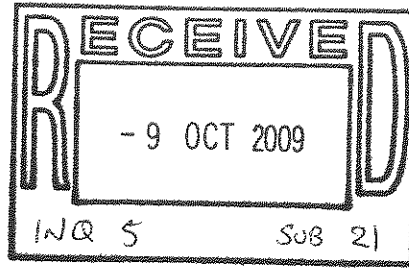


ABN 90 725 439 728

56 Reynolds Road
P.O. Box 801
Pakenham
Vic. 3810
AUSTRALIA

Ph: 03 5941 6244
Fax: 03 5941 7266



8th October 2009

Mr Sean Coley
Executive Officer
Outer Suburban/Interface Services
And Development Committee
Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Coley,

Proposed Growth Areas Infrastructure Charge

I am writing with reference to the proposed Growth Areas Infrastructure Charge announced by the Growth Areas Authority in February 2009, and the devastating impact this will have on landowners in the Urban Growth Boundary if legislature is passed.

Our company is a small to medium operator who, over the past twenty five years has operated a civil construction business employing over five hundred staff, and is now in the transition of becoming a development business . The impact of the proposed GAIC is so significant we feel compelled to write to you, as it has the potential to break our business and destroy all we have achieved over the past two decades.

Our company has purchased several parcels of land for future development over the past three years which are located in the proposed Cardinia Road Employment Precinct. At the time of purchase the proposed GAIC was not considered when arriving at a purchase price as the industry was not aware of the potential of this charge. This has been refuted by the Government who claim the proposed charge was announced in the amendments to the Urban Growth Zone and Planning Scheme in 2005, however owners were not informed through official correspondence and hence were not aware. It was also announced on 2nd December 2008, however it was only advertised in newspapers, with no correspondence to landowners. Landowners finally became fully aware of the charge on 20th February 2009 when the GAA issued correspondence directly.

In January 2009, our company received a copy of the Melbourne @ 5 million flyer which briefly documented the proposed GAIC charge. At this time, we instructed our lawyers to make investigation on the proposal as we had signed a Contract of Sale for the sale of one of our properties on 17th December 2008, completely unaware of the GAIC. They contacted the Law Institute of Victoria, State Revenue Office, various Planning Lawyers, various Property Lawyers, Property Valuers and the Legal Practice Liability Committee, all of whom had no knowledge of the proposed charge. They made contact on several occasions with the GAA themselves, who could not provide definitive answers as to whether our Contract of Sale would be affected by the charge or indeed who would be liable to pay the charge.

I have since met with Mr Peter Seamer, Chief Executive Officer of the Growth Areas Authority, to discuss the impact of the GAIC on our business (see attached correspondence). In that meeting, I clearly demonstrated to Mr Seamer that no financial windfall had been obtained by our company through the acquisition of land in the Cardinia Road Employment Precinct, however he was of the opinion that irrespective of this and the land sale caught up in the process, it was not within his power to grant any exemption to our company if the GAIC succeeds in Parliament. I am more than happy to provide you with the financial evidence I presented to him, provided that information is kept confidential.

Landowners with land in the Urban Growth Zone have already suffered significant increases in local Council Rates, Land Tax, and are bound by Development Contribution Plans. These costs have been imposed prior to rezoning being granted, and therefore land valuations are still based on "farm" or "rural" zoning, however we pay the costs as if the land has achieved rezoning and therefore valued at a higher rate. Through the economic turmoil experienced this year, the banking sector is heavily scrutinizing business whose main assets involve land, to the point where they will not support any holding costs, and therefore threaten the stability of any business who cannot self fund these requirements. This situation will get worse when revised land valuations are undertaken, which will now include the proposed GAIC and values will be reduced, hence increasing the debt ratio for business, and forcing business to the wall.

If the GAIC is legislated in the current format where the charge is payable on the first transaction on the land, whether it be a sale, subdivision or development, on top of all the other costs already been borne, developers will simply not have the financial capacity to commence any works, and the industry will come to a standstill. The Rudd Government has clearly indicated they require development to continue in this very difficult economic climate to sustain growth and employment, hence the First Home Owners Grant Scheme, however the State Government will destroy any chance of this occurring if this charge is implemented.

The greatest point of contention in relation to the GAIC is the retrospective aspect. Since the extension of the Urban Growth Boundary in 2005, many properties have been purchased with no knowledge of the GAIC, as no official notice was ever issued, therefore the cost was not included in determining purchase prices. This essentially means all land purchased during this time was acquired at an inflated rate and at a level where any increase in value may not satisfy the original purchase costs when the GAIC is applied. The anticipated growth in value has been severely affected due to the current economic environment, and therefore holding costs combined with the GAIC will ensure developers are in a loss situation on any land affected. If landowners had been advised through issuing of notices in 2005 of the impending charge, they would at least have purchased property at correct market rates and therefore the impact of this charge would have been reduced. Landowners with property to be included in the next boundary extension are at least aware of the GAIC and therefore can factor the cost into either the purchase or sale price of their land.

Developers agree they should contribute to funding of infrastructure. Significant contributions are already paid through Council rates, Land Tax and Development Contribution Plans. How much more can State and Local Government reasonably ask for? The common perception is property development is lucrative and highly profitable, however the reality is with the ever increasing costs developers must pay prior to any development being undertaken, together with the significant time constraints in achieving rezoning, has eroded these perceived profits and if the GAIC is imposed, it will simply destroy the ability to fund future development. I would think in the current economic environment, Government would be assisting industry of this type to encourage growth and provide employment, however they have simply hamstrung the process and growth will inevitably stall.

To implement a law retrospectively is to deny the natural state of justice. As a business, we spend significant time planning and preparing strategies for growth, however the plans we have made over the past three years and the financial position we believed we were in will be severely impeded if the proposed GAIC is implemented.

If the GAIC is imposed, the end user which is predominately home buyers, will suffer the burden and the great Australian dream of being a home owner will be even further out of reach. In addition to this, government want regional areas to become more self contained to alleviate pressures on current infrastructure leading into Melbourne, however developers simply cannot sustain the continuous onslaught of charges imposed, and therefore commercial and industrial development is also likely to cease.

We implore the State Government to reconsider the proposed GAIC being imposed retrospectively and fully consider the severe impact this charge will have on our industry and therefore regional growth.

Yours sincerely



Sue Kelly
Business Manager

att



ABN 90 725 439 728

56 Reynolds Road
P.O. Box 801
Pakenham
Vic. 3810
AUSTRALIA

2nd October 2009

Ph: 03 5941 6244
Fax: 03 5941 7266

Mr Peter Seamer
Chief Executive Officer
Growth Areas Authority
Level 6
35 Spring Street
MELBOURNE VIC 3000

Dear Mr Seamer,

Cardinia Road Employment Precinct & Proposed GAIC

Thank you for meeting with Mr Graham Ihlein and myself on 16 September 2009 to discuss the impact of the proposed Growth Areas Infrastructure Contribution (GAIC) on our land in the Cardinia Road Employment Precinct in Pakenham.

At the meeting we stressed that the principle of applying a GAIC to those who receive a windfall gain from their land being brought within the urban growth boundary is sound. It is right for there to be a fair contribution from the windfall gain to infrastructure costs.

After further considering all the matters discussed, we now urge you and the Victorian Government to make an early decision to exclude from the proposed GAIC our land, which was purchased after the 2005 boundary announcement.

This could be announced and then implemented in the proposed legislation or by administrative exemption.

Such action is justified because of:

1. the public interest in developing the Cardinia Road Employment Precinct as soon as possible;
2. we purchased the land after the 2005 urban growth boundary announcement so we gained no windfall benefit; and
3. the terms of the now proposed GAIC were not publicly spelt out until December 2008.

Early Development of the Cardinia Road Employment Precinct

The Pakenham area is growing very fast with four families a day moving into the area. The Cardinia Road Employment Precinct will generate an estimated 15,000 jobs, attract bigger businesses and a spread of employment types to the region and reduce pressures on roads to the city. These are important factors to help contain some infrastructure costs.

We are prepared to enter into a Section 173 Agreement under which we would provide a substantial upfront contribution to funding infrastructure which is essential for the early development of the Cardinia Road Employment Precinct. Our contribution would exceed by over \$40,000 per hectare what we would normally be required to contribute for site development costs. We would also cover the extra debt funding costs. There would be savings to authorities and the development benefits would be brought forward. It would be unfair in these circumstances to require us to pay the GAIC on top of this contribution.

No Windfall Benefit

Where the 2005 owners of land covered by the 2005 urban growth boundary announcement still owned their land in December 2008, there would be no unfairness in applying the 2008 GAIC to them. Those owners have now received effective notice of the GAIC while they still own the land. The GAIC can be paid by them when they access their windfall gain.

The windfall gains from our land purchased in 2006 passed fully to the sellers of the land. At our meeting on 16 September 2009 we provided you with evidence of these windfall gains. We paid full value for the land - with no discount for any subsequently announced GAIC obligation.

Terms of the now proposed GAIC

The terms of the now proposed GAIC were not publicly spelt out until December 2008. They were not publicly and clearly announced by the Victorian Government in 2005. In contrast to what was announced in December 2008, the 2005 announcement by the then Minister did not provide that any foreshadowed infrastructure contributions would be included in Section 32 Certificates for land sale contracts.

In December 2005 a fact sheet was released by DSE titled "FACT SHEET: Development Contributions". It included a number of general references to infrastructure contributions to be clarified in the future. For example, the sheet stated:

"[It is] important that developers continue to contribute fairly... A fairer and more integrated approach to determining contributions to infrastructure from developments will be adopted. Development Contribution Plans will be the vehicle for

achieving this simpler system...The new Growth Areas Authority will provide advice on the details of contributions in each growth area depending on local needs."

The Fact Sheet focused on residential developments. There was no reference in the Fact Sheet to an extra \$80,000 per hectare infrastructure contribution.

There was also a DSE discussion paper titled "A Plan for Melbourne's Growth Areas". This 2005 paper was not clear and certain, it was not widely distributed and it was not well known in Local Government or planning, legal or real estate circles.

The 2005 paper covered a range of issues concerning growth areas. In relation to infrastructure contributions the paper set out for consideration a range of possible directions focusing on residential developments, including the following important qualifications which differed substantially from what is now proposed for the GAIC:

- the paper said that contributions would vary for each growth area, with State Development Contribution Plans being developed for each growth area incorporating State and local contributions and these would be progressively introduced;
- the paper also referred to further work being needed to provide adjustments and more flexibility for "in kind" provision; and
- the paper said some adjustments would be needed to take into account existing local contributions to councils and other contributions for roads etc. For example, the paper referred to state arterial roads as follows:

"Major developments generally contribute towards the cost of State arterial roads through agreements with VicRoads. However, there is not a consistent approach to the application and recovery of contributions to roads from all developers. VicRoads estimates that the value of current contributions, where collected, averages approximately \$55,000-\$60,000 per hectare (mostly delivered as construction works, not payments)."

Most of the foreshadowed further work did not take place and no legislation was produced. There were no public announcements to clarify the proposals until the very different approach spelt out in December 2008. Inquiries to the Department prior to December 2008 did not reveal any further plans for infrastructure contributions.

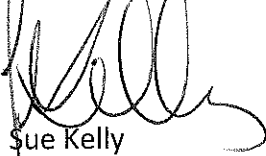
We stress again that there was no indication at any stage between November 2005 and December 2008 that Section 32 Certificates in land sale contracts would include reference to an extra contribution charge. This provision was included for the first time in the Minister's December 2008 announcement.

Conclusion

For all of the above reasons, we now urge you and the Victorian Government to make an early decision to exclude from the proposed GAIC our land, which was purchased after the 2005 boundary announcement.

We appreciate your consideration of these matters and would be happy to discuss the issues further and provide any additional information you require.

Yours sincerely



Sue Kelly
Business Manager

CC: *Hon Justin Madden MLC, Victorian Minister for Planning*
Hon Jenny Mikakos MLC, Victorian Parliamentary Secretary for Planning
Ms Tammy Lobato MP, State Member for Gembrook