OUTER SUBURBAN/INTERFACE SERVICES AND DEVELOPMENT COMMITTEE
Inquiry into the Impact of the State Government's decision to change the Urban Growth Boundary

SUBMISSION

I have a joint interest, along with my sister and brother, in a property of 11.5336 hectares in Whiteside Street Beveridge which is currently within the proposed new Urban Growth Boundary and is zoned Farming Zone (FZ).

My brother was going through a divorce which was due to be settled in court on the 16th December 2008 when the UGB announcement was made on 2nd December. This divorce settlement has subsequently been deferred until at least February 2010, due to the implications of, and the uncertainties surrounding, the proposed Growth Areas Infrastructure Contribution (GAIC) and its retrospective nature. This situation has placed a great deal of stress on my extended family, and our lives (particularly my brother's) have effectively been on hold since 2nd December 2008. My brother has been forced to seek work interstate to enable him to continue to meet his child and spousal support obligations while he waits for the matter to be heard in court.

The land is currently used for primary production. Council rates have increased from $792.00 in 2007/08 to $2406.00 in 2008/09. This is an increase of over 300% in one year. I am very concerned that further rate increases resulting from our land being placed in the UGB will threaten our ability to maintain ownership of the property.

I also have concerns about the fairness and equity of the proposed GAIC, in particular the trigger point for this tax, as outlined below.

1. There is no justification for charging the GAIC on the 'first property transaction' after land is included in the UGB

I fail to understand or accept how a flat rate tax can be applied to the first property transaction after inclusion in the UGB given the number of variables related to the "value increase" theory used as its justification.

These variables include:

a. The value of land prior to inclusion in the UGB.

b. The percentage of value increase that land experiences after inclusion in the UGB.

c. The timeframes related to when land is included in a PSP and has a planning permit granted and how this affects the value increase. Will the land be developed in 3 years, 10 years or 20 years?

d. The percentage of sale price or land value paid in GAIC tax.

The above property was valued in January 2009 at $195,000 per hectare taking into account inclusion in the UGB Investigation Area. If the land was sold under the Victorian Government's current proposal it would attract a GAIC tax bill of $95,000 per hectare or $1.09 million. Prior to the UGB announcement in December 2008 comparable properties in the area were selling for anywhere between $90,000 and $250,000 per hectare.

This is in contrast to information published by the Growth Areas Authority below which quotes much lower base figures and mentions a "notable value increase":

"Often land holders compare the GAIC rates against the valuation of their land under its current rural zonings when it is outside the UGB. This land is valued at much lower rural land values as it is not within the UGB and not zoned for urban development. Independent market valuation research by CKC indicates that the underlying value of such farming land outside Melbourne's growth areas is often around $15,000 to $35,000 per hectare.

However, this independent market valuation research also shows that rural land that is brought into the UGB and zoned for urban development undergoes a notable value increase and is valued significantly higher – at an average of around $365,000 per hectare across Melbourne's growth areas (ranging from $225,000 to $450,000 or more) – which is all well above the GAIC rates of either $80,000 or $95,000 per hectare.

The GAIC aims to tap part of the value increase directly caused by rezoning and this is generally realised when the land is first sold after being rezoned, and therefore it is appropriate that the land owner benefiting from such increase pays the GAIC." *(GAA Supplementary Fact Sheet No. 3 June 2009)*

Or this example where a three-fold increase is mentioned:

"According to an independent market valuation recently commissioned by the GAA the value of rural land inside the urban growth boundary in the Shire of Cardinia was three times greater than the value of rural land adjacent to the Urban Growth Boundary." *(GAA Media Release 27th May 2009)*

Or this example mentioning ten-fold increases:

"History has shown that when land is rezoned from farming to urban development, property prices can rise up to ten times in value," Mr Seamer said.

To take a real example from an independent market valuation, a property inside the UGB in Plumpton, in Melbourne's growing outer western suburbs, sold at $404,000 per hectare in September 2007. Whereas nearby land in Melton that was outside the UGB sold at the same time for $37,000 a hectare.

It's a similar story in the south-east, where a 40 hectare property in Pakenham sold in November 2007 at $474,000 per hectare, whereas nearby land outside the UGB in Clyde North, sold at the same time for $36,000 per hectare. *(Growth Areas News Issue 6: July 2009)*

I have found no mention by the GAA of comparable land values in the northern growth region in which my property is situated. It can only be assumed that this is because no sales in this area could be found to support the "value increase" theory:

Land goes through four stages as it moves from farming land (FZ) to eventually being developed for housing. Inclusion in the UGB and a resulting change in zoning to UGZ Part A is only the first stage in this process. The second stage is inclusion in a Precinct Structure Plan (PSP) and a resulting change in zoning to UGZ Part B. The third stage is the granting of a Planning Permit for subdivision and the fourth stage is the actual subdivision or development. It could take up to 20 years for land to move from stage 1 to stage 2 given that *Melbourne @ 5 Million* clearly states – "land within the investigation areas is unlikely to be developed for 10 to 20 years."

Land generally increases in value as it moves closer to the point of development. The above "sales evidence" quoted by the GAA for land inside the UGB gives no indication of where this land was positioned in the development process at the time of sale. What was the land's zoning? Was it under a structure plan or did it already have a planning permit for subdivision? There is no way of establishing this until the Charter Keck Cramer (CKC) report, to which the GAA refers, is released for public scrutiny.

The GAA uses these valuation and sales figures (which could represent the value increase of land that has moved through multiple stages of the development process) and uses this "evidence" to illustrate a value increase when land is brought into the UGB and zoned UGZ Part A (only one stage in the development process). This is the Government's flimsy justification for charging the GAIC on the "first property transaction" after land is brought into the UGB.

The GAA claims that $365,000 per hectare is an average value of land within the existing UGB, "(ranging from $225,000 to $450,000)". Some of the land to be brought into the new UGB this year is already within these value ranges, while other land on the fringe of the new boundary will be up to 20 years away from development and so could never achieve these sorts of prices in the short- or even medium-term.

Prices may also be pushed down by increased supply as the Government intends to bring an additional 41,000 hectares of land into the UGB.

I am also aware of sales evidence of property <u>within the existing UGB</u> that has sold for $130,000 per hectare (less than the value of land in the Beveridge area <u>prior</u> to inclusion in the UGB investigation area) yet this has not formed part of this range of values relied upon by the GAA.

Where is the fairness in charging the tax at a flat rate per hectare on such hugely varying sales prices and value uplifts? One landowner could have a GAIC liability in excess of their land's value, another could be paying 80% of their sale price in GAIC, while another pays 20%. Even using the GAA's quoted figures, at $225,000 per hectare a landowner's GAIC liability would equate to 42% of sale price, while at $450,000 it equates to 21% of sale price. This is not an equitable system.

Peter Seamer, Chief Executive Officer of the GAA, attempted to address the problems associated with these variables at a Standing Committee on Finance and Public Administration hearing on 7th September 2009:

"Without wanting to put a particular figure on it, yes, the rate, presumably having a flat levy which relates to the cost of the infrastructure involved, so that is one of the reasons why it is flat, would vary as a percentage of the value uplift.

There are two ways of looking at the percentage uplift. Firstly, there is the percentage of the total sale price; the other way is how much somebody who owns land gets a percentage uplift on their land. They are two quite different things. For example, if you have very expensive land, you are likely to have a smaller percentage of a GAIC-type structure taking out of the final sale but a smaller value uplift. If you have got land that starts at $300 000 and goes to $600 000 or something, it is going to go up; whereas if you have got land that is in the outskirts of Hume, the northernmost point or something like that, what you will find is that there presumably would be a higher percentage of the final sale, but a greater percentage increase in the actual value of land that would go up. There are two sides to that particular coin and putting the figures on it, it will vary, and both of those will vary."

Mr. Seamer admits that regardless of what method of "uplift" theory is used there are still variables. Mr. Seamer also assumes that land that had a relatively high value prior to inclusion in the UGB will have only a small value increase, while land that had a relatively low value prior to UGB inclusion will enjoy a significant value increase. This is purely speculation.

It should also be noted that it is possible that land could experience such a modest value increase as a result of UGB inclusion that the GAIC liability could be greater than the value increase. In other words, when the GAIC liability is taken into account this land would be worth more if it had been left outside of the UGB.

This can be illustrated using the GAA's own quoted figures. Take for example the land outside the UGB in Clyde North that sold for $36,000 per hectare (quoted in the Growth Areas News Issue 6: July 2009) and apply the three-fold increase mentioned in the GAA Media Release dated 27th May 2009. Inclusion in the UGB would increase the land's value to $108,000 per hectare ($36,000 x 3). A sale would trigger the GAIC of $95,000 per hectare so the landowner would walk away with $13,000 per hectare, compared with $36,000 per hectare if the land had remained outside the UGB.

There are simply too many variables associated with the "value increase" theory for it to be used to justify charging the GAIC on the first property transaction after land is included in the UGB.

2. Problems associated with charging the GAIC on the 'first property transaction'

Much of the land brought into the UGB this year may not be developed for decades, and it may be years before some of it even reaches values of $95,000 per hectare let alone reaches values that make it viable for owners to sell at a reasonable profit. So if the GAIC is charged on the 'first property transaction' landowners are forced to sit and wait until development reaches them, while paying ever-increasing Council rate bills.

I have been told by numerous GAA employees that I don't have to sell, so I don't have to pay the GAIC. This is fine if I CAN sit and wait until my property can be sold for a price high enough to cover the GAIC, any mortgage obligations, other tax liabilities including Capital Gains Tax and still walk away with money in my pocket. It should also be noted that the GAIC is indexed annually, so the longer I wait the higher it climbs.

But if for whatever reason landowners can't wait, be it illness, divorce, because they can't afford to pay their rates, and they need to sell out early they will walk away with very little.

If the GAIC is charged on the 'first property transaction' it is effectively tied to the land ownership title, resulting in an immediate loss of equity and borrowing capacity. This problem cannot be resolved without shifting the GAIC to a trigger point unrelated to title ownership.

The GAA's June 2009 fact sheet No. 3 states that: *Land that is transferred to a family member as part of their inheritance after a death in the family will not attract the GAIC. It only applies when land is sold or subdivided.* The exemption refers only to a transfer of the land – should a will request that property be sold and the proceeds divided between the beneficiaries the tax will apply. This is what happens in the majority of cases particularly when there are several beneficiaries.

The sheet also states:

*Do **transfers** within the family trigger the GAIC?*

*No. So long as the land isn't subdivided, the charge will not apply. Similarly, **transfers** associated with marriage breakdowns would not trigger the GAIC.*

As is often the case, the courts may direct that the family home or other disputed property is sold and the proceeds dispensed with in a manner they deem fit. It would seem that this will incur the tax. Even when a divorce does not go through a court process, but neither partner can afford to buy the other one out, resulting in the sale of the family home, the tax will apply.

Regarding divorce, the ATO website states that *"any capital gain or capital loss you make from the ending of rights that directly relate to the breakdown of your marriage or de facto marriage, including if you receive cash as part of a marriage breakdown settlement"* is exempt from Capital

Gains Tax. Therefore if a property is sold as a direct result of divorce a CGT exemption applies. I have previously asked if a similar exemption will apply to the GAIC but I have not had a response to date.

3. Charging the GAIC on the 'first property transaction' allows the potential for GAIC tax to be paid for land that is later deemed to be 'undevelopable'

The GAA has stated that the GAIC will not apply to land that is 'undevelopable'. However developable status can not be accurately ascertained until the land is placed under a PSP.

Land sold before a PSP is in place could be deemed entirely developable at the time of sale, and then part of it could be deemed 'undevelopable' later in the development cycle.

There appears to be no system in place to deal with this "degree of mismatch" (Peter Seamer, Standing Committee on Finance and Public Administration Hearing 7th September 2009). It is completely unfair for landowners to pay tax on land that they didn't need to pay tax on and there is no way of addressing this problem if the trigger point for the GAIC remains on the 'first property transaction'.

4. The GAIC should be payable at the point of development

The GAIC should be payable not on the 'first property transaction' which unfairly targets landowners, but at the point of development, when the land has been designated Urban Growth Zone Part B, a PSP is in place and a planning permit for development has been granted. It is only at this point, when a planning permit has been sought and granted, that whoever owns the land can be seen to actively seek to develop their land and so this would be an appropriate time to charge a development levy. In contrast, land can be included in the UGB and then subsequently included in a PSP with no participation or decision-making on the part of the landowner. The GAIC should not be triggered by these involuntary occurrences.

Shifting the trigger point for the GAIC to the granting of a Planning Permit for development has the following benefits:

- The tax is only paid by those who actively seek to develop their land, and therefore will not unfairly impact landowners.
- There will be no need for a Hardship Relief Board as landowners will not be adversely affected by the GAIC should they need to sell before their land becomes imminently developable. The fact that this board is needed should surely be ringing alarm bells that this proposal is fundamentally flawed.
- Protects property rights.

- As the tax is triggered willingly, it will no longer be linked to title ownership, and so will not impact on equity or complicate inheritance and marriage breakdown.
- Ensures that the tax is levied only on developable land.

Media reports have indicated that the Victorian Government is considering shifting the GAIC trigger point to the PSP stage. As land can be included in the UGB and then subsequently included in a PSP with no participation or decision-making on the part of the landowner, a PSP trigger point would mean that the GAIC is still tied to title ownership and remains a burden on the landowner, rather than on those who actively seek to develop the land.

The Planning Permit stage is only a small step forward along the development cycle from the PSP stage. Once a PSP is approved the next requirement for development is a Planning Permit with almost all developers seeking approval immediately. Therefore if the GAIC was triggered by the granting of a Planning Permit for development, the Government will still receive the revenue in a timely manner. However the tax burden is shifted from the landowner to the developer and that is a massive change which will solve all of the current problems associated with inheritance, marriage break-up, and loss of equity, borrowing capacity and property ownership rights.

5. The impact on housing affordability of the GAIC trigger point being later in the development cycle

The GAA and Planning Minister Justin Madden have repeatedly claimed that having the GAIC payable at the earliest possible point in the development cycle is critical in minimizing the impact on housing affordability.

This claim does not acknowledge the fact that vast tracts of land are already held by developers within the Investigation Areas and areas brought into the UGB after November 2005. Regardless of what trigger point is used, they will pay the charge and in turn pass the cost onto the end user – the home buyer.

In a recent parliamentary hearing Peter Seamer from the GAA, when referring to the GAIC and its impact on housing affordability, stated:

"… that the impacts of any levies like this are fairly minor in the bigger picture of things …
There is also the issue of at what point the levy gets applied. While there is no particular really strong piece of work I have been able to find on this, would it be offset against a potential profit on land, or would it be charged right at the end of the process so that effectively it would be paid for by the homebuyer? Presumably the earlier you can move it the more benefit it will have. That is just another issue of us trying to reduce the impact on the homebuyer."
(Standing Committee on Finance and Public Administration Hearing 7th September 2009)

There appears to be no evidence to illustrate that changing the GAIC trigger point to a later stage in the development cycle will have any significant impact on housing affordability.

6. How the GAIC revenue will be spent

The GAIC will be collected by the State Revenue Office, administered by the Growth Areas Authority and used in the following way:

• 50 per cent will be allocated to partially offset the costs of important infrastructure projects in the growth areas; and

• 50 per cent will be paid into a new Growth Areas Development Fund. This will be allocated to infrastructure projects as well as going towards the costs of the Growth Areas Authority. *(GAA GAIC Information Sheet May 2009)*

While I understand that a tax is needed to pay for infrastructure in growth areas, this information gives no assurances that the revenue is spent in the area in which it is generated and to date there is also no indication of what proportion of this revenue will go towards the cost of running the GAA.

This lack of detail is unacceptable and I also question why a portion of the revenue from a tax called a "Growth Areas Infrastructure Contribution" is being used to fund a government department. Apart from the giving the impression that the tax is a voluntary levy, the name is also misleading in that it gives the impression that the entire revenue will be spent on infrastructure in growth areas. This is clearly not the case. In fact, from the information above it appears that only 50% of the revenue will be spent in growth areas. Presumably the other 50%, as well as funding the GAA, will be spent anywhere in the State of Victoria.

7. Recommendation

The Government's proposal outlining a 'first property transaction' GAIC trigger point is grossly ill-conceived. As well as being personally affected I have also witnessed first hand the level of stress and uncertainty that this proposal has inflicted on hundreds of landowners (many of them elderly) since its announcement on 2nd December 2008.

I urge the Victorian State Government to amend its proposal and move the GAIC trigger point to the granting of a Planning Permit for development, and thus move the GAIC tax burden from landowners to those who seek to develop the land.

Comments or requests for further information can be directed to:

Jeanette Laffan
35 Kilmore Glenaroua Rd
Kilmore VIC 3764
Ph: 57 822 645
Mob: 0438 452 641
E: fastflow1@bigpond.com