# STRYVER PTY LIMITED
CANBERRA

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ACT LA
COMMITTEE OFFICE

20 February 2006

Ms Andrea Cullen
Secretary
Standing Committee on Public Accounts
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601


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Dear Ms Cullen

**BLOCK 22 SECTION 22 KINGSTON – 84 GILES STREET, KINGSTON**

I refer to our letter of 21 December 2005.

Attached are copies of further correspondence that has taken place with the Treasurer and Commissioner for ACT Revenue since that time.

If you require any further information I can be contacted on 0418434967.

Yours sincerely

Andrew Rudnicki
Managing Director

A.C.T. LEGISLATIVE ASSEMBLY
COMMITTEE OFFICE

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# STRYVER PTY LIMITED
CANBERRA

20 February 2006

Mr Graeme Dowell
Commissioner for ACT Revenue
PO Box 252
CIVIC SQUARE ACT 2608

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Dear Mr Dowell

**BLOCK 22 SECTION 22 KINGSTON**
**NOTICE OF REDETERMINATION OF UNIMPROVED LAND VALUE AND THE AVERAGE UNIMPROVED VALUE FOR 2004 AND 2005**

Thank you for letter of 18 January 2006 concerning our objection to the notice of redetermination.

Your letter provides an opinion on some of the fine points of law and advises on the two levels of fees associated with lodging an objection.

I accepted your invitation to contact Mr Robert Lewis and a constructive meeting took place on Wednesday, 8 February 2006. I am writing to advise you that a decision has been made to proceed with an objection to the assessment made on 25 October 2006. The letter of objection (attached) has been changed in view of the communications that took place with Mr Lewis in order to move forward with the review process. I have also enclosed the remaining thirty dollars.

I note in the Treasurer's letter of 1 February 2006 the assurance made that he has every confidence, as well as we do, that the legislative rights are well understood and respected by you and your staff. In this regard the review process provides an opportunity to correct the assessment made on 25 October 2005, as it has been applied in a manifestly unreasonable manner and contrary to the statutory provisions.

Yours faithfully

Andrew Rudnicki
Managing Director

# STRYVER PTY LIMITED

CANBERRA

15 November 2005

Mr Graeme Dowell
Commissioner for ACT Revenue
PO Box 252
CIVIC SQUARE ACT 2608

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Dear Mr Dowell

**BLOCK 22 SECTION 22 KINGSTON**
**NOTICE OF REDETERMINATION OF UNIMPROVED LAND VALUE AND THE AVERAGE UNIMPROVED VALUE FOR 2004 AND 2005**

We are writing to object to the assessment made on 25 October 2005 under the *Taxation Administration Act 1999* for the above property. Enclosed is the remaining thirty dollars (Your reference objection 1827).

The grounds of the objection are that the:

1. redetermination of unimproved land values at 1 January 2002 and 2003 is not authorised under subsection 11(1)(b) of *the Rates Act 2004* ("the Act") on the basis that the Crown Lease was varied effective from 18 February 2005 ("the Change of Circumstances") in consideration for the settlement of the Change of Use Charge.
2. 2004 and 2005 Average Unimproved Value for the reasons set out above are disputed.

A notice of redetermination was served on 25 October 2005 that advised of the assessment made to increase the unimproved land values for our property over 4 determinations retrospectively commencing from 1 January 2005 and the 2004 and 2005 Average Unimproved Value pursuant to section 11(1)(b) of the Act.

However, section 11(1)(b) of the Act authorises you to consider only a change of circumstances since the date of the any of last 3 determinations and the change was not taken into account in the most recent determination of the unimproved value of the property. The obligation to consider a change of circumstances can only arise if it took place over the determinations made on 1 January 2003, 2004 and 2005 of the unimproved value of the property and that change was not taken into account in the most recent determination of the unimproved value being 1 January 2005 given the date of assessment of 25 October 2005. Thus, this section of the Act does not authorise you to increase unimproved land values as stated in the notice of redetermination.

Properly understood, only section 11(4)(a)(ii) of the Act authorises you to make a redetermination on the day the Change of Circumstances happened being 18 February 2005 and ending on the day before 1 July when the next redetermination applies being 30 June 2005 pursuant to section 11(4)(b) of the Act. Thus, these sections of the Act authorise that the redetermination can only be applied to the previous determinations made on 1 January 2004 and 2005 of the unimproved value for the property.

In conclusion your assessment of the redetermination has been applied in a manifestly unreasonable manner as the 1 January 2002 and 2003 unimproved lands values were increased contrary to the statutory provisions for the reasons as set out above.

Yours faithfully

Andrew Rudnicki
Managing Director

**Ted Quinlan** MLA
**DEPUTY CHIEF MINISTER**
TREASURER
MINISTER FOR ECONOMIC DEVELOPMENT AND BUSINESS, MINISTER FOR TOURISM
MINISTER FOR SPORT AND RECREATION, MINISTER FOR RACING AND GAMING
MEMBER FOR MOLONGLO

Mr Andrew Rudnicki
Managing Director
Stryver Pty. Limited
9 Story Place
Isaacs ACT 2607

Dear Mr Rudnicki

Thank you for your letter of 12 December 2005 in which you raised concerns about the redetermination of land value for your property in Kingston. I understand that you have also written to the Commissioner for ACT Revenue, and that he has responded in writing to your concerns.

The objection and appeals process set out in the Rates Act 2004 and the Taxation Administration Act 1999 are designed to afford taxpayers with a mechanism by which decisions relating to their tax liabilities may be reviewed. As with any administrative review, however, there are certain processes that must be followed in seeking such review. There are also two levels of fees associated with lodging an objection, depending on the nature of the decision to be reviewed.

Until such time as the Commissioner has decided any objection you may choose to lodge, it would be not be appropriate for me to comment on either the redetermination matter itself, or your experience of the objections process. I have every confidence that the legislative rights afforded you in that regard are well understood and respected by the Commissioner and his staff. I would point out, though, that the Commissioner for ACT Revenue is a statutory office, and so I am not in a position to direct the Commissioner to consider any particular objection submitted by a taxpayer.

When the Objection and Appeals process has been exhausted, however, should you feel for whatever reason aggrieved with the ultimate conclusion, then it may be appropriate for me to respond to any concerns that you may have.

I am sorry that I cannot be of further assistance at this time. Should you have any further inquiries in relation to this matter, please contact Mr Robert Lewis from my Department on (02) 6207 0008, who I understand is looking into the matter.

Yours sincerely

Ted Quinlan MLA
Treasurer

1.2.06

ACT LEGISLATIVE ASSEMBLY
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DEPARTMENT OF TREASURY
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Telephone: 62070010
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Reference: Obj 1827

Mr Andrew Rudnicki
Managing Director
Stryver Pty. Limited
9 Storey Place
Isaacs ACT 2607

Dear Mr Rudnicki

Thank you for your letter of 12 December 2005. I understand that you also wrote to the Treasurer on that date. In responding to your letter, I would like to set out my understanding of previous correspondence between you and this office.

On 15 November 2005, you wrote objecting under section 100 of the *Taxation Administration Act 1999* to a notice of redetermination. A cheque for twenty dollars accompanied that letter in payment of what you may have thought was the appropriate objection fee.

This Office wrote back to you on 7th December 2005. In that letter, we quoted Section 71 of the *Rates Act 2004* and advised you that it did not provide a right to object to my power to make redeterminations. We also returned your cheque. That letter provided the name and telephone number of the officer who deals with objections and appeals, so that you could contact him to discuss the problem.

You wrote to me again on 12 December 2005, asserting that the grounds of your objection had been clearly stated in your previous letter and requesting that I consider them under Section 104 of the *Taxation Administration Act 1999*. You again enclosed a cheque for twenty dollars. That cheque was banked and despite there being a question as to whether there was a valid objection at hand, objection number 1827 was assigned, pending resolution of the matter.

There appears to be a number of areas that need some clarification, and so I am now writing in response to your letter to me of 12 December 2005 and also to the letter that you wrote to the Treasurer.

Your assertion that you have a right to object to my power to make a determination is incorrect. My power to make a determination is conferred directly in the legislation. The Act does provide a right, however, under certain circumstances and within certain timeframes to object to an assessment based on the redetermined values.

Such an objection would probably fall within the scope of section 71 of the *Rates Act 2004*. The grounds of any such objection would need to be provided, and would of necessity go to the question of whether the value is correct. As advised to you on 7th December 2005, the only right under Section 71 of the *Rates Act 2004* is to an objection to an assessment, with regard to the determined value on which it was based.

If the nature of your concern is indeed my power to make a redetermination, then it does not fall within the scope of that section of the Rates Act. Such an objection, while unusual, might be possible under section 100 of the *Taxation Administration Act 1999*.

Disallowable Instrument Number DI2004-77 provides that the fee under Section 100 (2) of the *Taxation Administration Act 1999* for an objection to an assessment or decision under the *Taxation Administration Act 1999* is fifty dollars, except for those objections to which Section 71 (objections relating to valuations - general) of the *Rates Act 2004* applies, for which the fee is twenty dollars. As you have paid twenty dollars, but your objection referred to a notice of redetermination, which does not fall within the scope of Section 71 of the *Rates Act 2004*, then should you wish to object to an assessment or decision under the *Taxation Administration Act 1999* it will be necessary for you to pay a further amount of thirty dollars to meet the required fifty dollar fee.

The letter of 7th December 2005 from this Office provided the telephone number for Mr Robert Lewis as the contact for any enquiries you may have. I appreciate that this matter raises some fine points of law as to the distinction between the types of objection that fall in the different categories, and again, I recommend that you speak with Mr Lewis in regard to those points.

If you decide to pay the full amount of the objection fee, I suggest that you state "the assessment made" or "the decision specified" under the *Taxation Administration Act 1999* to which you object. This would assist in ensuring that the officer dealing with the matter understands clearly what it is that must be decided.

Should you choose to recast your objection, and pay the remaining thirty dollars, I would be obliged to process the objection, and it would take its place along with other objections yet to be decided.You should be aware, however, that any tax liability remains due and payable as per the assessment, irrespective of its being the subject of an objection. Interest will accrue on any outstanding amount, and conversely were an objection to prove successful in whole or in part, then the fee paid would be refunded and interest would be paid with any refund of tax paid.

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building our community
ACT Government

If you decide instead not to proceed with an objection, then I will arrange for a refund of the twenty dollars that you have already paid.

I would invite you again to contact Mr Robert Lewis on telephone number 62070008 for advice that could help you in making that decision. He may also be in a position to offer some assistance regarding construction of an objection of that nature.

Graeme Dowell
Commissioner for ACT Revenue
18 January 2006