

18 November 2009

The Hon. Greg Pearce, MLC  
Shadow Minister for Financial Management and Housing Strategy  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr Pearce

**Re: Valuation of Land Amendment Bill 2009**

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

The purpose of this letter is to advise you of our strong opposition to the above legislation – which was introduced into Parliament by the Minister for Lands, the hon. Tony Kelly MLC on 12 November 2009.

This legislation expressly seeks to overturn a judgment of the NSW Court of Appeal.<sup>1</sup> That judgment concerned the method used by the Valuer-General to value land with heritage restrictions for the purposes of state taxes and council rates. The issue centred on the interpretation of section 14G of the *Valuation of Land Act 1916*, which was inserted into the Act nine years ago.<sup>2</sup>

Normally the Valuer-General values land on the basis of its unimproved value. However, where heritage restrictions prevent the demolition of an existing building, it would be unjust to ignore the burden that the property owner is forced to bear, in the form of retaining the existing building. Usually, the requirement to retain an existing building for heritage reasons reduces the development potential of land, and therefore, reduces the true value of the land. Since it is not lawful for the owner to demolish the structure, it would be unreasonable to impose taxes and rates, on the basis that demolition was possible.

Section 14G requires the Valuer-General to allow a discount to be made based on the existing development of the land, rather than on any presumption of future development. As a result, the valuation is usually lower than other comparable land not subject to a heritage restriction.

However, the Court of Appeal found that **the Valuer-General has been wrongly assuming that a property owner had the right to erect an entirely new, modern, building in place of the existing building**, albeit consistent with the design of the existing building.<sup>3</sup> No such right exists for the owners of most heritage restricted properties. **To make valuations in this way, is to tax the owners of heritage affected properties for a right they do not have.**

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<sup>1</sup> *Valuer-General v Commonwealth Custodial Services Pty Ltd* [2009] NSWCA 14.

<sup>2</sup> *Valuation of Land Amendment Bill 2000*.

<sup>3</sup> *Valuer-General v Commonwealth Custodial Services Pty Ltd* [2009] NSWCA 14 [23].

As Chief Judge McClellan said:

Most heritage buildings will be of some age which, even if carefully maintained, will be apparent in the materials, finishes and general condition of the building. All of these matters may affect the building's marketability and, because of the cost of maintenance they impact upon the available return. No building which is subject to heritage restrictions will be entirely new and in pristine condition.<sup>4</sup>

Nonetheless, the government is now seeking to overturn the judgement, of the chief judge, and his two fellow Court of Appeal justices. The government wants to tax the owners of heritage restricted properties, as if they had the right to demolish the worn existing buildings and build fresh new building to modern building standards and requirements. Such buildings would clearly be worth more than most existing heritage protected buildings.

Furthermore, **the bill imposes this methodology retrospectively**<sup>5</sup>. In doing so the government is asking the Parliament to legitimise the last nine years of unlawful conduct by public officials.

This will impact on the rights of owners of 44,000 heritage properties and the rights of owners of countless more properties that are in heritage conservation areas or are in the vicinity of heritage listed properties. **Most owners of heritage restricted properties are average families, who have no right to demolish the building on their land and erect a new one in its place.** Those ordinary property owners should not be taxed based on the fictional assumption by the government that such a right exists.

This legislation increases the inequity faced by the owners of heritage restricted properties and further burdens them with unreasonable costs. It further reduces the incentives for someone to buy such a property and adoptively re-use it (and doing so restore its condition).

**We ask you to oppose this bill in it's entirely.**

We are available to discuss these issues.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Aaron Gadiel  
Chief Executive Officer

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<sup>4</sup> Ibid.

<sup>5</sup> Schedule 1, item 3.