



**SUPPLEMENTARY SUBMISSION ON THE DRAFT REGULATIONS ON PROPERTY VALUATIONS
FOLLOWING CONSULTATION SESSION WITH VALUER GENERAL HELD AT PROTEA HOTEL, HILTON
ON 26 JUNE 2017**

1. Introduction

Forestry South Africa (FSA) drafted a full and detailed submission to the OVG on the Draft Regulations in terms of the Property Valuations Act (Act 17 of 2017) which was sent to the OVG before the cut-off date for making such submissions of 20 June 2017.

This supplementary submission is made to the OVG following a Consultation Session held with the OVG in Hilton on 26 June 2017 at which Kwanalu, commodity organisations, including ourselves, professional valuers, the Land Bank and other commercial banks and representatives of District Farmers' Associations affiliated to Kwanalu were present.

At this session, the Valuer General, Mr Chris Gavor, indicated that further stakeholder input would be accepted for a period of one week after the Consultation Session and taken into account when drafting their Report on the comments received. This supplementary submission is made in terms of this arrangement.

Forestry South Africa would like to thank the OVG for this opportunity to make additional comments and recommendations on the Draft Regulations.

2. Specific Recommendations and Motivations Therefore

2.1 Definitions - "acquisition benefits": 1.

The definition of acquisition benefits reads as follows: *"acquisition benefits" means any benefits that accrued to the owner of and the subject property because of the manner of acquisition, and where such benefits did not arise from normal market transactions, including that they did not acquire the property on the open market from a willing seller;*

2.1.1 Recommendation

It is recommended that the wording of this definition be changed to read as follows: *"acquisition benefits" means any benefits **derived from the State** that accrued to the owner of and the subject property because of the manner of acquisition, and where such benefits did not arise from normal market transactions, including that they did not acquire the property on the open market from a willing seller;*

2.1.2 Motivation

The current wording does not distinguish between acquisition benefits derived from the State (e.g. interest free loans, grants, subsidies etc.) and those derived through other means (e.g. inheritance, assistance from local co-op etc.) accruing to the owner of and subject property. Although it is implied that the benefits relate to those provided by the State, for the sake of clarity, we feel that it should be stated, as highlighted by the insertion in the definition of the words “derived from the State”.

2.2 Powers of the Valuer General: 2. (1) (e)

This sub-section reads as follows: *“require the owner, **tenant or occupier** of the subject property to provide an authorised valuer, either in writing or orally, with the particulars regarding the subject property reasonably expected to be in their possession, including, but not limited to... “*

2.2.1 Recommendation

It is recommended that the wording of this sub-section be changed to read as follows: *“require the owner, ~~tenant or occupier~~ of the subject property to provide an authorised valuer, either in writing or orally, with the particulars regarding the subject property reasonably expected to be in their possession, including, but not limited to... “*

2.2.2 Motivation

Sub-section 2. (1) (e) lists no less than 14 pieces of information that would need to be provided to the authorised valuer. These are contained in sub-sections (i) to (xiv). Given the nature of the information to be provided, it is highly unlikely that anybody other than the owner of the subject property would be in a position to provide such information – certainly not a tenant or an occupier.

2.3 Valuation practices, methods, standards and procedures: 4. (4)

Subsection 4. (4) reads as follows: *“The authorised valuer must deliver a written notice to the owner or person in charge of the subject property, at least **7 days** prior to the proposed date of inspection of the subject property, containing the following information....”*

2.3.1 Recommendations

It is recommended that:

- (a) the minimum notice period be increased substantially from 7 days (this would require the PVA to be amended as well); and
- (b) the written notice be referred to in terms of **“working days”** not “days”.

2.3.2 Motivation

- (a) Given the likely time it would take the owner or person in charge of the subject property to gather the extensive amount of documentation required by the authorised valuer in terms of subsection 2. (1) (e), the minimum notice of 7 days is woefully inadequate.
- (b) Changing the wording to read “working days” would bring it into line with what is written in Section 12. (2) of the PVA.

2.4 Determination of the value of the subject property: Section 6. (a)

Sub-section 9. (1) reads as follows: *“On receipt of the valuation report from an authorised valuer, the Valuer-General shall provide the owner or person in charge of the property with*

a copy of the valuation certificate, which will, for the purposes of this section, be designated as a provisional valuation certificate;

2.4.1 Recommendations

- (a) The current use value approach and formula to determine the value of a subject property be replaced with the alternative method indicated in (b) below.
- (b) This alternative method be based on the determination of value of a property identified for land reform purposes as defined in the PVA. This would reflect *“an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –*
- (a) the current use of the property;*
 - (b) the history of the acquisition and use of the property;*
 - (c) the market value of the property*
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and*
 - (e) the purpose of the acquisition.”*

2.4.2 Motivation

There are numerous reasons why we believe that the current use value approach together with the formula adopted (i.e. adding current use value to market value and then dividing by two) to determine a value for a subject property should be abandoned in favour of what we have recommended. In brief these are as follows:

A. Problems with price determination as contained in Draft Regulations

These problems are explained in some detail in our original submission but in summary, they include the following:

- **Current Use Value:**
 - The determination of “current use value” is **NOT** based, as Paragraph 4. (1) of the Draft Regulations states they must, in *“accordance with generally recognised valuation practices and methods.”*
 - This term is neither referred to in the Constitution or the PVA.
 - Should a financial loss be made, the “current use value” of the subject property would be zero. This would be highly prejudicial.
 - The “jockey” rather than the “horse” is being valued.
 - The Restitution of Land Rights Act deals with “rights in properties”, not businesses which the Draft Regulations say should be valued (i.e. a going concern).
- **Formula:**
 - Is arbitrary.
 - Will result in (in some cases, substantially) lower land prices which will, in turn, have serious consequences (see below).
 - The current formula will mean that the value of movable property, annual crops and growing timber will be halved in value. This will have a significant impact on the

Forestry Industry in particular as tree crops will not be able to be harvested prior to transfer.

- In essence, affected landowners will be sharing the cost burden of land reform with the State. If land reform is deemed to be in the public interest then the public should pay for it through the fiscus.
- The determination of value through the use of the current use value methodology and the formula is probably un-constitutional.

- ***Unintended Consequences: Drop in Land Values***

The implementation of the Draft Regulations in their current form will lead to an overall decrease in land values. This will not just affect the value of subject properties but all agricultural and forestry properties country-wide. A general drop in land values will trigger a series of negative impacts. In short, these are as follows:

- **An immediate decrease in farmers' solvency and collateral:** As the value of land forms the basis of farmers' collateral, a reduction in land prices will result in a drop in the amount of collateral an enterprise has against which banks will be prepared to lend it money. This will also pose a huge risk for the banks as in certain instances, loan amounts will be greater than the new level of collateral. Overnight, thousands of farmers could find themselves insolvent.
- **Which leads to decrease in farmers' ability to finance the growth of their businesses:** The reduction in collateral available to farmers' means that their ability to raise loans is reduced. Again, given the quantum of the expected decrease in land values, the amount that banks would be prepared to lend farmers would drop substantially.
- **Which leads to decrease in investment in fixed improvements:** This not only means that farmers will have a decreased ability to grow their businesses through investment in fixed improvements but also, in hard times such as at present, to finance working capital to keep their businesses afloat.
- **Which leads to decrease in productivity:** The reduction in investment in fixed improvements thus leads to a decrease in productivity, both in physical output and financial returns in respect of individual farming enterprises that can remain solvent.

In turn, the above impacts have further unintended consequences as indicated below.

- A decrease in global competitiveness
- A decrease in food and fibre security
- An increase in bankruptcies
- An increase in job losses
- An increase in social dysfunction in rural areas including an increase in crime.

- ***Other Unintended Consequences: Drop in Land Values***

The impact of a drop in land values will not just be felt internally by the agricultural and forestry sectors - it will have a much broader impact. Some of these impacts are listed below.

- Municipal property rate income will decrease.
- Rental income received by land reform beneficiaries i.t.o. “lease back” arrangements will decrease.
- Rental income received by communities i.r.o. leased SAFCOL forests will decrease.
- Capital Gains Tax and Transfer Duties flowing to the fiscus will decrease.
- Investment (both local and foreign) may stall.
- The risk profile of individual banks lending to the sector will increase which may, if serious enough, put the stability of the entire financial services sector at risk.

B. Advantages of price determination i.t.o. what is recommended as an alternative

- The determined value of a subject property would be “*fair and equitable*”.
- The determined value would, in our opinion, “*reflect an equitable balance between the public interest and the interests of those affected by the acquisition*” as stated in the PVA.
- Would be in alignment with the definition of “value” contained in Section 1 of the PVA and Section 25 (3) of the Constitution.
- Would not result in the serious negative impacts and unintended consequences listed above.

2.5 Determination of the value of the subject property: Section 6. (b)

Sub-section 6. (b) reads as follows: “*provided that the value of movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation must be added to market value **before** the division referred to in paragraph (a) is performed, and if so requested by the instructing authority;*”

2.5.1 Recommendation

Should the current use value and formula still be used as a basis for determining the value of a subject property (despite our recommendation otherwise), it is nevertheless recommended that the wording of Sub-section 9. (1) be changed to read as follows: “*provided that the value of movable property, annual crops or growing timber on the subject property that have not yet been harvested as at the date of valuation must be added to ~~market~~ **the resultant value before** after the division referred to in paragraph (a) is performed, and if so requested by the instructing authority;*”

2.5.2 Motivation

The current wording is highly problematic in that the value of any movable property, annual crops or growing timber would be halved! Given the delays experienced in the acquisition processes to date, it is highly unlikely, however, that farmers growing annual crops would be prejudiced as they would have sufficient time to harvest their crop and sell it before transfer took place. This would not be the case with timber growers who, in effect, would be the only growers of a commodity to be penalised in this way. This penalty would be particularly severe as the value of a tree crop on a timber estate is considerably more than that of the land upon which the trees grow. If not amended this methodology could potentially wipe R10.6bn off the Industry’s current asset base. Is this fair and equitable? In our view it is highly unfair and if not addressed, could have serious negative consequences for the Industry.

It should be noted that up to present, the DRDLR has been reluctant to purchase timber crops on claimed farms as they have viewed their mandate as being to purchase and transfer land, not crops. In the limited number of cases where the DRDLR have bought standing timber, the trees have, in terms of common practice, been valued separately and paid for in full.

2.6 Representations by owner or person in charge of property: Section 9. (1)

Sub-section 9. (1) reads as follows: *“On receipt of the valuation report from an authorised valuer, the Valuer-General shall provide the owner or person in charge of the property with a copy of the valuation certificate, which will, for the purposes of this section, be designated as a provisional valuation certificate;*

2.6.1 Recommendation

It is recommended that the wording of Sub-section 9. (1) be changed to read as follows: *“On receipt of the valuation report from an authorised valuer, the Valuer-General shall provide the owner or person in charge of the property with a copy of the valuation certificate, **together with a list of any assumptions and special assumptions used by the valuer in determining the property value**, which will, for the purposes of this section, be designated as a provisional valuation certificate;*

2.6.2 Motivation

One reason that valuations are challenged by landowners is that the valuer has valued the property on the basis of a flawed assumption/s which has resulted in a valuation lower than that expected by the owner. By changing the wording of Sub-section 9. (1), as highlighted above, this would give the owner of the property an opportunity to easily and quickly determine a possible reason for why a valuation was lower than expected and one which, in need, could be fixed before having to go through a costly legal appeal process. This would not only be beneficial for the owner but also for the valuer concerned and the OVG.



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29 June 2017