LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Inquiry into commercial rates)

Members:

MRS V DUNNE (Chair)
MS T CHEYNE (Deputy Chair)
MS B CODY
MS N LAWDER

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 6 MARCH 2019

Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Amended 20 May 2013

The committee met at 10.35 am.

PROCTOR, MS SUSAN, Representative, Manuka Business Association

THE CHAIR: Good morning, and welcome to the seventh public hearing of the Standing Committee on Public Accounts inquiry into commercial rates. Today the committee will hear from Ms Susan Proctor, a representative of the Manuka Business Association. Today's hearings will be broadcast, recorded and transcribed.

Ms Proctor, have you had an opportunity to read the pink privilege statement? Can you acknowledge that you have read and understood it?

Ms Proctor: Yes, I have read it; thank you.

THE CHAIR: Do you want to make opening comments or are you happy to go directly to questions?

Ms Proctor: I have put in quite a detailed statement, and there is an executive summary at the front of that; so rather than read that, it might save time if you want to go straight to questions.

THE CHAIR: Okay. What is the capacity in which you appear today?

Ms Proctor: I wear a number of hats here today. I am a commercial property lawyer and have been in the ACT for over 20 years. I am a business owner in Manuka and a tenant. I am also a building owner in Manuka. The building is owned by my self-managed super fund. I am a keen advocate for the Manuka community and for Canberra more broadly.

THE CHAIR: By way of background for the committee, is the Manuka Business Association a long-term organisation or has it grown up out of a current need?

Ms Proctor: I understand that, originally, Mr Peter Blackshaw put together the Manuka Business Association over 12 years ago, significantly prior to my time. I am only a recent member of the Manuka Business Association. I cannot really talk about the whole history.

THE CHAIR: That is all right. I wanted to get a feel for it. Much of your submission hinges around the survey of businesses in Manuka. What prompted the survey?

Ms Proctor: As I have explained, I have a vested interest in speaking today, and I am very grateful for the opportunity to speak to the issues that Manuka businesses and building owners are facing. I have only recently set up my business, my law firm, in Manuka. I acquired the building in late December 2017.

The reason for wanting to get involved with my community was because I see value in communities supporting each other and understanding the issues that other occupancies face. I made a point of finding out, when I became a part of the community, what, if any, association or tenant community existed. That is when I became aware of the Manuka Business Association.

It was clear to me that a commonality, an issue that every business owner and tenant faced, if tenants are impacted by deterioration of the capital improvements around them, is the rates: how the rates are increasing while the value of improvements and maintenance of the general area are not.

It was clear that we all had something in common, and I wanted to articulate that and assist business owners who do not have the time or perhaps the legal understanding of what the basis of these rates is and what the impact will be. As a property lawyer, I understand the potential economic impact on people buying in or occupying as tenants in that area.

THE CHAIR: In a conversation we were having when you came in, somebody pointed out to me only last night another business in Manuka that was closing down. I am aware of a couple of businesses recently that have closed their doors. To what extent is that driven by the life cycle of a business and to what extent might that be driven by increasing rents, increasing rates and things like that? I know that is a very general question. I have specific examples in my mind, and I do not particularly want to explore particular examples.

Ms Proctor: At the end of the day, if your business is viable and economic, you will stay. You will stay in the area; you will stay in the precinct. If you are struggling because you cannot deliver the return that you need to, to pay down your debt and deliver a yield against the asset, you are going to have to look at other options.

I walk from my building in Murray Crescent to the post office to get the mail every day. The increasing number of vacancies that I see from simply walking that strip—almost every second shop in some parts—concerns me. It is sad and it is disappointing. I can only imagine that the issues are that it is very difficult for landlords to pass on rentals that capture the rate component to the extent necessary to deliver an appropriate yield.

A lot of the people who have purchased in the area over the years—I have acted for many of them—have bought these assets in their self-managed super funds, in terms of wanting to deliver a yield into their retirement. They cannot suddenly increase the rents that their tenants are paying by passing on outgoings, or the significant hike in outgoings, because when they have entered into the lease agreements, made the purchase and done all the numbers, it has worked. But these numbers have been unforeseen, and they continue to be unforeseen.

MS CODY: You said that in your walk to the post office, you see a number of businesses closing. Didn't we see a spate of that happening in Kingston back in the early 2000s, too?

Ms Proctor: Possibly. I have not gone to get my mail—

MS CODY: I am a former business owner. I have had businesses. I had one in Kingston. I have had several businesses. I distinctly remember seeing, at different times over the course of many years, that you have these rolling times when sometimes, unfortunately, for all sorts of different reasons, we do have spates of—

THE CHAIR: We are having another spate in Kingston at the moment. There are a lot of vacancies.

MS CODY: I thought it was vibrant the other day when I was in there. I cannot remember which day it was last week.

Ms Proctor: There are patches of vibrancy. If you go to Manuka on a weekend and go to the Lawns, often there are lots of people. That is fabulous for those businesses, but they are generally selling coffees and food. There is not necessarily the ability to sell food and coffee at a significantly higher price than there would be in other shopping precincts. But the rates that we are paying are significantly higher than they would be in other precincts. That is because they are largely attached to the highest and best use, which is residential, in a lot of those circumstances. The residential rating value is the land value assessment and the commercial multiplier is then applied, to determine the use. The disparity between the residential multiplier and the commercial multiplier is significant.

THE CHAIR: Manuka is essentially two-storey, with retail on the ground floor and commercial upstairs—a few restaurants upstairs et cetera.

Ms Proctor: Yes.

THE CHAIR: Have we seen a change of use applied across the Manuka precinct to allow for more residential? If you knocked it down, you could build something which was retail, commercial, with residential above?

Ms Proctor: No. You cannot knock it down. There is a heritage nomination over the whole of the Manuka shopping precinct.

THE CHAIR: How has it come to have a residential—

Ms Proctor: Overlap. There are different areas in Manuka. There is the Blandfordia area, which is Murray Crescent and Bougainville Street—original homes for public servants. Most of those buildings have, as their original crown lease permitted use, residential and/or professional consulting, as the use. I will give a like-for-like example. My building is located next to a residence. We have a central wall between our two buildings. We have identical services in terms of both taking the same garbage bins out into the street for collection every Friday. That is the only distinction in services, yet the rates that I am paying in my self-managed super fund are $40,000 and the general rates of the residents next door are $4,000. That is the disparity.

That is the best part of a wage of an employee. That represents significant improvements to the amenity of the area, which we just cannot do. I do not have the flexibility, with that particular asset, to drop it and put on an apartment block, even though I have residential use. The Blandfordia area, which is residential streets close to that precinct, together with Murray Crescent and Bougainville Street, is all already heritage listed. It is called Blandfordia—that zone.

THE CHAIR: I was thinking about inside the square rather than outside the square.

Ms Proctor: Yes. The Manuka precinct expands into those businesses, and that is where there are disparity and inequities. But there are still the same challenges in terms of development opportunities in the Manuka precinct itself, because of its heritage status. It is nominated. It is not on the register. There are other overlays that have an impact as well, under the National Capital Plan.

THE CHAIR: Blandfordia is on?

Ms Proctor: It is, yes.

THE CHAIR: I remember doing that many years ago.

MS CHEYNE: Your submission noted in a few places the uncertainty of future rates and how that is having an impact on businesses. It has been a recurring theme that has come up for us, including whether rates notices should have some more information. Sometimes it has been the shock that has really made it difficult just because people have not been able to budget or because they budgeted, and then got it, and then had to drop something they wanted to do.

Ms Proctor: Yes.

MS CHEYNE: Some of the suggestions received have included that rates notices should give an indication about what the rates in future years might look like. Would that be a suggestion you would support, or do you have other suggestions on what could reduce the shock a bit?

Ms Proctor: I think any rate system needs to be clear and transparent as to its impact for future years. Any landlord and/or tenant needs to understand their viability and their sustainability for the years to come. That is where we have the biggest problem. The abolition of stamp duty was seen by many as a plus. However, the impact was unknown as to what would happen with the combination of land tax and commercial general rates and then how the multiplier would be applied and the land value assessed. That has been unforeseen and unknown; people have not been able to anticipate that in negotiations with tenants, and tenants have not been able to do that in making decisions about signing particular lease terms.

We then have Hayne and the royal commission that have come in. Many banks—all the big four—have ceased lending to self-managed super funds in terms of residential property investments and, to a large extent, commercial property investments. The economic overlay is quite dire for people in a position where they are wanting to acquire an asset. The banks will be looking at the sustainability of the investment, and they will look at the rates and the fact that they are increasing, going forever upward, and the return you can derive from rentals is shrinking. My concern is that there is going to be an issue with getting continuing funding in these areas from lenders.

I do not think I have quite answered your question. But I think that any rating system has be understood, and perhaps at the moment it is uncapped contingent liability where you just do not know what it is likely to be. I feel, as a property lawyer, that the territory really has an obligation as a landlord to ensure that the costs that it is putting on its tenants are sustainable. I do not think that that is the case at the moment.

MS CODY: I note your submission is from the Manuka Business Association. Is that correct?

Ms Proctor: Yes.

MS CODY: Are you appearing on behalf of the Manuka Business Association?

Ms Proctor: Yes. I am a member of the Manuka Business Association. They have allowed me—and worked with me in terms of my firm, Proctor Legal—to put forward this submission, which I have done pro bono for the benefit of Manuka businesses more broadly.

MS CODY: So a lot of the views that you are expressing today are part of the combined submission that you have made?

Ms Proctor: Yes. They are definitely my own. As I have explained, I certainly have a conflict of interest in this matter, or I have a concern; I have a great concern. But yes, my concerns are shared by every other business owner and tenant that I have spoken to in Manuka. I have spoken to quite a number, including those who are and are not members of the Manuka Business Association. As you will see, we have put together a summary of questions, we have put it to them, and we have assembled their responses, which are all very consistent.

MS CODY: How did you find out about our inquiry?

Ms Proctor: I saw it through an Australian Property Institute circular. Also, the Property Council sent out emails explaining about the inquiry. I was so relieved when I heard about the inquiry. I thought, "That is great." I just hope something can come out of it.

MS CODY: You also mentioned—I think you were answering a question from Ms Cheyne—that there is a disparity between the residential rates of $4,000 and your commercial rates of $40,000. Do you have employees in your business?

Ms Proctor: Yes.

MS CODY: You mentioned that $40,000 is part of a wage. I would imagine it is a small part, but—

Ms Proctor: No, it is not, not for a junior office assistant. It would not be the entire wage; obviously it is a bit less than the minimum wage. I employ law clerks on a part-time basis, a couple of afternoons a week, to do the running into town for my business, into and out of town. That would more than cover those sorts of salaries. I just have one other full-time employee. My office is a tenant in the building that my self-managed super fund owns.

MS CODY: Yes.

Ms Proctor: That area is 112 square metres, so I have a very finite space in terms of the number of people I could employ.

Interestingly, I note the submission put in by treasury relating to the upside in terms of there being a benefit for small business owners because they no longer have to cop payroll tax in terms of their payroll. I am pretty confident that there are no businesses in Manuka that have a payroll that would even get close to the prior threshold, let alone the new threshold.

THE CHAIR: Perhaps with the exception of Coles.

Ms Proctor: Yes, perhaps with the exception of Coles.

MS CODY: Which means that there was no-one paying payroll tax previously.

Ms Proctor: Yes; there has been no benefit.

MS CODY: I just wanted to clarify what the statement was.

Ms Proctor: The other point would be that every occupier or owner of a premise has paid stamp duty on that acquisition already. Although from a government perspective stamp duty may be an efficient tax because it is market driven, at least when you are making an acquisition you can understand that it is a one-off payment when you buy something whereas the current state of affairs is that when you purchase an asset you may or may not have stamp duty but you will have an annual increasing charge that is unknown as to where it is going to go. In advising purchasers of commercial property, that is a big risk that I identify for people straight up. And it is impacting people purchasing.

THE CHAIR: We heard evidence from someone the other day who was saying that in his business he plans for a 10 per cent increase in this, that and the other, and that includes his rates, and then when you get significantly more than a 10 per cent increase it means it is beyond your capacity to plan. Would you agree with a statement like that? Is that the sort of thing people are experiencing, from your observations?

Ms Proctor: Most definitely. You need to have contingency around business operations, issues with the market and what is going to occur in your business operations. But you also have the banks and the lenders looking at exactly what the expenses are. If they are unknown, what sort of contingency are the lenders going to put on that? It may be a different lens to the business operator themselves. That is increasingly becoming a big issue.

THE CHAIR: At the very end of the survey it says:

> Since rental yield is a major driver in the price of a commercial property, a Commercial Property Unimproved Land valuation should take into account the state of the commercial rental market.

One of the things we have heard is that the valuation officer is saying, “Your unimproved value is here,” but the reality is that decreasing capacity to recover that devalues the overall property with its built form. So what we are hearing is that the ideal unimproved value is quite disconnected from what is actually going on in the market. With your property lawyer hat on, how do you bridge that disconnect?

Ms Proctor: You cannot bridge the disconnect other than advise of the risk and whether it is a sustainable investment option or not a sustainable investment option. What the solution—

THE CHAIR: Yes but if the reality is that in the market the actual value of the property is here but the valuation office says the unimproved value is something else, it leads to unsustainability, if the rate at which you are taxed is based on something which does not reflect reality and in fact is much higher than reality. They could have had it the other way and, “You beauty,” you would be winning. But if it is this way and the unimproved value is significantly higher than the market value, what gives? The unimproved value or—

Ms Proctor: With the properties in Manuka, the increasing vacancies, by not assessing the actual income coming in or the potential income you could generate from leasing those properties for the actual use for which the multiplier is applied, you are failing to take into account the true reality of the scenario and the sustainability of that asset. To my mind it is very unfair to apply the highest and best use as residential and then not apply the same multiplier for that use in terms of determining the rating factor. If you are applying the commercial multiplier to the unimproved land value but are then not able to have a commercial land value that takes into account the reality of what the premises are fit for use for, particularly where there are restrictions on altering that use in a heritage precinct, then there is just a total disconnect.

MS CHEYNE: On the suggestion of creating a panel to assess the rating system, what would it do and how would it work?

Ms Proctor: I think the committee has already looked at concerns arising. If we have pockets of exceptions, how do we best protect people from getting around loopholes, drafting in a particular fashion or representing assets in a particular way? I think that that is where a panel of valuers, lawyers, interested parties and policy could come together and arrive at a better system that may take into account these restrictions on use, the commercial realities. I do not understand how it has been arrived at, other than to derive the greatest amount of revenue for government, in its current formulation, because there is an absence of policy, in my opinion, informing the current system.

MS CODY: I have a question about one of the questions in the survey. There is a question that says:

> What is the impact on leasing costs? Can you pass on these costs under your leases or incur them as a tenant?

There are a couple of dot points—answers, I am assuming. They are:

> Rates are not an expense that can be passed on to tenants and remain an attractive and viable option.
>
> Under one lease, the owners are able to pass on a percentage of the rates increases, however, under the other two, the owners are unable to pass on the rates increases.

I do not understand "under one lease" and "under the other two". Are you talking about specific properties in that?

Ms Proctor: Yes. The lease is the sublease, not the crown lease. Often there may be any number of subleases over a crown lease. It might have more than one tenant. Depending on when those lease arrangements were entered into and the understanding of the market at that time that would dictate the terms of that lease.

MS CODY: I understand. I just was not sure if you were referring to specific leases or if you were referring to—

Ms Proctor: One of the business owners was referring to it. That is why it is referenced in the summary at the back.

THE CHAIR: Thank you very much for your attendance here today and for the work that has been done by the Manuka Business Association in participating in this inquiry. It has been quite useful to us. We did not have any questions taken on notice. You will receive a proof *Hansard*. If there are errors in the transcription or issues you wish to raise, you can take them up with the committee secretary, Dr Lloyd.

I thank the witnesses for appearing and close the hearing for today, which is probably the last public hearing we will have on this.

The committee adjourned at 11.02 am.