be binding**.