STATUTORY VALUATION PROCEDURES AND PRACTICES under the LAND VALUATION ACT 2010

FEEDBACK TO VALUER GENERAL - HERITAGE

Issues for Consideration

- ***How do members compare sales of similar properties without heritage restrictions?***

  See fuller explanation below but there are four essential items to consider being Limitation on Development Potential; Approval Costs on Development (Loss of Control on the use of the land); Obsolescence; and Enhancement.

- ***Do members see a consistent effect in the prices of heritage affected properties?***

  No. There is no consistency - each property must be separately considered.

- ***What are the positive or negative effects of heritage significance on the property's site or unimproved value?***

  See Dot point one.

- ***How do members consider the 'highest and best use' should be applied for heritage properties?***

  Highest and best use is an essential first step in the valuation of real property. The highest and best use can be gauged by having regard to the Heritage Citation (details in the Heritage Register/List). The highest and best use should be qualified and quantified.

  Highest and best use is defined:

  > "The use that would produce the highest value and must be physically possible, legally permissible and financially feasible."

  The determination of highest and best use does not change from usual valuation principles applied. With heritage properties, the highest and best use is required to consider the impact of the heritage classification of the property. That impact may constrain further development.

  A useful guide for valuers is Section 22 LVA 2010. The existing use is the highest and best use. Once the GFA has been recorded in QVAS it should make the job of valuing heritage easier as this method would be applied every valuation year unless there was a change to the property. Again, each property is different but for most heritage properties the highest and best use is the existing GFA.

  An important assumption in the determination of highest and best use is that the important heritage item is to be retained in its heritage state. It is not to be assumed that a similar or replica replacement can be made which is inconsistent with the significance of the important heritage item.

- ***How does this affect the development potential of a site?***

  Dependent on the Criterion and matters of significance in the Heritage register/List there may be no opportunity to increase the existing floor space or there may be significant potential. Each property must be considered and assessed on its merits.

  The important principle is that each heritage classification must be carefully considered in determining the potential of the land. This is often supported by a report from a heritage expert and additionally a Town Planning expert.

  Heritage properties do not fit neatly into a mass valuation approach. They require proper individual consideration to properly understand the nature of the heritage constraints and the impact on value. If expert reports and agreed past allowances between expert valuers determined by court precedents are recorded in QVAS than the mass appraisal system will function better. Like Volumetrics there will never be one size fits all.

- ***Are there any realistic potential benefits available through transferable development rights for the heritage site, and how are these considered in the statutory valuation?***

  Historically there was value in transferable development rights but these are in effect a chattel that may be sold. Therefore, the site value of land granted the transferable right is unaffected. Land that has acquired a transferable development right has a greater development potential and depending on the Town Plan may have a benefit which could be treated under Section 22 LVA. The Brisbane Town Plan has subsequently been amended which effectively negates the potential value of a transferable development rights. Valuation experts from both the Appellants and Respondents in previous court matters have both correctly stripped TSA's from their respective sales analysis.

- ***How do different types of heritage restrictions affect properties? Consider federal, state and local.***

  The heritage restriction is inherent in the Heritage Citation (entry in the Register/List). There is no generic application. The restrictions for each property must be individually considered.

- ***How do varying levels of government responsibility and regulatory control impact the assessment of heritage-affected properties, and how do these factors influence statutory valuations?***

  The level of government responsibility really has little relevance. The guidelines are in the Heritage Citation (Entry in the Register/List).

The API recommends that the section in the *Statutory Valuation Procedures and Practices under the Land Valuation Act 2010* manual relating to Heritage is expanded to assist all parties (public and private) to be not only cognisant of the guidelines but to provide background information on the process. This should lead to consistent valuation outcomes. Hence, we recommend that heritage matters should be expanded and put in context.

We welcome the Valuer General using some or all of the following discussion.

Whilst there is significant precedent, some of the following matters have set the existing guidelines that are currently in place.

The following matters will assist in understanding the overarching principles:

The Valuer General v Queensland Club [1991] QLAC 18 919910 13 QLCR 207

Ballow Chambers Ltd v The Valuer-General [1993] QLAC 42 (1993) 14 QLCR 422

Roberts v Department of Natural Resources and Mines [2003] QLC 65 (2003) 24 QLCR 228

An additional case for consideration from the Land and Environment Court of NSW which relates to cost of construction on site value was *In Adam Pty Ltd v Valuer General* [2011] NSWLEC 55

Heritage in Context

The International Council on Monuments and Sites (ICOMOS) is a non-governmental international organisation dedicated to the conservation of the world's monuments and sites. In Australia the Burra Charter is a set of principles that have been adopted to create a nationally accepted standard for heritage conservation in Australia. It is Australia's implementation of ICOMOS. Whilst not a legal document, it is unlikely, when considering heritage constraints that the Burra Charter will not be strictly followed.

In Queensland there are four registers that may be needed to be investigated to fully understand the heritage constraints being:

1. National Heritage List
2. Commonwealth Heritage List
3. Queensland Heritage Register
4. Local Government Heritage Registers

The National and Commonwealth Heritage Lists are established under the *Environmental Protection and Diversity Act 1999*. The National Heritage List includes outstanding heritage value to the nation and the Commonwealth Heritage List includes heritage places owned or controlled by the Commonwealth

The Queensland Heritage Register is established under the *Queensland Heritage Act 1992* (and its precursor *Heritage Buildings Protection Act 1990*), which facilitates the existence of the Queensland Heritage Council. The primary role of the Queensland Heritage Council is to provide advice : to the Minister; to government and community organisation; and to the chief planning executive about the effect that development proposed under a development application have on the cultural heritage significance of a State heritage place.

Entries on a heritage register are divided into four sections being general, significance, history and description. All need to be considered to understand the requirements to implement the Burra Charter.

There are eight criterion that identify the significance. The significance may be limited to one criterion or multiple criterion. They are for the Queensland Register:

A The place is important in demonstrating the evolution or pattern of Queensland's history.

B The place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage.

C. The place has potential to yield information that will contribute to an understanding of Queensland's history.

D. The place is important in demonstrating the principal characteristics of a particular class of cultural places.

E. The place is important because of its aesthetic significance.

F. The place is important in demonstrating a high degree of creative or technical achievement at a particular period.

G. The place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

H. The place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.

Valuation Process - Guidance

The overarching principle is to assess the site value unaffected by heritage and then to adjust for the heritage aspects. When considering adjustments for sites on a heritage register, or adjoining a site on the heritage register, the following should be individually considered, amongst other considerations, bearing in mind the Heritage Citation:

- Limitation on Development Potential (Highest and Best use)
- Approval Costs on Development (Loss of Control on the use of the land) and that referral authority approvals have greater complexity and hence cost.
- Obsolescence
- Enhancement

The mere fact that a site is listed does not mean it cannot be further developed, rather that development may be significantly constrained. A site without heritage constraints may have the potential for high rise development, whereas a similar site with heritage constraints may not have the ability to increase the size of the building.

Any development application including renovations of a building or improvements subject to heritage constraints has greatly increased costs due to the need to demonstrate compatibility with the heritage constraints.

The heritage significance may be inherent in the design and layout of the building or improvements. For example, a heritage building in a retail area may not have the opportunity for a display shopfront thus losing exposure. Alternatively, the internal layout may have larger columns losing useable area. The measurement conventions in Australia ignore columns but these columns may also prevent line of sight.

Many heritage buildings are older in nature and are subject to higher repairs and maintenance costs. This is for two reasons, firstly, that more problems may exist, and secondly, any maintenance must be sensitive to the heritage restrictions and requirements of the Heritage Citation. This however relates solely to the building and does not flow through to the site or unimproved value.

In some instance heritage buildings may be attractive to the market. This attraction may offset some of the constraints above and even surpass those constraints. The importance is to view and assess the asset objectively.

Heritage properties and the restrictions or constraints outlined in the Heritage Citation require assessments to be on a case-by-case basis and must reflect the unique nature and extent of the heritage characteristics, and the impact and effect of the heritage protection and development controls that apply. It is not appropriate to attempt to compare sales of a heritage property to the site value of another heritage property without adjustments. To do so is to risk applying the heritage restrictions and constraints of the sale property to the subject property. This does not mean the analysis of individual constraints that may be derived as an observable input cannot be used as a guide to the constraints applicable to the property being valued.

Finally and to again emphasise, whilst one specific assessment or application of heritage restrictions or constraints may be on the basis of a percentage adjustment from an unaffected site, that same adjustment must not be applied to another site without considering and allowing for differences. That is, each aspect must be individually considered.

The API recommends that the section in the *Procedures and Practices* manual relating to Heritage is expanded to assist all parties (public and private) to be not only be cognisant of the guideline but to provide background information on the process. This approach should lead to consistent valuation outcomes.

The API also notes that in the May 2020 version of the document *Statutory Valuation Procedures and Practices under the Land Valuation Act 2010* that the discussion and guidance on heritage matters has been grouped with contamination. These are different subjects that warrant individual sections.