

Changes to the *Valuation of Land Act 1944* and How They Affect Land Owners

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On 12 March 2010, the *Valuation of Land and Other Legislation Amendment Act 2010* ("the Amendment Act"), which varies the *Valuation of Land Act 1944* "the Act", came into effect. The effect of the amendments on you will depend on whether you are:

- a land owner who has recently received a valuation of land notice;
- considering objecting to a new valuation;
- appealing a decision of the State; or
- currently an appellant in an undecided appeal commenced prior to the Amendment Act coming into force.

The Amendment Act is a direct response to the Queensland Court of Appeal in *Chief Executive, Department of Natural Resources and Mines -v- Kent Street Pty Ltd* ("the Pacific Fair Case"). While the Court's decision in the Pacific Fair Case was clear and it was consistent with many years of past valuation practice, the State Government has taken the view that changes are needed.

Changes to the method of determining value

The Amendment Act is amendments to several definitions and principles in the Act will have a direct effect on past, present and future valuations.

The modifications have both retrospective and prospective effects. The Amendment Act applies to all valuations made between 20 June 2002 and 30 June 2011 (when it is intended that an entirely new Act will take effect).

Unimproved value changes

For land owners, the most substantial change to the Act is the amendment of the definition of "unimproved value". The new definition requires that in determining the unimproved value:

- (a) the benefits of any lease or other instrument relating to the land (or its improvement) must be included in its unimproved value;
- (b) no amount can be deducted for goodwill;
- (c) no deduction is to be made for any profit and risk allowance or development premium for realisation of the use of the land; and
- (d) infrastructure provided to the land or infrastructure charges paid in respect of it, must be taken into account.

Value of improvements

Under the Amendment Act, if the land is improved, the unimproved value cannot be less than the sum that would be obtained by deducting the "value of improvements" from the improved value of the land on the date of valuation.

However, under the Amendment Act, the "value of improvements" cannot exceed the aggregate of:

- the price payable for their construction reduced by a discount for their condition, age, physical and economic obsolescence or any other factor diminishing their value; and
- an allowance for the holding costs over the time it would take to construct improvements of a nature and efficiency equivalent to the existing improvements.

This is a significant change which may have a substantial effect on land owners, for example, a heritage house may be of intrinsic value but, due to its age, the value of the improvements may have "depreciated" so significantly as to result in no deduction from the improved value being available when determining the unimproved value of the land on which it stands.

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Balance

The objection process

While the time frame for an owner to object to a valuation remains 45 days from the date the notice of the valuation was issued, the requirements and procedure for an objection are considerably altered.

The Amendment Act places an increased burden on the objector by requiring that an objection must be "properly made".

The requirements for a properly made objection are lengthy and precise. Strict compliance is required. If an objection is not properly made not only will it be refused but the objector also loses its right of appeal to the Land Court.

Generally, an objection must:

- be made using the approved form;
- be signed by the owner or have written consent of the owner;
- specify the amount contended as the proper value;
- give detailed grounds supporting that value and include specified accompanying information and documents.

An objector is only able to appeal to the Court on those grounds included in their objection. It is therefore vital that the objection be correct and comprehensive.

Given the detail that must be included and the relatively short period of time in which to lodge an objection, land owners should seek legal and expert valuation advice as soon as possible to help determine:

- if they should lodge an objection;
- what must be done to make a properly made objection; and
- how an objection may affect their appeal rights.

Existing appeals

The amendments to the Act varying the definition of unimproved value do not apply to appeals commenced prior to 12 March 2010,

provided those appeals are decided before 30 June 2010.

In those appeals, owners are still able to ask the Land Court to decide the value of the land using the former definition (and potentially follow the decision of the Court of Appeal in the Pacific Fair case). The window for deciding these appeals closes on 30 June 2010. Therefore, there is a compelling incentive for those appellants to settle their appeals quickly.

Conclusion

If you are a land owner who wishes to object to a valuation or appeal a decision made about an objection or if you have a current appeal before the courts, you should immediately seek legal advice about the implications of the Amendment Act.

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