

INQUIRY INTO LAND VALUATION SYSTEM

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7 March 2013

Mr Matt Kean MP
Chair, Joint Standing Committee on Office of Valuer General
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Kean

RE: Inquiry into the Land Valuation System

I refer to your letter dated 7 February, 2013 inviting the NSW API Division to make a submission for the Inquiry into the Land Valuation System.

We appreciate the opportunity to provide comment and our submission is attached.

We would be pleased to provide further comment to the Joint Standing Committee if requested. Arrangements can be made via contacting [REDACTED] API NSW Executive Officer, on telephone [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]

Robert Dupont FAPI
President



NEW SOUTH WALES DIVISION

SUBMISSION

Inquiry into Land Valuation System

8 March 2013

To:

Joint Committee on the Office of Valuer-General
Parliament House
Macquarie St
Sydney NSW 2000

From:

Robert Dupont FAPI
President
Australian Property Institute Inc.
New South Wales Division
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PREFACE

This submission to the Joint Committee on the Office of the Valuer-General has been prepared by the New South Wales (NSW) Division of the Australian Property Institute (API) and is in response to the Issues Paper – Inquiry into the Land Valuation System, February 2012. The API appreciates the opportunity to provide comment to the Valuer-General Committee on the Land Valuation System in NSW.

The API is the major professional association in NSW and Australia representing property valuers. The NSW Division has 3 000 members and nationally the API has over 8 000 members.

Approximately 250 API members undertake the rating and taxing valuation contract work for the state.

The API also has members who work in funds management, asset management, property finance, development, advisory, agency, property law and education. Its membership spans both the private and public sectors, and most members would be exposed to, use or rely on statutory valuations to some degree.

SUMMARY

The API supports the current Land Valuation System in NSW and the use of land (or site) value as best practice for rating and taxing purposes. The NSW Land Valuation System is used as a benchmark by other systems around Australia and is accepted by most property experts as best practice for an equitable property taxing system.

Considering the limitations of mass appraisal systems and with 2.45 million properties valued each year and 200 000 land tax assessments made annually in NSW, we believe that the NSW land valuation system achieves a high level of accuracy and has seen considerable improvements over the past eight years.

For greater efficiency, transparency, predictability and equity, the API suggests that some improvements can be made to the procedures of the current land valuation system such as a change of the base date and establishing an informal valuation tribunal.

The use of land value requires a legal framework to define the specific nature and definition of vacant land. In most countries in which land value has been used, the definition of land value has evolved over many years and has to conform to a legislative structure which is articulated by a myriad of case law. The API suggests that a number of amendments to the *Valuation of Land Act*

1916 are required to provide improved certainty in applying the provisions of the Act.

LAND (OR SITE) VALUE AS BEST PRACTICE

The API supports the use of land (or site) value for rating and taxing purposes as best practice and principle.

Land (or Site) value taxation (LVT) is a tax on the values of land and is primarily a tax on unearned income generated from Government expenditure on community facilities, transport infrastructure and so on. Its principle advantage is that it has no negative impact on the productive economy as land is neutral and is not distorted by the impact of improvements which are not maximally productive or highest and best use. It dampens speculation and by default directs investment into productive activities, not speculative ones. It also tends to dilute and reverse wealth polarisation, that is, it is the ideal progressive taxation.

There are a number of advantages to using LVTs. One advantage is that there is a high correlation between increasing economic prosperity and land value, that is, it is generally accepted that as land values increase the value of the buildings on top of that land decreases (assuming no upgrading takes place) in proportion to the total value and the value eventually reaches a level where it encourages construction and redevelopment. Another advantage is that land values in some

way reflect Government investment in infrastructure and services to the property and hence create a higher return back to the Government. Also, LVT is generally paid by the owner and it is difficult to pass this tax on to tenants as rents are part of an elastic market that depends on what tenants are prepared to pay rather than being reflective of the expenses of the landlords.

Another advantage of LVT is that it is readily administered as it only requires a valuation of the land and the identity of the land holder. The valuation of land can be relatively un-intrusive and can usually be conducted to a high degree of accuracy by trained valuers without the participation of the taxpayer. The use of LVT once initiated allows ready updating by mass appraisal systems that can be updated regularly to ensure relevance with market movements.

DISADVANTAGES OUTWEIGH ADVANTAGES WITH ALTERNATIVE METHODOLOGIES

Capital Improved Value (CIV) is another basis of value used internationally in countries where land tax, also referred to as the property tax, operates at the local government level. CIV is also evident in Australia where it is used to assess council rates in both South Australia and Victoria. Local government rating, which is a tax, is perceived by taxpayers to be closely aligned to services provided by local government of which no such rationale exists for state land tax. State land tax has an important role in imposing a tax on a base which is free

from improvements, especially improvements which are underdeveloped or which underutilise the land and distort the base of the tax.

The major disadvantage of taxation based on improved capital values is that it is considered to be a tax on enterprise investment and individual endeavour. Such a taxation base could be viewed as discouraging the economic use of land, in that a person who invests a large amount of money, risk and their own capital to create a productive enterprise, that in turn will employ people, produce commodities and add to the national output and economic wealth is then taxed on those inputs.

A tax on capital value is sometimes perceived to increase land speculation as there is no incentive to add value to the land. This in turn discourages redevelopment of older sites which may have a large component of old and dilapidated buildings but still offer the owner a return on investment.

In practical terms, the implementation of a capital values system requires a large initial cost and a large amount of effort to inspect, record, itemise and categorise all land and buildings and can be extremely intrusive in the initial setup phase. This will require a large number of trained personnel and extensive resources.

Ongoing administration and valuation costs are much more expensive for improved values as continual changes to all buildings and improvements in NSW have to be incorporated into the fresh valuations.

With all past records of improvements having been destroyed, the cost and time to establish a vigorous capital register suitable for valuation purposes would be uneconomic. Based on the experience of API members, an initial cost to establish this register would be in the vicinity of \$90 million in valuation fees alone, before the added costs of establishing centralised data collection.

Another methodology is to use net annual values based on rental returns and to a certain extent these values are merely a reflection of the ability of capital values to generate an income in the marketplace, and most of the above comments would apply.

Application of rental values usually results in smaller variations between properties and also reflects the demand on services, that is, three bedroom units would generally have a greater demand on services than one bedroom units which would be reflected in a higher rental and attract a higher tax rate in a similar manner to capital values.

However, changing the current NSW system from a land value to rental returns would still require the establishment of a detailed register albeit at a lower cost

than a capital register but still create similar disadvantages as outlined for capital values.

This Inquiry highlighted its priority to be the valuation system,¹ of which State land tax plays an important role in contributing to an efficient base on which the tax is assessed in NSW and indeed across Australia.

Capital Improved Value has been considered along with the models mentioned in the Issues Paper. It was highlighted that while other bases of value are used in Australia for council rating purposes, no such bases of value is used in any other state for land tax and this Inquiry should not cloud the distinction between these two taxes.

Land is an important medium for maintaining a neutral and efficient base which is not distorted by improvements of varying scale, types, age or structures that exist across locations of similarly zoned land, which are not highest and best use. To this end the retention of a tax on land by the states is the most efficient and neutral basis of value.

¹ 'It should be noted that the focus of this inquiry is the valuation system'

SUGGESTED PROCEDURAL IMPROVEMENTS

Change Date of Valuation (Base Date) For Rating and Land Tax Valuations

The *Valuation of Land Act 1916*, currently requires the Valuer General to provide valuations for rating and taxing purposes as at 1 July in the year of valuation. For local government purposes, finalised land values are generally provided to Councils in November/December in the valuing year, with land owners being provided with a Notice of Valuation in the following few months. For land tax purposes, the Office of State Revenue is provided with a copy of the Register of Land Values, as it appears at mid night 31 December in the year of valuation.

There has been over time considerable debate over the valuation date. Julie Walton in undertaking an inquiry into the NSW valuation system and published in 1999, recommended that consideration should be given to altering the valuation date to 1 May in the valuing year. In 2005, the NSW Ombudsman in his report, "Improving the Quality of Land Valuations issued by the Valuer General," considered that there was justification to amend the date of valuation to 1 March in the valuing year. One of the principal drivers for seeking this change of valuation date was, that the Ombudsman observed that there was insufficient time for the independent contract valuers and the contract managers to interpret and analyse sales data in a timely manner and for the array of quality control and statistical checks to be completed to a satisfactory level. The Ombudsman

recommended that consideration be given to altering the valuation date to 1 March.

Following consultation with a number of the contract valuers, in order to improve efficiency in the current land valuation system, the API suggests that the date of valuation be changed to 1 March rather than 1 July. As found in the earlier inquiries, the 1 July base date provides too tight a timeframe for the conduct and review of valuations. Another advantage from a change of date would be greater transparency in the valuations in relation to the market and this would increase public confidence in the land valuation system.

Changing the base date will also enable provisional values to be delivered earlier to the Office of State Revenue, will facilitate the auditing process and will assist the Office of State Revenue to know in advance if there are going to be any major impacts on their revenue bases.

Goods and Services Tax (GST)

Currently, contract valuers in NSW are directed to include GST in the Land Value assessment by reference to the analysis of sales where it can be determined that GST was included in the contract price or paid in addition to the contract price, even though the purchaser is entitled to a credit and considers the GST exclusive price to be the market value. This issue is relevant where both parties to a sale

are registered for GST and notably excludes single dwelling residential and rural residential land.

As there is no requirement in the *Conveyancing Act 1919* for the Purchase Price to be indicated as GST inclusive or exclusive, it can be operationally difficult to source reliable information as the treatment of GST varies depending on the circumstances of the parties.

In contrast to NSW, the GST policy of the State Valuation Service of the Queensland Department of Environment and Resource Management is in accordance with the general and accepted practice of members of the API where market valuations are expressed “exclusive of GST” as a reflection of the market of which the property is part.

This is a transparency issue with the land value being assessed and issued on the basis of a different set of assumptions compared to the market within which it is a part. This also creates a situation whereby we have a “tax on tax”.

The API suggests that a GST exclusive approach be adopted which would be in line with the market treatment of GST and also be in line with the Queensland policy.

Conservation Agreements

Policy should be developed for articulating the various conservation management agreements that exist in the determination of land value for rating and taxing purposes.

Currently, contract valuers are advised not to include the value of the environmental offset in either the land value of the offset land or the land that benefits from the offset. For Conservation Agreements to be taken into consideration in the determination of land value for rating and taxing purposes, there needs to be a single register where the agreements are readily available.

Contaminated Lands

In recent years, technical directions have been released by Land and Property Information (LPI) on the valuation of contaminated lands, utilising the existing provisions of section 6A(2) VLA.

The *Contaminated Land Management Act 1997* treats the remediation and management of contaminated lands as a personal liability. Currently, the valuation of contaminated lands could be challenged given the highly technical nature of specific site contamination and estimating the costs of remediation. Essentially, it is considered inequitable to have polluters get reduced land tax and reduced rates because they have polluted a site. The Contaminated Land

Management Act makes the liability of contamination a personal liability at either the individual, company or mortgagee level.

The API suggests that amendments to the Valuation of Land Act should align with Contaminated Land Management Act which would enable more robust valuations and address a taxation inequity.

Provision of Valuation Guidance for Specialist Properties

The provision of more guidance notes on valuing specialist properties covered in Part 1B Divisions 2, 3, 4, 5, and 5A would facilitate greater consistency in valuation approach and improve efficiency not only in the production of the original valuations but also in the audit process.

Victoria is a good model for this. Consideration could also be given to including such notes as regulations within the Act to provide a greater degree of consistency and reduce legal challenges and judgments based on technicalities.

Improving the Efficiency in the Auditing of Valuations

The API understands that, given the level of resourcing in LPI, the efficiency of the current auditing process of valuations could be improved by introducing an audit based on valuation outcomes rather than what many contractors see as

statistical compliance. However, auditing of specialist properties such as shopping centres could be outsourced to valuers with the requisite expertise and experience in that specialist property.

Improving Accuracy of Comparable Sales Report

Improving the accuracy of the current sales report from the LPI website in terms of the proximity and comparability of properties utilised in the valuation of the subject property would assist in improving transparency. An aerial view of the subject and comparable properties would also enhance transparency.

The current system of sales reporting is generally seen as having little relevance for all but standard residential properties.

Introduction of an Informal Valuation Tribunal

The initial objection process is seen as fair and equitable and is available in a readily understood format for most property.

The initial review of the valuation by a third party valuer and the requirement of that valuer to verbally contact the objector and address their concerns in a written document is considered to be best practice and does provide transparency to the objector in most circumstances.

However, should an objector still be dissatisfied with the result, proceeding to the next step involves listing the matter with the Land and Environment Court which can be costly and intimidating for the average person. Although this process does offer a further mediation point via a Section 34 Conference, and Commissioners are willing to assist those objectors who cannot afford legal representation, in practice, the process can be inequitable. In addition, objectors can be frustrated when the Section 34 Conference does not result in a decision.

The API suggests that an informal valuation tribunal which can make a decision on the objection be made available to the objector as an alternative to the Section 34 Conference or going to the Land and Environment Court. Past valuation boards of review consisting of two valuers and a lawyer and where the parties do not have legal representation have worked well. Similarly, the Section 34 Conference may be reconfigured to provide a preliminary judgment.

SUGGESTED AMENDMENTS TO VALUATION OF LAND LEGISLATION

Various Sections – Non Market Based Assessment of Value

It is generally agreed that the current Act's wording is archaic and it would benefit from updating to reflect the modern idiom.

The Act has been amended at various stages to reflect operating procedures or as a result of court decisions and legislative orders. Generally where the Act departs from clear market based assumptions, selective legal interpretations lead to a lack of clarity and large variations in valuation outcomes, for example, Part 1B Division 2- 14G Valuation subject to heritage restrictions under EPI (where there is substantial development value in the site despite the Heritage restriction) and Part 2-26A Valuation of parcels that form part of the site of a building (where the property is only part developed or part has no rental value).

The API recommends that the following amendments be considered, however recognises this is not an exhaustive list.

Part 1 Section 4 Definitions – Land Improvements

The API suggests that definitions used for land improvements need to be clarified and written in modern language to provide greater certainty in interpretation.

Part 1B Division 2 Section 14K Assumption as to physical condition and manner of use of land

An anomaly can exist under Section 14K where a lot will be valued for Council on the date of change of circumstances, usually being a subdivision. The requirement to provide a land value at the base date of the general valuation year

for Council cannot be utilised in the calculation of land tax or receive the benefit of averaging if it is a declining market.

The API suggests that Section 14K be revised to include suitable dates which would form the "date valuation made" when directing the valuer to make the assumptions required, for example, when assessing the valuation of new lots in a subdivision the date of registration of the Deposited Plan could be the directed "date valuation made" rather than many months later as currently occurs.

CONTACT

The API would be pleased to discuss any of the matters raised in this submission or to provide any additional information. Arrangements can be made by contacting:

[REDACTED]
Executive Officer
New South Wales Division
Australian Property Institute Inc.
Tel: [REDACTED]
Email: [REDACTED]

APPENDIX 1

AUSTRALIAN PROPERTY INSTITUTE INC.

The Australian Property Institute (API), (formerly known as the Australian Institute of Valuers and Land Economists), has enjoyed a proud and long history. Originally formed over eighty years ago in 1926, the API today represents the interests of more than 8000 property experts throughout Australia. As the nation's peak professional property organisation, the API has been pivotal in providing factual, objective and dispassionate advice on a broad range of property issues addressed by the Commonwealth and State/Territory governments since the Institute was formed.

In addition, the API's advice has increasingly been sought by overseas bodies such as the United Nations, the Food and Agriculture Organisation (UNFAO), the World Bank and the Human Rights Program of Harvard University evidencing a level of expertise within the API which is recognised globally.

As a professional association, the primary role of the API is to set and maintain the highest standards of professional practice, education, ethics and discipline for its members.

API members are engaged in all facets of the property industry including valuation, property development and management, property financing and trusts,

investment analysis, professional property consultancy, plant and machinery valuation, town planning consultancy, property law, and architecture.

Membership of the API is synonymous with traits and qualities such as professional integrity and client service, industry experience, specialist expertise, together with tertiary level education and lifelong continuing professional development.