VALUATION OF LAND AMENDMENT BILL 2014

Bill introduced on motion by Mr Dominic Perrottet, read a first time and printed.

Second Reading

Mr DOMINIC PERROTTET (Castle Hill—Minister for Finance and Services) [7.47 p.m.]: I move:

That this bill be now read a second time.

In this State property land values are used as the basis for determining local council rates and land tax. The Valuer General is responsible for making these valuations and ensuring their integrity, according to a procedure detailed by the Valuation of Land Act 1916. To do this the Valuer General has established a process of making valuations and developed a set of principles for valuing land that have been applied over many years. A recent court decision has caused uncertainty regarding the Valuer General's longstanding practice in the valuation of land where the current use of the land, having regard to the existing improvements, is a higher use than would be allowed under the current environmental planning controls.

The Valuation of Land Amendment Bill 2014 addresses the issue by clarifying the Act and confirming the established practice of the Valuer General. The key feature of valuations made under the Valuation of Land Act 1916 is that they do not include the value of buildings or other improvements erected on the land. Instead, the land is valued as if it were vacant, according to its highest and best use. However, there are a number of specific valuation principles that apply to certain categories of land where a valuation based purely on vacant land would not provide a fair outcome.

For example, a heritage valuation allows a discount to be made, taking into account that the presence of a 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 use. As a result, heritage land is usually given a lower valuation than similar non-heritage land. Since these valuations are used to assess local council rates and land tax, a lower valuation will lead to lower rates and taxes.

A similar but reverse situation arises when land has been developed for a higher use than would be allowed under the current environmental planning controls. As planning controls are modified over time, what may have been approved when the land was first developed may now be impermissible. It would be unfair for the owners of this land to pay rates and taxes based on an assumption that did not take into account the true financial value of the land to the landholder. The Valuer General's method of valuing land that has been lawfully developed above the existing planning controls has been supported by several court cases over a number of years. However, a recent case has added a level of confusion and complexity that threatens the established practices.

Land identified as being developed above the current planning controls is valued by using a set of assumptions contained in section 6A (2) of the Valuation of Land Act. A further provision within the

Act, section 7B, deals with the same valuation scenario for stratum where land is limited in height and depth. The assumptions require the valuer to assume that the land may continue to be used for the purpose for which it is being used, and such improvements may be continued or made on the land as may be required in order to enable the land to continue to be so used. On face value there appears to be some inconsistency between these assumptions and the underlying principle that the land is to be valued as if it were vacant. However, in practice, this valuation task is not complex or contradictory.

An accepted standardised method of valuing this land has been used by the Valuer General since the concept was introduced over 50 years ago. The practice requires two valuations to be made. The first valuation is based on the assumption that the land is notionally vacant and the highest and best use is restricted to the development allowable under the environmental planning controls. The second is based on the assumption that the land is notionally vacant, but that the current way that the land is being used can continue. The higher of the two valuations is then used for rating and taxing purposes. Section 6A (2) is applied in a variety of circumstances. It is used when commercial premises, such as a service station, is situated and continues to operate on land now zoned residential. It would be odd if the land could be valued only as if its highest and best use was residential.

Similarly, the section is also used when much larger improvements have been allowed to be built than would be approved under existing controls. To understand the approach, I will provide an example based on an actual property in the central business district of Sydney. The property in Phillip Street has a floor space double that which would be allowable under the City of Sydney Local Environmental Plan. The land value of this property, determined for 1 July 2013 as notionally vacant under section 6A (1) was $61,100,000. The land value under section 6A (2), which had regard to the floor space of the existing improvements, was $91 million. The second valuation was used for rating and taxing.

This long-held approach has now been challenged. In the Land Environment Court case of *Fivex v Valuer General* it was determined that section 6A (2) could be applied only when the zoned use of land had changed, not when a much larger building occupies a site. This is best examined by considering the case itself. The subject property lies within an area zoned general business under the Woollahra Local Environmental Plan 1995. The allowable floor space ratio, which generally determines the size of the improvements, is 3:1, permitting a building three times the size of the site to be constructed on the land. Erected on the site is a four-storey retail and commercial office building with a floor space ratio in excess of the allowable limit.

The Valuer General applied section 6A (2) to value the land, taking into account the extra floor space that it enjoyed. However, the court determined that as the current use was permitted use under the local environmental plan [LEP]—that is, retail, commercial—section 6A (2) was not engaged. The land had to be valued without regard to the additional size and scale that had been allowed to be developed on the site. This was not the intention of the legislation. Section 6A (2) was introduced to ensure that a land value was not determined on the basis that it had no potential to be used for the very purpose for which it is in fact being used.

Town planning controls are amended regularly and are often site-specific. The court's view that section 6A (2) can be engaged only when a use is prohibited adds to the complexity of the valuation process. The court's decision also would have other perhaps unintended consequences for rating valuations. In valuing contaminated land, the historic interpretation of section 6A (2) allowed the valuer to consider that the current use of the site could continue and so the cost of remediation is ignored. If contaminated land can no longer be valued under the assumption in section 6A (2), the valuer will need to factor into the valuation the costs of remediation of the site. The cost of remediation of the sites would range from a small amount to the whole value of the site.

This will result in unrealistically low land values for industrial and commercial sites that are known to be contaminated but continue to be used, possibly for the very purpose that caused their contamination, such as major industrial sites or petrol stations. It also creates an incentive to owners to pollute or not remediate their sites to achieve lower rates and taxes. The decision also will create inequity between valuations. The assumptions applying to land that is heritage restricted requires that the land value assumes that the existing improvements could be replaced on the land. If the decision of the court were to be adopted, properties with much larger existing buildings—not heritage restricted—could have lower land values than adjoining heritage sites. This is the reverse of the intention of the heritage valuation provisions.

Whilst the amending bill makes sure that section 6A (2) can be applied, it does not overvalue affected sites. The Government appreciates that landholders should not be adversely impacted by the amendment and so the amendment does nothing more than restore the status quo and will not result in any increase in land values. It is the view of the Government that the Fivex decision misinterpreted the intent of Parliament in regards to the valuation of land with existing improvements. This bill maintains the purpose of the legislation, which is to provide a fair valuation of properties when the current use of the land, having regard to the improvements, is a higher use than would be allowed if the land was actually vacant.

As the amendment merely restores the law to what it was before the Fivex decision, it is proposed that the amendment be taken to have always applied. This will confirm the valuations currently on the Register of Land Values. The transitional provisions preserve the decision made in the Fivex proceedings and ensure that the amendment will not affect any proceedings commenced before introduction of this bill. The amendments proposed by the bill confirm, rather than change, the practices and functions of the Valuer General. Sections 6A (2A) and 7B (2) put beyond doubt that the Valuer General can make valuations based on the improvements presently on the land. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.