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Your Ref:

Our Ref: Planning and Environment Law Committee

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Mr David Eades
Queensland Valuations Reform Project
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[redacted]

Dear Mr Eades

QUEENSLAND STATUTORY VALUATION REFORM OPTIONS REVIEW - OBJECTIONS PROCESSES

I write in response to the Draft Report entitled Department of Environment and Resource Management: Queensland Statutory Valuation Reform Options Review (the Report) to provide some additional comments of the Queensland Law Society.

The Report necessarily addresses high level principles in many respects. The QLS is keen to continue to be involved in this reform process, especially as it relates to legislative amendments.

The additional comments of the QLS relate to Section 7 relating to Objections and some short observations on transitional arrangements.

Objections and Appeals

The QLS prefers the proposed option 1 approach but with some reservations and concerns. This option is, however, preferable to option 2.

Disclosure of Information Critical

As the Report rightly states much of the value in the proposed objections system is predicated upon the implementation of appropriate disclosure systems by the Valuer-General for information and methodologies upon which a valuation assessment has been made. It is salient that the New South Wales experience has proven that addressing information asymmetry between land owner and valuer has brought about significant positive effects, both in terms of objection durations and rates of objection.

Phase 1 – Lodgement

This proposed phase in option 1 requires a land owner to lodge the approved objection form 'properly made' containing relevant information.

Again the appropriate early disclosure of relevant information by the Valuer-General should act to reduce many low level objections as it will address perceptions of powerless and information asymmetry of land owners with regard to their assessment.

With regard to the notion of 'properly made' we said in our last submission to you:

> The Society rejects the notion of an objection being 'properly made' in terms of sections 42C and 52AB and associated provisions of the Act and the manner in which that concept is used to unfairly restrict the rights of land owners and also to provide the Chief Executive of the Department decision-making power which is not the subject of any review. The Society contends that it is inappropriate for any administrative officer to be provided with an unreviewable discretion as this promotes poor decision making and also provides fertile ground for corruption.

We note that there is very little detail in the proposals about the 'properly made' requirements other than prescribed information which must be provided. The QLS is opposed to the notion that a land owners right to question their government valuation should be based upon their ability to provide information to the valuing authority. In the interests of accessibility and equity we strongly recommend that the prescribed information is requested as a part of an objection but that a failure to provide any aspect of it (other than the key elements identified below) play no part in assessing whether an objection is 'properly made'.

It would seem highly improper and unnecessarily prejudicial for an objection to be deemed not 'properly made' if, for example, an objector can not inform the valuing authority of the correct size of the area of land comprised in the lot. While this is one of the pieces of prescribed information, there would seem little utility in mandating its provision other than as a double-check for the valuing authority and as a threshold hurdle for an objector.

The only possible components appropriate for assessing a 'properly made' application in the view of the QLS is that:

- a version of the approved form is used (not necessarily the current version);
- the land owner provides the following information on that form:
    a. their name and contact details; and
    b. the address of the property in question or a reference which would enable the property to be identified; and
    c. some objection or concern with the valuation assessed.

Additionally, a decision that any application is not 'properly made' must be itself appealable to an appropriate Tribunal or Court. Also for the sake of transparency and proper decision-making subsection 33(6) of the *Land Court Act 2000* which was added in the recent amendments which denies the Land Court the ability to make a declaration about whether an objection is 'properly made' should be removed. Any appeal of whether an objection is 'properly made' should stop time from running for the purposes of the objection sunset timeframes.

The QLS is strongly of the view that any initial lodgement processes must be done within a bounded timeframe for both the land owner and the valuing authority.

Phase 2 – Exchange and Consultation

This proposed phase in option 1 obliges a valuer to respond to an objector with a description of the approach to valuation adopted and the evidence used, permits an objector to respond and provides for an optional conference chaired by a Delegate of the Valuer-General.

The drafting of the Report sites the conference as both optional and compulsory on page 63.

Again at this stage there is little detail in the proposal about how this might work. The QLS is supportive of speedy mediated outcomes for objections and apprehends that the proposals for this stage are well suited to low level and residential objections.

The concern of the QLS at this stage resides with high value and more complex valuations. Our members inform us that in these matters there is generally agreement about the basic facts relating to a valuation and that the area for dispute is the expert assessment of how those facts are to be interpreted in the context of the valuation.

In this regard we apprehend that for high value and complex valuations processes more closely aligned with the ADR steps of the Planning and Environment Court would make a preferable model for the exchange and consultation stage. In this regard we note the significant benefit to an appeal under the *Sustainable Planning Act 2009* which is brought about by a meeting of experts as contemplated by Part 3 Division 3 of the *Planning and Environment Court Rules 2010*. The preparation of a joint expert report under these procedures clarifies accepted facts and exposes clearly and at an early stage the areas of opinion where the parties differ.

If such a procedure is adopted and a joint report is produced at this stage, all parties to a conference or mediation in the objections process are informed to appropriately attempt to seek a resolution of the objection. Given that the areas of genuine contention have been identified mediated outcomes should be easier to achieve at this early stage and should be easier and quicker to progress to the Land Court if a mediated outcome can not be reached.

It is the contention of the QLS that only after a joint expert report and the proper identification of the facts and issues of dispute between the parties could an informed 'locking in' of grounds of objection and / or appeal be made. Up to this point in the process a land owner may not truly be informed about the basis on which a valuation decision was made, nor about any deficiencies, or omissions, in the material relied upon to reach that decision. Accordingly the QLS is of the view that parties, following a mediation where a joint expert report has been obtained, should be in a position to amend their grounds of objection or introduce new evidence without a court deeming there is exceptional circumstances.

The essence of the process proposed in option 1 runs counter to this approach and seeks to speed high value and complex valuation objections through these early steps, more rapidly bringing these matters within the purview of the Court. While this is not an unfair or opaque objective it is likely to result in a similar process to that proposed being engaged in again at the Land Court appeal phase.

Phase 3 – Decision and Ratification

This proposed phase in option 1 proposes that an interim decision is made and then ratified by the Valuer-General.

The QLS is concerned that the oversight of the Valuer-General is only applied if the objection is allowed. This approach would seem to indicate that there is an inherent disallowance bias within the system.

To achieve equity, transparency and good decision making we contend that the VG should apply oversight to both allowed and disallowed objections. Without such an appropriate check and the balance of administrative convenience is simply placed upon disallowing an objection and speeding its way to the appeal phase. As discussed above this is not in itself an undesirable result but may not be necessary if appropriate measures are taken at the previous phase to properly narrow the scope of the areas of disagreement between the parties and seek bona fide mediated outcomes.

Phase 4 – Appeals

This proposed phase in option 1 proposes that on disallowance of an appeal a land owner has two months to seek review by a court or tribunal.

The QLS supports a robust and unfettered right of appeal to a court of competent jurisdiction. If our suggestions in relation to joint expert reports are not accepted at phase 2 then we suggest that they be considered for adoption in the Land Court's processes as in the planning jurisdiction they have proved to be effective in isolating issues and reducing the length of hearings. Additionally the provisions of the *Planning and Environment Court Rules 2010* in Part 3 Division 4 have appropriate limitations on adducing additional evidence to the Court if a joint report has been prepared. This again has the effect of narrowing the scope of matters before the Court to those actually in contention which aids with speedy adjudication.

Transitional Arrangements

The QLS is of the view that transitional arrangements for the increases in taxation brought about by the introduction to site valuation should be stepped in over a reasonable period of time.

I thank you for providing the QLS the opportunity to provide comments on these proposals.

Peter Lardley
President