NSW Legislative Assembly Hansard

Local Government and Valuation of Land Amendment (Water Rights) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 21 June 2005.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [6.05 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now read a second time.

This bill responds to a situation that has arisen due to the implementation of the Water Management Act 2000, pursuant to the 1994 Council of Australian Governments strategic water reform framework. The Water Management Act commenced on 30 June 2004 in those areas of the State for which water-sharing plans have been made and gazetted. The Act contained a number of important initiatives to provide better ways of ensuring the equitable sharing and wise management of the State's water. One of these initiatives was to create a water trading market, which was achieved through the separation of water access entitlements from land title. Associated with this change is provision under clause 2 of schedule 8.29 of the Water Management Act for the omission of section 6A (3) of the Valuation of Land Act 1916.

This section provides that the value of any water right or entitlement attached to the land is included when determining the value of that land. The commencement of this clause, and the subsequent repeal of section 6A (3), was postponed, because there was no framework in place to protect councils from a drop in rates revenue that could occur if water entitlements were traded separately from land, and could no longer be included in the valuation of land. The bill provides that framework. Forty-four shires in New South Wales have been identified as deriving a proportion of their rates from irrigated farmland, and all will be affected by the change in water access. As we are all aware in this terrible time of drought, water is a precious resource, and no-one is more aware of this than the regional communities in the State that rely on irrigation to support farming.

The Government is mindful of this, and has endeavoured to come to a position that provides a fair outcome for these councils and their communities. In addressing this issue, the Government has endeavoured to keep to three key principles: first, that councils should have the flexibility to be able to generate the same level of rates revenue once the Water Management Act is fully implemented as they do now; second, that existing equity relationships between categories of ratepayers be maintained in broad terms; and third, that there be no increase, or a minimal increase, in administrative complexity. I am happy to report that the amendments proposed in the bill establish a framework that delivers on all three counts. I also acknowledge that this has only been possible due to the extensive consultation that has occurred on this issue.

A discussion paper canvassing a range of options to address the issue was prepared by a senior officers group comprising representatives of the Department of Local Government, Treasury, the Cabinet Office, the Valuer-General's Office, and the Department of Infrastructure, Planning and Natural Resources. The discussion paper was then circulated to all councils in New South Wales for comment, and submissions were also called for via the worldwide web and advertised in the major newspapers circulating in affected shires, including the major daily newspapers. More than 30 submissions were received, from peak groups representing local government and irrigators, councils and regional organisations of councils, and concerned individuals. These submissions have been taken into account in the formulation of the Government's response, and I thank all stakeholders for their input.

As well, the Department of Local Government, with assistance from the Valuer-General and the land and property information section of the Department of Lands, has conducted an exhaustive round of meetings and forums with affected shires around the State over the past two years. These forums have been both informative and productive. I understand that the major local government stakeholders, including the Shires Association, are supportive of this package, and the Government looks forward to working with all stakeholders to implement the new framework proposed in the bill. The Local Government Act 1993 is the core Act for the regulation of local council and county council functions, including how these bodies are financed. Under the Valuation of Land Act 1916 councils are provided with land valuations on all rateable properties within their areas by the Valuer-General. These valuations form the basis on which council rates policies are founded. Such land valuations include the value of any water entitlement that was attached to the land in question. The Water Management Act 2000 is a key component of the New South Wales Government's water reform agenda, delivering efficiency and environmental dividends to the use of the State's water resources.

Under the Act, water entitlements, previously attached to land titles, are converted to three different licences or approvals. An access licence entitles the holder to a share of a water resource as specified in a gazetted water-sharing plan. It is an item of personal property and does not relate to any particular parcel of land. A water use approval confers the right to use water for a particular purpose. This remains attached to a particular piece of

land. A water works approval confers the right to construct and use a water supply works for the purpose of bringing water to a specified property. It also remains attached to a particular property. For water to be used for irrigation on a property, all three of these elements must be present in some part. However, it is important to note that the holder of the access licence need not be the owner of the property for which the water use and water works approvals are valid.

As a result of these new arrangements the water access licence, which is held by an individual and does not attach to any particular land, can no longer be included in land valuations. To accommodate this, the Water Management Act currently provides for the repeal of section 6A (3) of the Valuation of Land Act 1916. This section requires the value of any water entitlements attaching to land to be included in valuations. However, as water and land can now be traded separately, it is probable that land valuations provided to councils will be lower than previous valuations for the same property. The full extent of this drop in value cannot be accurately estimated, but is likely to be significant. As the water trading market matures, it is likely that there will be changes in land use that will have to be brought to account in valuation processes. This is why the Government is doing the responsible thing and implementing a new valuation framework that will grant councils the ability to maintain their level of rates revenue.

Access to water under the Water Management Act 2000, and the ability to take it under the Water Act 1912, will be valued differently by the market in different locations. However, it is impossible to speculate at this stage what value new markets might place on either access licences or use and works approvals. We can be sure that some value will be conferred by the existence of the water use and water works approvals on a particular land title. Equally, we can be sure that the separation of the water access component from land title will lead to a significant loss in value of those properties that had water entitlements under the old system. The Government understands that each council and its community is different, and the particular circumstances and characteristics of a shire should be the key factors in any response.

Rather than tell shires what to do, the Government prefers to remove restrictions identified in existing legislation, thereby allowing councils to make their own judgments about the elements that might comprise their responses. One way for local councils to address the issue of lower land valuations leading to a decrease in the amount of rates collected is to use existing provisions of the Local Government Act to vary the rate that applies to that particular category of land. I advise the House that there are four categories of rateable property under the Local Government Act: residential, industrial, mining and farmland. However, there is a major impediment to an equitable outcome resulting from such a scheme because the current legislative framework does not prohibit the burden being shifted to other categories of ratepayer, for example, irrigated landfalls under the farmland category for rating purposes.

Section 530 of the Local Government Act specifies that the ad valorem amount for the farmland category must be the lowest of all categories. For those who are not scholars of Latin, I would take the opportunity to clarify that the ad valorem amount refers, of course, to the amount levied according to the value of the land. Should a council respond to a fall in irrigated land valuations by raising the rate for farmland in order to achieve the same revenue from the farmland category as before, then those with water entitlements will pay lower total rates for the same property, which is now valued without the value of the water access licence. Landholders with no irrigation component in their land will pay more as their land valuations will not be affected, but will now have a higher ad valorem rate applied.

An alternative method would be for councils to categorise irrigation land differently from non-irrigation land. The sub-categorisation of rateable land is already allowed under section 529 of the Local Government Act. This bill introduces an amendment to clarify that farmland may be sub-categorised according to its irrigability. It further clarifies that land may be taken to be irrigable only if it is the subject of a water right within the meaning of the Valuation of Land Act 1916. Such an approach would allow a different and higher rate to be applied to identified irrigation properties so that they pay the same total rates as before even though their respective land valuations have fallen. Non-irrigated farmland properties would continue to pay the same level of rates as before since their land valuations would remain unaffected by the removal of water access licence values.

However, in many shires, particularly where the value of water entitlements is large relative to total land valuations for farmland, the setting of a rate sufficient to compensate for falls in land values would be in breach of section 530 of the Act. I clarify that section 530 states that farmland must have the lowest ad valorem rate if different amounts are applied to different ratepayer categories. To avoid a breach of the Act while maintaining revenue would require the rates in other categories to also rise. This would effectively transfer part of the rates burden from irrigation ratepayers to others in the community. Consequently, the bill seeks to remove the requirement for farmland to have the lowest ad valorem rate by removing section 530 of the Local Government Act.

Categorisation of land will likely play a major part in any remedial strategy adopted by councils. It will allow councils to set a rate for various categories of farmland commensurate with the economic benefits that the application of water confers. If there is no intention to irrigate and no benefit anticipated or to be gained, there would appear to be little point in a landowner choosing to maintain and not surrender these approvals. A

transitional provision will be inserted to restrict the amount by which rates levied on land categorised as farmland can be increased during the first five years after the commencement of this Act. It is the Minister's intent that any rate increase on farmland will be restricted to no more than 20 per cent per annum under this provision. This is intended to reassure ratepayers that a fair and equitable response to any fall in land valuations is guaranteed, and there will be no singling out of rural landowners.

Finally, for reasons of clarity, the bill proposes amendments to repeal section 512 (1) (b) (iii), which states that if a council contravenes certain sections of the Act in making a rate or charge for a year, this does not invalidate the rate or charge originally made, but does invalidate rates and charges made for the following year, unless the council did not contravene sections 509, 510, 511 or 511A in making the rates and charges.

The bill also proposes a number of amendments to the Valuation of Land Act 1969. I spoke earlier about the proposed repeal of section 6A (3) of the Valuation of Land Act 1916 under clause 2 of schedule 8.29 of the Water Management Act. That section provides that the value of any water right or entitlement attached to the land is included when determining the value of that land. However, during the drafting of the bill it was recognised that not all areas of the State currently implement water-sharing plans under the Water Management Act. In those areas where the Water Management Act is yet to apply, provisions of the Water Act are still in place. Consequently, in order to provide a framework that is relevant across the State, the bill now proposes to amend the definition of a "water right," rather than repeal section 6A (3) of the Valuation of Land Act.

The existing definition of "water right" extends to any right to take or use water. The new definition extends to any right to construct, install or use works of irrigation or to use water supplied by works of irrigation. It does not, however, apply to a water access licence, since such an entitlement does not attach to land. This means that water access, under the Water Management Act—and the right to take water under the Water Act in those areas where the Water Management Act is yet to apply—will be excluded from the land valuation process in line with the objectives of portability of access to water. So the existence of water works and water use approvals under the Water Management Act, and rights to construct, install or use works of irrigation under the Water Act will continue to be included in the process of valuing any parcel of land. This recognises that the potential to use water to enhance productivity on a piece of land increases its value, and guarantees that this factor will be retained in land valuations provided to councils.

This is similar to the way in which the existence of a particular land-use zoning under a council's local environment plan, or other planning instrument, can affect the value of the land. It means that higher value users, be they urban or rural, will in future be treated similarly. In delivering a revised valuation and rating regime the Government is also mindful of the potential impact of new valuations on councils' maximum permissible income in future years. It is not possible, with the resources at hand, to issue general revaluations for all 44 shires affected by the Water Management Act, and at the same time maintain the current cycle of land valuations across New South Wales. Consequently, the Government intends to use supplementary valuations in those shires where general revaluations are not scheduled for 2005.

Obviously this will be a significant process, and the Valuer-General will need as much time as possible to conduct these supplementary valuations and provide the results to local councils in a timely manner to allow consideration of changed land valuations as part of councils' financial planning process. It is for this reason that the Government seeks to pass the bill through all stages in both Houses this week. Appropriate provisions already existing in the Local Government Act will be utilised to ensure that there are no negative effects on councils' future income. In closing, this bill ensures that local government will not be disadvantaged by any fall in land valuations as a consequence of the full implementation of the Water Management Act. At the same time ratepayers will not be unfairly or inequitably exposed to higher rate payments through rating redistributions that are an artefact of existing legislation. Finally, councils will have all the powers they require to respond, and the choice in application of these response tools will be their own. I commend the bill to the House.