

**Submission
No 59**

INQUIRY INTO LAND VALUATION SYSTEM

Name: Mr Colin Rooke

Date Received: 5/03/2013



Colin A. Rooke, FAPI - (PAST)

Registered Valuer and Licensed Real Estate Agent
Bellevue Hill 2023

t: [REDACTED]
m: [REDACTED]
E: [REDACTED]

SUBMISSION

Inquiry into the Land Valuation System



Colin A. Rooke, FAPI *-(PAST)*

Registered Valuer and Licensed Real Estate Agent
Bellevue Hill 2023

t: [REDACTED]
m: [REDACTED]
E: [REDACTED]

I make this submission in response to the Parliament of New South Wales Inquiry into the Land Valuation System as it currently applies in New South Wales.

I have been a professional Valuer in continuous private practice since 1969 being Registered Valuer No. 48; a copy of my Brief Biography and Curriculum Vitae is attached.

While I do not possess the technical professional expertise to comment extensively on "Any legislative changes required", I believe I have the expertise to comment on some of the more practical aspects of the current statutory Land Value system, especially with respect to such topics as complexity, inequity, transparency, equitability, predictability, and greater efficiency of the mass land valuation system.

I note the inquiry is about "the valuation system, not state revenues."

Further, I note the comments of the Treasurer of NSW, Mr Mike Baird when he was quoted in the Sydney Morning Herald on 28th March 2012 as saying "The valuation process drives me crazy there's no transparency, no consistency. We need to get much more certainty and transparency". I know he speaks for the community as a whole. (Copies of relevant press reports are attached).

My comments are as follows:-

It appears that the current system of using many and varied private individual valuation firms, in the first instance, "falls between two stools" as, by its very structure, it provides for a variation of individual market interpretations. The High Court of Australia has repeatedly stated that Valuation is not an exact science; however I believe that with the very wide public endorsement and acceptability of computer systems throughout our community, virtually all the current residential property assessments could be computer-driven. As stated in the Henry Tax Review, the broader the base, the fewer distortions and I believe this principle should also apply to the mass assessment land valuation system.

Although not appropriate to this enquiry, I believe extensive cost savings would result through the expanded use of computer-driven land valuations, savings which could be more appropriately applied to creating a more transparent and equitable review process. It seems clear to me that the whole objection and review system would be greatly revised and enhanced by creating easier, and more direct, access to independently appointed private review panel valuers.

My opinion is that one of the main reasons for lack of transparency and consistency in the current review and objection system is the lack of a reliable, independent and readily accessible Review Process. This is clearly illustrated by the outcome of two residential properties which were reported in the Sydney Morning Herald, on 28th and 30th March 2012, as having had their reviews result in a reduction of statutory land value by some 45% and 61% respectively. The actual figures, as again reported in the Sydney Morning Herald, stated that [REDACTED] Point Piper, a large waterfront holding, was originally assessed at \$17.2 million and reviewed down to \$9.5 million; another multi-unit waterfront property at [REDACTED] Point Piper was reviewed down from \$11.7 million to \$4.5 million.

As a Registered Valuer who has specialised in this geographical area for many years and who lives in a neighbouring suburb, I cannot comprehend how these land value reductions could have been assessed. A very comparable sale occurred at [REDACTED] Point Piper, which sold as a vacant home site in December 2005 at \$16,088,000. This site area is advised as 1,486 square metres and shows about \$10,826 per square metre. Although there were variations in actual land sizes and appropriate handcrafted professional adjustments must be made, the most basic market relativity shows the capital price of a waterfront home site in the suburb. Established valuation principles clearly show a pro rata basis cannot be accurately used; however, as a simplistic exercise, if a rate of \$10,826 per square metre was applied to the advised area of 1,866 square metres at [REDACTED] Point Piper, a figure of \$20,200,000 would be produced; at [REDACTED] Point Piper, with an advised area of 481 square metres, the same rate of \$10,826 would produce a figure of \$5,200,000. It is important to emphasize that there are many adjustments to be made,

relative to the application of comparable sales evidence, but I provide this over-simplified scenario to illustrate that there may have been some subjectivity in the professional and/or legal advocacy which is not relative to the statutory enunciated Court professional valuation requirements. Independent expert Valuers are not to act as advocates.

Relative to the above illustration is the definitive complexity issue where the current public perception of 'Land Value' may be overcome by the adoption of a basic name change to 'Vacant Site Value'. I believe the definition as stated in the Western Australian "Valuation of Land Act 1978" s4 (1) is simple, straight-forward and comprehensive, being as follows:-

" 'Site Value' of land means the capital amount that an estate of fee simple in the land might reasonably be expected to realise upon sale assuming that any improvements to the land, other than merged improvements, had not been made;"

And the definition of 'merged improvements' is –

"any works in the nature of draining, filling, excavation, grading or levelling of the land, retaining walls or other structures or works for that purpose, the removal of rocks, stone or soil, and the clearing of timber, scrub or other vegetation."

I believe the addition of the word 'vacant' would further clarify and explain this definition to the community.

Also, a new definition could be added to the Legislation, being "Specialist Statutory Valuer" and I will elaborate on this later in my submission.

The Objection Process, as it currently exists, in my opinion, does not create and provide enough transparency through obvious independence of process or personnel, with the ultimate final decision being open to the vagaries of the best, and possibly most expensive, advocate.

The existing Review Objection Process entails the Valuer-General seeking competitive price quotations from his Department's own sources and this, in itself, eliminates transparency and does not necessarily mean the best qualified and most respected valuer in a geographical area is appointed.

It has long been recognised throughout the community and the Courts that a bias exists to any expert to his/her employer. In Lord Abinger v Aston (1873) 17 LREq358 at 374 Sir George Jessel, the Master of Rolls, expressed a view that..... "Now it is natural that his mind, however honest he may be, should be biased in favour of the person employing him, and accordingly we do find such bias.....undoubtedly there is a natural bias to do something serviceable for those who employ you and adequately remunerate you."

Eighty years later, in the Supreme Court of Tasmania Lane v Warden etc of the Municipality of Devonport (1953) 12 The Valuer 382, Crisp J said at 385 "... that he will, be it unwittingly or not, favour the interests of the party that instructs him..."

I am proposing that it may be advantageous to abolish the existing objection process, or at least create a level between the existing 'non-transparent' Valuer-General appointed level, and the ultimate final Court level of appeal.

In truth I see it as a matter that procedural fairness and natural justice must be transparently and readily recognisable throughout the whole community, being broadly available to all land owners, not just the wealthy few and I would refer you to Commissioner of Police v Tanos (1958) 98 CLR 383 at 396.

I am proposing consideration should be given to amend the existing Review and Objection process broadly along the following lines:

- ↳ The establishment of a panel of independent 'Specialist Statutory Valuers' to be registered and maintained by the Real Estate Institute of NSW and the Australian Property Institute. An appropriate legislative definition would need to be decided upon for the term of "Specialist Statutory Valuer"

- ↳ Both parties to the disputed Valuation would be asked to nominate and agree on an appropriate Valuer to undertake the review process, which would be conducted as a 'Documents Only Arbitration', carried out under the appropriate "Commercial Arbitration Act 2010". Should the parties not be able to agree upon a Valuer, it would be left to the respective Institute President/s to nominate an Arbitrating Valuer to complete the task. The President and the Institute would also have the appropriate protection of the Arbitration Act. The Institute's time would be appropriately financially compensated, and this would be paid by the party seeking the review. Such amount could be claimed back if the Review was in favour of the party making the original assessment.

- ↳ A Documents-only Arbitration Valuation would entail both parties to the dispute providing written evidence and submissions to the appointed Arbitrator/Valuer who, after due and careful consideration, which may require further information and advice to and from both parties jointly, before making his/her final Award in writing.

It has been my experience, and enquiries reveal, that there is a very significant percentage of land owners who object regularly and this suggested process may provide a basis of more serious consideration in the mind of any potential objector. This certainly is not to suggest, in any way, discouragement of an objection or limitation of a land owner's right to natural justice or procedural fairness. Rather, I believe these rights would be enhanced.



Colin A. Rooke

Registered Valuer 