

VALUATION OF LAND AMENDMENT BILL 2011

Bill introduced, by leave, read a first time and ordered to be printed on motion by the Hon. Greg Pearce.

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [6.10 p.m.]: Pursuant to the sessional order for the cut-off date for Government bills, I declare the bill to be an urgent bill.

Question—That the bill be considered an urgent bill—put and resolved in the affirmative.

Declaration of urgency agreed to.

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [6.10 p.m.]: I move:

That this bill be now read a second time.

The Valuer General is a statutory position established by the Valuation of Land Act 1916. That Act sets out the functions of the Valuer General and prescribes the way in which land is to be valued, conferring on the Valuer General the role of ensuring the integrity of valuations made under the Act. In fulfilment of that role, the Valuer General has established a process of making valuations, and developed a set of principles for valuing land, that has been used in practice over many years. Two recent court decisions have identified some uncertainty around the Valuer General's practice in two unrelated areas—the valuation of heritage restricted land and the use of a contract valuer or delegate in the process of making valuations that are not required to be made by legislation.

I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

Leave granted.

The Valuation of Land Amendment Bill 2011 addresses both issues by clarifying the Act and confirming the established practices of the Valuer General.

Valuations made under the Valuation of Land Act are used for rating and taxing purposes. There are two key features of these valuations. Firstly, the valuation relates to the land only and does not include buildings or other improvements erected on the land. Land is valued as if it were vacant, according to its highest and best use.

Secondly, land is not valued on the basis of an individual inspection of every parcel. Instead, land is valued using a mass valuation method with like properties grouped together and valued on the basis of features such as locality, size and zoning.

Land that is heritage restricted is given a heritage valuation for rating and taxing purposes. A heritage valuation allows a discount to be made taking into account that the presence of the heritage building will restrict the manner in which the land can be developed and may prevent it from being used for the highest and best purpose that would otherwise have been allowed under the zoning. As a result, heritage restricted land is usually given a lower valuation than similar non-heritage land would receive. Since these valuations are used as the basis of assessing land tax and local council rates, a lower valuation will lead to lower rates

and taxes.

Land identified as having heritage significance in an environmental planning instrument is valued in accordance with a set of assumptions contained in section 14G of the Valuation of Land Act. A mirror provision in section 123 of the Heritage Act deals with land listed on the State Heritage Register.

An accepted standardised method of valuing heritage land has been used by the Valuer General since its introduction over 30 years ago.

In 2009 a decision of the Land and Environment Court prompted the need for clarification of the assumptions in section 14G and section 123. At that time the court considered that the assumption that improvements may be continued and maintained required the actual condition and state of repair of the building to be taken into account in the valuation process. As can be seen from the Sydney Hospital example, this was never the intention. Improvements are only considered to the extent to which they limit the potential use of the land.

To clarify that the actual condition of the building does not need to be considered, sections 14G and 123 were amended in 2009 to include an additional assumption. This assumption requires the valuer to assume that all improvements on the land are new and clarifies that no deduction is to be made because of the actual condition of the improvements. Whilst a heritage building will not be "new", this assumption was introduced to enable the valuer to make an assessment of the highest potential use of the heritage property without having to consider the actual condition of improvements.

The amended section 14G has now been the subject of further litigation. In the case of *In Adam v The Valuer General* the Land and Environment Court determined that whilst the amended section 14G ensured that the actual condition of improvements was not to be taken into account, the section instead required deduction of a heritage cost penalty described as being the difference between the costs to construct a new existing heritage building and the costs to construct a new non-heritage building.

Needless to say, this was not the intention of the legislation. As noted earlier, heritage valuations are intended to be made without regard to the actual condition of improvements on the land. There was certainly no intention of introducing the complex process that would be required if the cost of construction of a new heritage building and a non-heritage building had to be calculated and compared. This calculation would involve not only a detailed inspection of each heritage property but would require quantity surveyors to be employed to estimate the construction costs. Not only would this process be expensive, it would be extremely time consuming and would be a challenge to complete within the time frames required by the Act.

Introduction of a heritage cost penalty would also have a serious impact on State revenue. As the penalty would be applied in addition to the deduction already received through the heritage assumptions, land values would fall significantly leading to corresponding deduction in State Government revenues. This reduction in revenue has not been budgeted and would have to be recouped by other means.

Section 14G of the Valuation of Land Act and its mirror provision in section 123 of the Heritage Act must be amended to ensure that the accepted methodology for valuing heritage land can continue to be used.

To achieve this, section 14G is to be amended to add a further assumption directed specifically at the issue raised in the *In Adam* decision. The assumption provides that the cost of construction of improvements on heritage restricted land has no effect on its land value. As a result, there will be no need to make a comparison of the difference in construction costs between a heritage building and any other building.

To reinforce the intent of the amendment, a further clause has been added aimed at ensuring that heritage restricted land is to be determined on the basis of the legislated assumptions without any additional deductions being made. The current assumptions used to value heritage land already provide a genuine reduction on land value and no further deductions are to be given above and beyond those.

Whilst the amendment bill makes sure that no additional reductions are applied, it does not reduce the level of discount currently received by heritage landowners. This Government is highly supportive of those landowners who are caring for buildings that have been identified as having heritage significance, either on the State Heritage Register or through some other planning instrument. This amendment does nothing more than restore the status quo and will not result in any increase in heritage property values.

It is the view of the Government that the *In Adam* decision misinterpreted the intent of Parliament in making the 2009 amendment. This bill reconfirms the purpose of the legislation, which is to provide a discount on the valuation of heritage restricted land based on the extent to which the heritage improvements prevent the land from being used to its maximum development potential. Neither the state of repair of the building nor the cost of its construction is to be taken into account in applying the heritage assumptions.

As the amendment merely restores the law to what it was before the *In Adam* decision it is proposed that the amendment be taken to have always applied. This will reconfirm the heritage valuations made by the Valuer General since the 2009 amendment, none of which included a "heritage cost penalty".

The transitional provisions preserve the decision made in any finalised proceedings, including *In Adam*, and provide that the amendment will not affect any proceedings commenced before introduction of this bill.

I turn now to the other important part of this bill. In addition to heritage valuations, the bill resolves an issue relating to the use of contract valuers to make valuations not specifically required to be made by the Valuation of Land Act.

As noted earlier, valuations required to be made by the Valuation of Land Act are used for rating and taxes purposes. However, these are not the only valuations that the Valuer General makes. Valuations are made as required by other Acts, such as the Land Acquisition Act, which requires values to be determined for the purpose of acquisition. In addition, the Valuer General is often asked to arbitrate on valuation matters arising from private contractual agreements. This most often occurs in the context of a lease, where rent increases are to be calculated on the basis of land value. The leases concerned may have a State Government entity as a party or may be between private entities. As the State's pre-eminent expert on valuation matters, it is not surprising that parties look to the Valuer General as an appropriate arbiter in a wide range of potential valuation disputes.

In 1996 the Valuation of Land Act was amended to enable the Valuer General to fulfil his statutory functions through the use of contract valuers. The use of contract valuers has a

number of benefits for New South Wales. It enables local valuers, with a detailed knowledge of their neighbouring areas, to be employed to value different segments of the State. Valuations are required to be made at specific times on a cyclical basis. By using contractors, local experts can be commissioned as required to ensure that the valuation schedule is completed in the time required.

As required by the Act, valuations made with the assistance of contract valuers are undertaken in accordance with detailed guidelines established and overseen by the Valuer General and set out in valuation contracts. Valuation recommendations prepared by contract valuers are given to the Valuer General for review, who then makes a valuation on the basis of the recommendation.

A recent case before the Supreme Court has raised some doubt as to whether the Valuer General can delegate or use contract valuers to carry out valuations not specifically required by the Valuation of Land Act.

The matter before the court concerned the interpretation of a specific provision in a lease regarding the undertaking of a valuation for the purpose of rent review. The clause required that a valuation of leased premises be made by the Valuer General who was to "act as an expert valuer and not in any capacity under the Valuation of Land Act". The Valuer General had not undertaken the valuation himself, but, as was his usual practice, contracted the valuation out to a contract valuer. The court held he could not do so and interpreted the provision to mean that the Valuer General was personally required to undertake the valuation for the purposes of the determination.

While the decision largely turned on the wording of the particular clause, the decision has highlighted the need to amend the Act to specifically allow the Valuer General to perform a valuation outside the ambit of the statutory functions set out in the Act and to enable such a valuation to be made by the Valuer General's delegate or a contract valuer.

Where the parties to a contract have identified the Valuer General as the arbiter on a valuation matter, in the case of disagreement or otherwise, it is reasonable to assume that the parties intended the task to be performed under the instruction of the Valuer General and not by him personally.

To resolve these issues, the bill proposes to include a new section 9A. The section expands the stated statutory functions to remove any doubt that the Valuer General has the power to undertake valuations at the request of any person for the purposes of a private agreement. These valuations are referred to in the section as "private valuations".

The section will also make it clear that, notwithstanding the terms of a private agreement, the Valuer General may delegate the making of a private valuation or may make the valuation on the recommendation of a contract valuer.

The amendments will additionally make it abundantly clear that any valuation made at the request of the Valuer General by a delegate of the Valuer General, or on the recommendation of a contract valuer, is deemed to be made by the Valuer General even if the terms of the private agreement provide for the valuation to be made by the Valuer General based on his own expert skill, investigation or judgement. Whilst this may appear to be an attempt to rewrite terms of a private agreement, it merely ensures certainty by providing that an otherwise valid agreement cannot be struck down on a technicality relating to whether a

valuation was performed by the Valuer General personally or by a delegate or contract valuer on the Valuer General's behalf.

This bill will apply from the date of its introduction into this House.

Records indicate that the Valuer General has undertaken a relatively small amount of private valuations, however, this is not indicative of the number of private agreements that contain clauses requiring valuations by the Valuer General. As these clauses are usually included as a means of dispute resolution, it is only where a disagreement arises that the clause becomes operative and the Valuer General's skills are called upon. The potential for this to occur adds impetus to the need for the amendments.

New section 9A will confirm that the Valuer General cannot be compelled to undertake a private valuation. The undertaking of any private valuation will and should always be at the discretion of the Valuer General. The new provision attends to this discretion.

Both of the amendments proposed by the bill reconfirm rather than change the practices and functions of the Valuer General. Section 9A puts beyond doubt that the Valuer General can make private valuations at the request of a third party.

I commend the bill to the House.

Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.