

INQUIRY INTO THE PROVISIONS OF THE VALUATION OF LAND ACT 1916

Organisation: City of Botany Bay Council
Name: Mr Peter Fitzgerald
Position: General Manager
Telephone: (02) 9366 3666
Date Received: 2/08/2010

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City of Botany Bay

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Joint Committee on the Office of the Valuer General
Parliament House
Macquarie Street
SYDNEY NSW 2000

General Manager's Office

Administration Centre

141 Coward Street

Mascot NSW 2020

PO Box 331 Mascot

Telephone: (02) 9366 3666

Facsimile: (02) 9667 1793

DX 4108 Maroubra Junction

Dear Sir/Madam

**Submission to the Joint Committee on the Office of the Valuer General's
Inquiry into the Provisions of the Valuation of Land Act 1916**

Please find enclosed Council's submission to the above mention Inquiry.

If you require any further information please do not hesitate to contact the undersigned.

Yours faithfully



PETER FITZGERALD
GENERAL MANAGER

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City of Botany Bay

Submission to
the Joint Committee on the Office of the Valuer General's

**Inquiry into the Provisions of the
Valuation of Land Act 1916**

Dated: 28 July 2010

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**Submission to the Joint Committee on the
Office of the Valuer General's
Inquiry into the Provisions of the Valuation of Land Act 1916**

Inquiry Terms of Reference

It is understood that the Committee has resolved to conduct an inquiry into the provisions of the Valuation of Land Act 1916 with particular reference to:

1. The efficiency and effectiveness of the current provisions of the Act;
2. Its application to stakeholders; and
3. Any other related matter.

Introduction

Council thanks the Committee for the opportunity to provide a submission to the current Inquiry.

The focus of Council's submission is the need for an amendment to the legislation and the need for a revised methodology to be applied by the Valuer-General in the valuation of certain lands, namely land occupied by Sydney (Kingsford-Smith) Airport.

The Valuer-General provides valuations and undertakes periodic revaluations of relevant properties that are then provided to Councils. These valuations are then applied for the purpose of calculating Council rates which then become due and payable to Council over the course of each rating year.

Council contends that, in valuing commercially leased properties on Sydney (Kingsford-Smith) Airport, the Valuer-General has applied incorrect and inappropriate methodology and has consistently under-valued on-airport lands.

Background

The Commonwealth of Australia leases Sydney Kingsford Smith Airport (Airport) to Sydney Airport Corporation Limited (SACL) on the terms of a lease dated 30 June 1998.

Clause 26.2(a) of the lease provides that SACL must make payments as set out below:

Clause 26.2 Ex Gratia payment in lieu of Rates and Land Tax

(a) *Where Rates are not payable under sub-clause 26.1 because the Airport Site is owned by the Commonwealth, the Lessee must promptly pay to the relevant Governmental Authority such amount as may be notified to the Lessee by such Governmental Authority as being equivalent to the amount which would be payable for rates as if such rates were leviable or payable in respect of those parts of the Airport Site:*

- (i) *which are sub-leased to tenants; or*
- (ii) *on which trading or financial operations are undertaken including but not limited to retail outlets and concessions, car parks and valet car parks, golf courses and turf farms, but excluding runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the Master Plan for these purposes;*

unless these areas are occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from paying rates by Commonwealth policy or law. The Lessee must use all reasonable endeavours to enter into an agreement with the relevant Governmental Authority, body or person to make such payments.

As with owners of off-airport land, the valuation or re-valuation provided to Council by the Valuer-General is the basis on which rate equivalent payments, to Council, by SACL, are assessed.

Appeal Procedures – Valuation of Land Act, 1916

Pursuant to Section 29(3A) a person to whom the Valuer-General has given written notice under subsection (1) may lodge with the Valuer-General written objection to any such valuation within such time as is stated in such notice. Section 35(1) provides for a period of 60 days for the lodgement of such objection.

Section 29(3B) requires the objector to then notify all persons having any other estate or interest in the land, however there is no requirement to notify the Council of the objection.

Under Section 31(1) Council has the right to object within the prescribed time. If it does, it is obliged to give notice of such objection to every owner or occupier liable for rates or taxes which may be payable to Council.

Once an objection is lodged the Valuer-General is required to determine the objection and notify the objector. There is, once again, no obligation for the Valuer-General to notify the Council.

It is therefore the case that, the first advice Council has of an objection being received and processed is when it receives a supplementary valuation list from the Valuer-General. That advice will most certainly be beyond the period permitting lodgement of any objection by the Council.

In this case Section 38(2) provides for the Land and Environment Court to allow an appeal through the court after the 60 day timeframe for an appeal has elapsed.

Council's Experience

Following a valuation of airport lands in 2007, SACL lodged objections in respect of 58 property values. It appears that the objection was lodged after the prescribed 60day lodgement period. However under Section 35A the Valuer-General is permitted to allow a later objection and appears to have done so in this case.

Under Section 35(C4), where an objection is not dealt with within 90 days, the objection is taken to have been disallowed. In the case of the SACL objection it also appears this timeframe was substantially exceeded. Nevertheless consultant valuers, on behalf of the Valuer-General re-assessed the valuations, reducing 13 while confirming the remainder. The Valuer-General notified SACL of his determination in Late June 2009.

At the same time, having become aware of the original valuation by coincidence, Council lodged an objection to 10 of the Valuer-Generals original valuations on 6th November 2008 alleging that these valuations were too low. However, following telephone enquiries receipt of the objections was not acknowledged until 18th February 2009.

As at July 2009, no formal response had been received causing Council to write seeking an outcome. The Valuer-General, in correspondence dated 31st July 2009 indicated Councils query was being investigated.

A response dated 18th August 2009 was received indicating that 4 of the 10 valuations were to be further reduced while the remaining 6 were confirmed.

Council has subsequently exercised its appeal rights to the Land and Environment Court with the Valuer-General as first respondent and with SACL subsequently joined in the action. The case is presently proceeding in accordance with orders and with hearing dates set for October 2010.

Outcome

Council is of the view that there is a fundamental flaw in the legislation in that notification of the Council in relation to objections or an intention to amend a valuation should be required. The amendment should allow sufficient time for the Council to express a view should it believe one to be warranted. Otherwise a Council wishing to object must seek leave of the court and incur substantial delay and costs in doing so.

Airport lands Valuation Rationale

Council contends that the valuation of a number of lease sites on the airport are substantially below those applying to similar or even identical operations off-airport.

In fact it appears that a number of clearly commercial operations have been categorized as industrial by the Valuer-General and, consequently, attributed a lower valuation.

It is claimed by the Valuer-General that the lower valuations are justified by:

- A lower potential developable floor area than off-airport sites;
- The fact that on-airport sites are subjected to noise and fumes;
- Airport sites have no public road frontage;
- Access difficulties; and
- Development restrictions (height and available use).

Lower potential developable floor area than off-airport sites.

In drawing this conclusion the Valuer-General has calculated a lower floor space ratio (**FSR**) potential for on-airport commercial sites. This lower potential has been calculated on the commercial area available divided by the entire airport area. This has been done regardless of the fact that the vast majority of the airport area is occupied by aviation related activities and infrastructure including runways, taxiways, aprons, aircraft parking areas, navigation and flight control infrastructure, safety areas and the like.

The simple fact is that relatively minor areas of airport land are capable of supporting commercial development without conflicting with direct aviation activity. Assessment of FSR across the entire airport is therefore inappropriate and the reasoning flawed.

On-airport sites are subjected to noise and fumes.

Many off-airport sites are also subjected to noise and fumes. In most cases this burden is managed by the use of appropriate construction or building operating techniques. In any case on-airport lessees choose to be there for the same reasons that a commercial lessee of an off-airport site might choose to establish at any particular location. That is that they see a particular business opportunity, comparative advantage or market catchment that they can access at their chosen location.

The simple fact is that lessees receive a direct commercial benefit from being located on-airport.

Airport sites have no public road frontage.

While perhaps not having direct public road access, on-airport lessees have direct access to a substantial private road system that feeds directly onto major public road infrastructure designed to service the volume of users both

accessing and by-passing the airport. Lessees in business estates will similarly be located off public roads while many in older industrial and commercial areas will have comparatively sub-standard access through narrow streets and laneways with less access and profile than a major destination such as an international airport.

Access difficulties.

See comments above. In addition it would be highly subjective to claim that access to the airport precincts is any more difficult than accessing any commercial center across Sydney at particular times of the day.

In fact airport related commercial undertakings may have a comparative advantage in that their operations are often aviation focused allowing them to avoid the double handling that may be required by some competitors located elsewhere.

Development restrictions (height and available use).

This is perhaps the greatest furphy of all in a claimed disadvantage for on-airport operators.

All off-airport local planning instruments provide for some degree of restriction in height, development potential, bulk and scale. Further they are subjected to a wide range of other restrictions with regard to setback, access, light, sunlight, privacy etc. Off-airport sites are also governed by quite rigid town planning zoning classifications, restricting the types of developments and activities that are permissible in various locations.

Planning instruments in local government areas surrounding airports and on aircraft approach paths also have substantial aviation based restrictions in relation to such things as height, lighting, the use of reflective materials etc.

With on-airport development there are requirements in relation to Master Plans, Major Development Plans and a Building Approvals process. However land-use planning descriptors and instruments relating to on-airports developments allow a high, and contentious degree, of flexibility with regard for what might be constructed where. Certainly there is a demonstrable flexibility in the permissibility of airport developments not available under planning instruments that are applicable to off-airport projects.

Airport Master Plans broadly identify "zones" however the category of development in each zone is much broader than allowed under Council planning schemes. In addition an argument can, and is sometimes put, allowing for development outside of the specified "zone". In other words there is a flexibility in the planning regime available on-airport far removed from the prohibitions that apply elsewhere.

In effect, while off-airport development has strict controls, on-airport development can be of a nature and in any location that can be justified by the airport operator who is also the party who will receive a direct financial benefit as a result of commercial development.

Outcome

Lessees on-airport are not some disadvantaged minority. Quite the opposite. They choose to lease and establish their business on-airport because they see a commercial advantage in doing so.

Many of the lessees operate businesses that are quite clearly commercial in nature and may in fact be subjected to a far less rigorous planning regime than off-airport competitors.

It is therefore logical, equitable and in the spirit of the level playing field supporting the principles of the National Competition Policy that they receive the same consideration in assessing land value as applies to like activities located elsewhere.

Furthermore, while being truly flexible in nature, the Airport Master Plan does identify and categorise the intended future use of various land parcels. Those parcels should be attributed a value in accordance with their category and in direct comparison with similar operations in other locations.

Conclusion

While the airport remains Commonwealth land it has been leased long term to a commercial company which, in turn sub-leases available areas to other commercial undertakings.

These sub-leases may be to speciality retailers in airport terminals competing with similar businesses in shopping malls or commercial centre main streets. They may be to stand- alone operators or franchisees or chains such as fast food outlets, accommodation providers, show rooms or service centres.

By any reasonable classification these businesses are commercial in nature. They are in competition with the providers of like goods and services in other locations. They may even have a commercial advantage due to an increased client potential as a result of the numbers of workers, visitors and users drawn to the airport. They are there by choice and should be treated equitably by direct comparison with their competitors.

Should the Committee wish any matters clarified, to receive further information concerning matters raised or to have representatives attend the inquiry then Council will be happy to oblige.