Inquiry into the Land Valuation System

Colin Biggers & Paisley submission dated 6 March 2013

Issue	Term of Reference	Problem	Recommendation
Objection process	TR 1(a) (volatility; lack of transparency, equitable and consistent outcomes) TR 2(c) (measures to improve transparency) TR 2(d) (measures to achieve greater efficiency)	It is not clear on receipt of a valuation notice or land tax assessment notice what statutory valuation allowances, assumptions or concessions, if any, are being applied by the Valuer General in making his valuation, particularly from the perspective of a land owner assessing the merits of an objection. We also suspect for many land owners (and for that matter their appointed solicitors and valuers), the valuation methodologies and application of the various statutory valuation assumptions, concessions and allowances are foreign and opaque. Further, in some cases, it appears that the contract valuers appointed by the Valuer General appear to differ fundamentally in valuation methodologies (including as to selection and weight to be given to appropriate comparable sales, treatment of GST and time value of	**Recommendation 1**: All relevant statutory assumptions relied upon, and concessions and allowances made in the valuation should be stated on the valuation objection form issued to prospective objectors and also identified on a land value search being made (in particular, reliance upon the statutory assumption in section 14K, if any). **Recommendation 2**: Any valuation manual issued to district and contract valuers as to relevant methodologies, interpretation and application of the *Valuation of Land Act* 1916 should be published on the Valuer General's website. A method of version control showing

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		money) and the application and interpretation of statutory valuation assumptions, allowances and concessions. Many objections might never be lodged or might be resolved at a much earlier time if objectors better understood after the issue of a valuation notice or land tax assessment notice what statutory valuation assumptions, allowances or concessions were being relied upon or applied for a valuation and how the Valuer General (by his district or contract valuers) generally approaches s 6A(1) and other statutory valuation exercises. Even if an objection was pursued, the issues could be narrowed and valuation evidence of both parties prepared in a way that compared "apples with apples" in a consistent format. It is apparent on review of some of the case law that the valuation evidence of an opponent is often found defective given certain statutory assumptions have not been made by the objector's valuer and the Court is unable to safely rely upon any part of it.	amendments made over time should be implemented. A good example of such a manual is the patent, trade mark or design examination manuals on IP Australia's website. **Recommendation 3**: In addition, circulars of the Valuer General to his district and contract valuers addressing issues of interpretation and application of statutory assumptions, allowances and concessions and valuation practice should be published on the Valuer General's website. **Recommendation 4**: Examples of the preferred format of a valuation report showing how the Valuer General marshals and presents his valuation evidence should be made available on the Valuer General's website.

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An unfettered power to re-ascertain any land value at any time?	TR 1(a) (volatility; lack of transparency, equitable and consistent outcomes) TR 2(e) (possible amendments to the Act)	It would appear that the Valuer General considers that section 14A(2) and section 14A(6) of the *Valuation of Land Act* 1916 permits him to reascertain the existing land value of any parcel of land at any base date in the State at any time. Taken to a logical extreme, the Valuer General could tomorrow re-ascertain every parcel of land in the State for the past 20 years if that was his whim. This wide ranging and unfettered power is unnecessary and is capable of abuse. There are already sufficient powers to correct clerical errors (see section 14DD(1)(c)) or to re-ascertain values on the request by Council or other authorities in the Act on, importantly, rezoning or similar land use events (see for example, s60A).	**Recommendation 5**: The unilateral and unfettered power of the Valuer General to reascertain existing land values under of section 14A(2) and section 14A(6) of the *Valuation of Land Act* 1916 should be repealed or at least conditions be placed on the exercise of that power.

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An assumption to value say rural land as residential land retrospectively?	TR 2(e) (possible amendments to the Act)	There is a remarkable statutory assumption in section 14K, at least on the reading given to it by the Valuer General, that on any valuation, or reascertainment, the Valuer General must assume that the physical condition and the manner of use of the subject land (and that of any other land) is to be taken into account at the time the valuation **is made,** rather than at the relevant base date: see *St Marys Land Limited v Valuer General* [2011] NSWLEC 1330 **Example 1:** The land value for a parcel of land zoned recreational open space is recorded in the Register of Land Values as $3M in 2009. The land is rezoned residential in January 2012. In February 2012, the Valuer General exercises a power to reascertain the 1 July 2009 land value under either section 14A(2) or section 60A(1). He is required under section 14K to assume for that purpose the land is zoned residential. The reascertained valuation for 1 July 2009 is now determined by the Valuer General to be $13M, even though rezoning would not have occurred for several years after that date.	**Recommendation 6**: Section 14K of the *Land Tax Assessment Act* 1916 should be restricted in application to only annual general valuations and also perhaps in the context of a section 60A reascertainment (and then only for rating, not taxing, purposes) and not reascertainments of existing land values generally.

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		This simplifying statutory assumption is perhaps understandable and reasonable in the context of the mass valuations made annually several months after 1 July in each year. It is also perhaps understandable in the context of the need to update the base date land value for rating purposes so that rates are paid on a rezoned value from the date of rezoning. However, section 14K is drawn too broadly. It appears to apply to all valuations, including reascertainment of existing land values, made under the Act. It clearly should not apply, for example, to a request for a valuation made by a land owner under section 20. Reascertainments made taking into account section 14K also often significantly inflate the land tax payable given land tax averaging. It is unclear whether that was ever intended by the legislature as a matter of public policy. We describe this result to our clients as a hidden development tax.	

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Administrative errors in application of section 60A(1).	TR 1(a) (volatility; lack of transparent, equitable and consistent outcomes) TR 2(e) (measures to achieve greater efficiency in the system)	Section 60A(1) requires the Valuer General, on **request in writing** by a Council, to reascertain the land value on, inter alia, variation of a planning instrument with the result that the purposes for which development may be carried out on the land is changed. We are aware of administrative errors in the application by the Valuer General of this section. **Example 2**: The land value of a parcel of land was reascertained purportedly pursuant to section 60A(1) of the *Valuation of Land Act* 1916 **before** a rezoning of that parcel of land had been gazetted. **Example 3**: The land value of a parcel of land was reascertained after rezoning purportedly pursuant to section 60A(1) of the *Valuation of Land Act* 1916 in circumstances where it turned out that **no such written request** had ever been made by Council. The difficulty is that a re-ascertainment made in error will trigger a supplementary land tax assessment or rate notice.	**Recommendation 7**: An internal process needs to be implemented by the Valuer General to identify and withdraw quickly reascertainments made in administrative error of the kind in this submission. See further recommendations regarding administrative law remedies set out below.

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		Those supplementary rates and taxes must be paid by the relevant due date despite any pending objection or appeal: see section 36 of the *Valuation of Land Act* 1916. Further, the issue of a supplementary valuation notice or land tax assessment notice triggers the commencement of a 60 day objection period (with limited discretion to extend) within which to object to the valuation: see section 35 of the *Valuation of Land Act* 1916. To preserve its objection and appeal rights, an objector often has to put on a substantive objection, including planning, valuation and other expert evidence, at considerable cost and expense. It must also pay relevant rates and taxes. When ultimately the Valuer General withdraws the valuation made in error or substitutes a valuation made on some other proper ground, the difficulty is that often the supporting planning and valuation evidence needs to be revisited and a fresh or supplementary objection lodged.	

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Exercise of administrative discretion to create a new parcel of land	TR 1(a) (volatility; lack of transparent, equitable and consistent outcomes) TR 2(e) (possible amendments to the Act)	A "parcel of land" is the valuation unit adopted by the Valuer General in making his valuation: it may comprise part, whole or one or more legal titles. **Example 4**: the Valuer General decides to reascertain the land values of a long standing land aggregation for convenience reasons. In doing so, he consolidates several long standing parcels (as identified on the Register of Land Values by a PID number) used for many years for rating and taxing purposes forming part of aggregation into one large parcel. This is done despite no rezoning, change in applicable planning instruments or physical condition of the land, no addition to, or disposal of, part of the aggregation or no consolidation or transmogrification of the relevant long standing legal titles. The problem is that on the creation of a new parcel, this triggers section 9AA(7) of the *Land Tax Management Act* 1916. That section says that on creation of a new parcel of land, only the current land tax	**Recommendation 8**: A decision to create a new parcel of land should only be undertaken in tightly controlled circumstances given the rating and taxing impact on land owners. A purely administrative decision to create a new parcel of land should only be made after advance notice of the proposal and after the land owner is given opportunity to make submissions and be heard. **Recommendation 9**: Alternatively, section 9AA(7) of the *Land Tax Management Act* 1956 should be amended to clarify that land tax averaging should continue to be allowed where the Valuer General has created a new parcel of land for purely administrative reasons and has recorded in the Register of Land Values land

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		values since creation of the new parcel of land are to be taken into account in determining the average taxable land value. This means that the land owner does not have the full advantage of land tax averaging. We estimate for one client this resulted in an additional liability for land tax well into the $100,000s. But for that administrative decision, that liability would never have arisen.	values for the current and two preceding land tax years.
Administrative remedies to be available through the Land & Environment Court	TR 1(a) (volatility; lack of transparent, equitable and consistent outcomes) TR 2(e) (possible amendments to the	There are only limited grounds on which land value objections can be objected to under the *Valuation of Land Act* 1916: see section 34(1). There is perhaps some doubt about whether administrative errors of the kind identified above (see Examples 2 and 3) are capable of being characterised as being a permitted ground for an objection under section 34 of the *Valuation of Land Act* 1916. Sometimes what appear to be plain statutory construction issues going directly to the question that the valuations are too high (see	**Recommendation 10**: The *Valuation of Land Act* 1916 and the *Land and Environment Court Act* 1979 should be amended to provide that the Land & Environment Court should have the jurisdiction to hear and grant administrative law remedies in class 3 disputes. **Recommendation 11**: Alternatively or in addition, the grounds of objection set out in section 34(1) of the *Valuation of Land Act* 1916

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	Act)	section 34(1)(a)) are resisted by the Valuer General's legal representatives on the basis that what is sought by the objector are administrative law remedies. Often a valuation is highly dependent upon whether certain statutory assumptions have been adopted, or statutory concessions or allowances applied. For some reason, this is not stated as a ground of objection in the *Valuation of Land Act* 1916. Further, the Land & Environment Court recently decided that the Court does not apparently have jurisdiction to grant administrative law remedies in class 3 disputes: see *Trust Company Limited ATF Opera House Car Park Infrastructure Trust No 1 v The Valuer-General (No 2*) [2011] NSWLEC 34. It would appear that in order to obtain an administrative remedy from the Land & Environment Court - say for example that a decision to re-ascertain land values under section 60A(1) was beyond power - the applicant must first commence a separate proceeding in the Supreme	should be expanded to include as additional grounds of objection that (a) a valuation was made inconsistently with the Act; (b) a statutory allowance or concession was not taken into account.

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		Court. An order would then be sought from that Court to have that proceeding transferred to the Land and Environment Court on the basis that it is more appropriate for the proceedings to be heard by that court: see section 149B of the *Civil Procedure Act* 2005. The Land & Environment Court would then be vested by the transfer with all of the jurisdiction of the Supreme Court with respect to the proceedings: see section 149 of the *Civil Procedure Act* 2005. The difficulties and additional costs for a land owner to commence and co-ordinate proceedings in two separate Courts to have access to all available remedies is inefficient. All remedies should be available from the one Court.	

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Better valuations for new significant development	TR 1(a) (volatility; lack of transparent, equitable and consistent outcomes) TR 2(d) (measure to achieve greater efficiency in the system)	It seems apparent that on testing initial valuations, particularly for significant green field and infill development sites, that the initial valuation made by the Valuer General is lacking. Substantial adjustments are often made to the ascertained land values on objection. We accept that a full valuation cannot be undertaken for all parcels of land on rezoning. Some form of computerised mass valuation process must be applied. However, for high value development precincts - which are admittedly difficult valuation exercises - we submit that an after the fact adversarial proceeding to determine a better approximation of the land value for rating and taxing purpose is not ideal. Presumably Treasury and Councils have structured budgets based on those initial valuations. A better understanding of the site in the hands of district and contract	**Recommendation 12**: For significant "developer led" rezonings there should be some liaison between the Valuer General's Office and the developer's valuers as to what the appropriate land value is for rating and taxing purposes on rezoning. This should involve at least a comparison of notes of relevant comparable sales, market conditions, relevant planning controls, relevant heritage affectations, timing of infrastructure and utility connections, appropriate assumptions, valuations and allowances etc. This might possibly take the form of a "developers brief" to the Valuer General's Office.

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		valuers would reduce volatility, reduce costs associated with unnecessary disputes and surprises in Treasury and Council budgets and developer feasibility studies / cash flow analyses.	

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