

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.50 p.m.]: I move:

That this bill be now read a second time.

The Valuer General is the State Government's principal adviser on all land valuation matters and has a statutory responsibility to provide fair and accurate land valuations for rating and taxing purposes. The Valuer General has recently been involved in a court case, the decision of which has put in jeopardy the manner in which heritage land is valued and casts doubt on the validity of heritage valuations undertaken by the Valuer General. This bill will clarify the approach to valuing heritage land that has been developed by the Valuer General and used for over 30 years. The Valuation of Land Act 1916 provides for the valuation of land for rating and taxing purposes. Valuations made under the Act reflect the land value only. Value is assessed as if the land was vacant on the basis of its highest and best use. The land value determined by this method does not generally reflect the full sale price that could be obtained for the property.

The court case prompting this amendment—*Valuer General v Commonwealth Custodial Services Pty Ltd* 2009 NSWCA 143—dealt with the valuation of heritage land. In New South Wales there are two categories of heritage land—heritage-restricted land and heritage-listed land. Land subject to a heritage restriction is listed in the heritage schedule to the local council's local environmental plan. Heritage-listed land refers to property identified on the State Heritage Register kept under the Heritage Act 1977. This is a register of places and items of particular importance to the people of New South Wales. If a property is heritage restricted, a landowner can request the Valuer General to provide a heritage-restricted valuation for land tax and local rate purposes. It would be unjust to value such land as though all its potential uses could be realised.

A heritage valuation allows 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. It would follow that the owner of the heritage land would receive lower council rates and land tax, again, compared to land that is not heritage listed. Section 14G of the Act sets out the manner in which heritage-restricted land is to be valued. In order to determine the highest and best practical use of the land, section 14G requires three assumptions to be made. These are: that the land may be used only for the purpose for which it was being used at the date of valuation; that all improvements on the land when the value was determined may be continued and maintained in order that the existing use of that land may continue; and that no improvements, other than those on the land, may be made to or on that land.

In order to demonstrate how the section operates, I will provide an example of a valuation of a heritage-restricted building. In this example I will use the Sydney Hospital, located next door on Macquarie Street. In assessing the value of the land the valuer would ask: If the site of the Sydney Hospital were vacant, how much would someone be willing to pay for the land, given that the only building allowed on the land would be the current building, and the land could be used only for a hospital? The land value would then be calculated accordingly. By taking the use of the land into account, section 14G would operate to discount heritage-restricted land. Using my example again, the site of the Sydney Hospital would attract a much higher valuation if development on the site allowed a 30-storey building for use as offices or even for the development of a modern and more substantial hospital.

It goes without saying that a building of heritage significance will never be in a new condition. However, the assumptions provided by section 14G are designed to assist a valuer to properly determine the highest practical use of heritage restricted land, as required by the Act. The actual building itself is not assessed for value. The building is considered only for the purpose of determining the nature of use and the extent of development allowed on the land. The Court of Appeal in *Valuer General v Commonwealth Custodial Services Pty Ltd* considered that the current wording of section 14G requires that the current condition of the building must be taken into account in the valuation assessment. The court stated that the cost of maintenance of a heritage building impacts upon its marketability and available return, and the potential cost of refurbishment should therefore be factored in.

The Valuer General has never valued heritage-restricted land in this way. To undertake a heritage valuation in the manner that the court has stated would be disastrous for the valuation process in New South Wales. Most land in New South Wales is valued using a mass valuation process. This procedure enables like properties to be considered together and valued in groups called components. The properties in each component are similar, or are likely to change in value in a similar way. Within each component, at least one representative property is valued individually each year to measure how the much the value has changed in the previous year. The change in value is then applied to all properties within the component to determine their new value. If, as the Court of Appeal has suggested, section 14G required that the actual condition of the heritage building be taken into account, separate inspections would need to be made for every heritage property in the State.

There are approximately 44,000 heritage properties in New South Wales. To require an individual inspection of all these would mean the end of the mass valuation process. To change the valuation procedure in this way would have a substantial impact on the ease and practicality of administering the Valuation of Land Act, as a significant amount of time and expense would be required to assess each and every property. This change to procedure from mass valuation to individual inspections of heritage property would require a substantial variation to the existing contracts with private valuation companies currently engaged to undertake this work, creating additional cost to the Government. A change to the accepted valuation method would make land values more volatile and enable the land value to vary due to a landowner's intervention.

A landowner may be tempted not to maintain improvements on the land and ultimately achieve a lower land value for his or her property. This is contrary to the intention of both the Heritage Act, which aims to protect items of environmental heritage, and the Valuation of Land Act, which focuses on the value of land rather than on the improvements on the land. The purpose of this bill is to maintain the status quo and to clarify the purpose of the assumptions in section 49G. To achieve this the bill proposes to introduce a further assumption that clarifies that when valuing property under section 14G all improvements on the land are, and will continue to be, maintained without the need to make any allowance for the building's actual condition. This amendment will ensure that a valuer need not take into account the actual condition of the building when the valuation is made.

The bill will also validate the practice of assuming that the building or structure may be continued and maintained to determine the best and highest use of the land. I take this opportunity to assure landholders of heritage properties in New South Wales that these amendments will not of themselves result in any increase in heritage property land values. The amendments will maintain the status quo and enable the Valuer General to continue valuing heritage land following the method used over the past 30 odd years. A landowner's right of objection and appeal against a valuation under the Act are untouched by these amendments. The bill also proposes a corresponding amendment to the Heritage Act 1977.

The State Heritage Register is established under the Heritage Act. The register contains a list of places and objects of particular importance to the people of New South Wales. Land that is listed on the State Heritage Register is subject to similar development restrictions to that of heritage-restricted land. If land is listed on the State Heritage Register, the Valuer General is compelled to value the land in accordance with the heritage valuation principles set out in section 123 of the Heritage Act. A heritage valuation made under the Heritage Act is made upon the same assumptions as section 14G of the Valuation of Land Act. For the same reasons as I have given in regard to the proposed amendment to section 14G, a corresponding amendment will be made to section 123 of the Heritage Act.

The amendment will provide that all improvements on the land are, and will continue to be, maintained without the need to make any allowance for the building's actual condition. The amendments in this bill will ensure that the Valuer General's office can continue to value effectively heritage-restricted land and provide timely and consistent valuations on which the rating and taxing authorities can confidently rely. I commend the bill to the House.