

Your Ref: Scrutiny of Legislation Committee

Quote in reply: Planning and Environment Law Committee:2100347/17

17 February 2010

Ms Julie Copley  
The Research Director  
Scrutiny of Legislation Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Ms Copley

### **VALUATION OF LAND AND OTHER LEGISLATION AMENDMENT BILL 2010**

The Queensland Law Society expresses its concern about aspects of the proposed *Valuation of Land and Other Legislation Amendment Bill 2010* (the Bill) not having sufficient regard to the rights and liberties of individuals.

The Society's concerns relate primarily to three aspects of the legislation, namely:

- the characterisation of 'unimproved value' proposed in clause 5;
- the objections and appeal processes proposed in clauses 26 to 32 and 36 to 42; and
- the retrospective application of certain provisions affects current objections and appeals in clause 105.

#### **Characterisation of 'unimproved value'**

The Society expresses concern that the treatment of the term 'unimproved value' in the Bill does not have sufficient regard to the rights and liberties of individuals on the basis that:

- the administrative power contemplated by the Bill is not sufficiently defined; and
- it is ambiguous and not drafted in a sufficiently clear and precise way.

The Society noted that clause 5(7) of the Bill amends section 3 of the *Valuation of Land Act 1944* (the Act), by including a new sub-paragraph (5):

(5) To remove any doubt, it is declared that—

- (a) the benefit of a lease, agreement for lease or any other instrument of any type relating to land, or improvements on land that enhances the value of the land, as unimproved or improved must be included in its unimproved value; and
- ...
- (c) the term 'unimproved value' defined under this section has been given a special meaning that must be applied whether or not that definition accords with the ordinary meaning of that term.'

Additionally the Explanatory Notes to the Bill states at page 2:

The policy intent in Queensland has been to value the land component at that amount which represents the value of the land as developed at the date of valuation. In undertaking that process the expression "*unimproved value*" has been adopted. This was not intended to convey that the land be valued as though it had not been developed and accordingly should be assessed only by comparison with sales of vacant or unimproved land.

Rather, **the expression was a term with a special definition designed to describe the value of the land component to be attributed to improved property.** As unimproved value is a highly technical concept, litigation as to what precisely was intended has proliferated. (*emphasis added*)

The Bill proposes that the expression 'unimproved value' is to be determined with close regard to a number of factors closely associated and intimately linked to the developed and improved land, namely:

- the benefit of commercial or retail shop leases located within a structure built upon the land; and
- improvements built upon the land which enhance its value.

It is clear from this construction that the term 'unimproved value' is defined to reflect significant components of the improved value of a parcel of land. This reading is supported by the wording of the Explanatory Notes reproduced above and the proposed introduction of a new section 3(5)(c) of the Act.

It is the submission of the QLS that use of the term 'unimproved value' is not sufficiently defined, is ambiguous and not drafted in a sufficiently clear way to give a lay reader of the Bill a fair understanding of the Government's policy intent. It is inappropriate and misleading for a term in legislation to be substantially redefined to mean the opposite of its ordinary meaning.

It is the proposal of the QLS that if it is the policy of Government to assess the value of land with respect to benefits flowing from structures, buildings, improvements and fixtures, this crucial definition should be replaced by a more appropriate term such as 'developed value' of the land, or similar.

## Objections and Appeal Processes

The Society expresses concern that the objection and appeal processes in the Bill do not have sufficient regard to the rights and liberties of individuals on the basis that:

- rights and liberties are dependent on administrative power which is not subject to appropriate review; and

- they are not consistent with principles of natural justice.

The Bill sets out new objection and consequent appeal processes for the defined terms general valuations and valuations in essentially mirroring processes set out in clauses 26 to 32 and 36 to 42.

The proposed initiation of the objections process set out in clauses 26 and 37 of the Bill requires that an owner object within 45 days of the date of issue of a notice of general valuation or valuation decision to the Chief Executive and is 'properly made'.

The Bill proposes extensive materials which must comprise a 'properly made' application in proposed new sections 42A and 52AA to the Act. It is noted that an objector is expected to compile evidence, including expert opinion evidence, within 45 of the issue (not receipt) of a notice from the Chief Executive. It is the understanding of the QLS that obtaining such evidence within the stated period may prove difficult in most cases.

Once received the Chief Executive must assess an objection to determine whether it is properly made pursuant to proposed new sections 42C and 52AB of the Act. No time period is provided for this consideration, but should the Chief Executive determine that an objection is deficient the Chief Executive must issue a 'correction notice' to the objector. The 'correction notice' must state why an objection is not 'properly made' and provides an objector 14 days from the date of issue (not receipt) for the objector to amend the objection so that it is a properly made objection. Obtaining expert evidence within this 14 day period to 'correct' an objection would most likely prove to be an impossible task.

Should an objector not 'correct' their objection within the 14 day period, serious consequences flow:

- pursuant to proposed sections 42C(3) and (4) and 52AB(3) and (4) of the Act, an objection is deemed to be not 'properly made'; and
- pursuant to proposed sections 43(2) and 53(2) of the Act the Chief Executive will be prevented from deciding the objection with respect to a general valuation; and
- pursuant to proposed sections 45(2)(c) and 55(2)(c) of the Act the objector will be prevented from taking the matter to the Land Court.

Proposed sections 42C and 52AB of the Act do not appropriately provide appropriate review of administrative power and do not accord natural justice to an objector as:

- a decision of the Chief Executive that an objection is not 'corrected' within the required time period can not be appealed to any forum; and
- there is no obligation on the Chief Executive to make a decision that supplementary material provided during the 14 day period has made the objection 'properly made' within the 14 day period; and
- there is no discretion or mechanism for a period of greater than 14 days from the date of issue (not receipt) of a 'correction notice' to be provided to an objector to 'correct' their objection and expiry of that period will deem the objection not 'properly made'.

It is noted that the Bill also proposes amendments to the *Land Court Act 2000*, which would preclude the Court's jurisdiction from making declarations that an objection to a valuation or general valuation is 'properly made'. Such a fettering of discretion of the Court is a concerning and potentially inconsistent with inherent court jurisdiction.

### **Retrospective Application and Effect on Current Objections and Appeals**

The Society expresses concern that the retrospective application of certain provisions affecting current objections and appeals in the Bill does not have sufficient regard to the rights and liberties of individuals on the basis that:

- it is inconsistent with the principles of natural justice; and
- it does adversely affect rights and liberties retrospectively.

It is proposed that the new section 105 in the Act provides, relevantly:

- (1) This section applies to a valuation in effect at any time on or from 30 June 2002.
- (2) Former sections 3 to 6 and 23 do not apply, and are taken never to have applied, for the valuation.
- (3) New sections 3 to 6 and 23 apply, and are taken to have always to have applied, for the valuation.
- (4) Despite subsections (2) and (3), former sections 3 to 6 and 23 continue to apply for the purpose of a proceeding decided before the commencement.
- (5) To remove any doubt, it is declared that subsections (2) and (3) otherwise apply for all other purposes, including, for example—
  - (a) an objection or decision relating to the valuation made before the commencement; and
  - (b) a proceeding, including an appeal from a proceeding mentioned in subsection (4), started but not decided before the commencement.

The proposed application of these provisions is clearly retrospective in intent by replacing the crucial definitions contained in sections 3 to 6 of the Act for any valuation issued from 1 July 2002 onwards. Objections and Appeals based on the appropriate determination of concepts such as 'unimproved value' already commenced but not finalised will be subject to the new provisions. It is highly irregular for the law to be retrospectively amended for proceedings on foot and doing so brings with it the real danger for parties to objections or appeals that costs incurred up to this point will be wasted.

Additionally it is contrary to principles of natural justice for a party not to be heard on the principles of law which applied to their matter when their action was taken. Retrospectively supplementing new definitions into the objection and appeal processes associated with valuations is a denial of procedural fairness.

It is the submission of the Society that parties to existing objections and appeals will be adversely affected in both a financial and procedural sense by the retrospective application of the legislation. The proposed provisions contained in the new section 105 of the Act are, in our view, needlessly contrary to fundamental legislative principles and unnecessarily interfere with the rights of parties to existing litigation.

It is not the position of the Society to comment, nor is the Committee the appropriate forum for comment on the economic implications of these proposals.

Thank you for providing the Queensland Law Society with the opportunity to comment on these issues.

Yours faithfully

Peter Eardley  
**President**