

## Property, Planning and Development - Client Alert

13 May 2010

### GROWTH AREAS INFRASTRUCTURE CHARGE UPDATE

The passage of the Growth Areas Infrastructure Charge (“**GAIC**”) legislation is now in its final stages.

After an agreement was negotiated at the Parliamentary Disputes Resolution Committee in recent weeks, the GAIC bill (in a revised form) passed through the Legislative Assembly on 4 May 2010. The bill now has to be passed by the Legislative Council prior to being enacted, which is anticipated within the next Parliamentary sitting week, commencing Monday 24 May 2010.

If enacted, the GAIC legislation is likely to come into operation before the specified date of 1 May 2011 (“**Commencement Date**”).

The key changes relate to the timing of payments, the ability to stage and defer payments, and the indexation of any deferred or staged GAIC by reference to a consumer price index (as opposed to a construction cost index).

The key aspects of the GAIC in its amended form are summarised below.

#### APPLICATION

The GAIC applies to land that has been brought within the Urban Growth Boundary (“**UGB**”) since its expansion in 2005 (“**Contribution Area**”). All land within an “urban development area” (“**Urban Development Area**”) in the Contribution Area is subject to the GAIC.

#### URBAN DEVELOPMENT AREA

“Urban Development Area” means land within the Contribution Area which is now, or in the future, zoned under the planning scheme:

- for residential, industrial or business purposes; or
- as a comprehensive development zone, a priority development zone or an urban growth zone.

#### CONTRIBUTION AREAS

The Contribution Area consists of four land types:

- *Type A land* is any land that was brought within the UGB between 28 November 2005 and 31 December 2006 (inclusive of those days) and is within an Urban Development Area on or after 2 December 2008;
- *Type B-1 land* is any land in the municipal districts of Casey, Hume, Melton, Mitchell, Whittlesea or Wyndham, shown as investigation areas on plans numbered LEGL./09-311 to LEGL./09-316 (inclusive) which have been lodged with the Department of Sustainability and Environment (“**DSE**”) and brought within the UGB on or after 2 December 2008, and is within a growth area and an urban growth zone;
- *Type B-2 land* is any land in the municipal district of Melton shown as the investigation area on the plan numbered LEGL./09-317 lodged with DSE and brought within the UGB on or after 19 May 2009, and is within a growth area and an urban growth zone; and
- *Type C land* is any land (that is not type A land, type B-1 land or type B-2 land) that is brought within the UGB on or after the Commencement Date, and is within a growth area and an urban growth zone.

Different GAIC rates apply to each of the Contribution Area land types.

#### GAIC RATES

GAIC rates for the 2010/2011 financial year are:

- \$80,000 per hectare for Type A land; and
- \$95,000 per hectare for Type B-1, Type B-2 or Type C land.

## GAIC TRIGGERS

Under the proposed legislation, events which trigger a GAIC payment are:

- The issue of a statement of compliance for a subdivision of land;
- Making an application for a building permit to carry out works valued at more than \$1 million; and
- When a dutiable transaction (such as the sale of land) occurs ("**Dutiable Transaction**").

## WHO IS LIABLE TO PAY THE GAIC

1 If the GAIC trigger event is:

- the issue of a statement of compliance for the subdivision of land; or
- the making of an application for a building permit,

the person liable to pay the GAIC is the owner of the land immediately after the statement of compliance or building permit application is made.

2 If the GAIC trigger event is a Dutiable Transaction, the transferee in respect of that transaction is the person liable to pay the GAIC.

## WHEN IS THE GAIC PAYABLE?

The GAIC is payable at different times, depending on the GAIC trigger event. In summary, if the trigger event is:

- an application for building works, the GAIC must be paid before a building permit is issued;
- a subdivision, the GAIC must be paid within three months after the statement of compliance for the subdivision is issued;
- a Dutiable Transaction, the GAIC must be paid within three months after the Dutiable Transaction has occurred (eg. on settlement of the sale of land).

## STAGED PAYMENT OF GAIC

A person who is liable to pay a GAIC due to a subdivision of land, or an application for a building permit, may apply to the Minister of Planning for the GAIC to be paid in stages. The Minister may approve the staged payment of the GAIC subject to conditions. Interest will be payable on any GAIC paid in stages.

## DEFERRAL OF GAIC

If the GAIC trigger event is a Dutiable Transaction, payment can be deferred as follows:

- 100% where the GAIC is \$80,000 per hectare and the transaction occurred before the Commencement Date; or
- 70% where the GAIC is \$95,000 per hectare.

The deferred GAIC must be paid when the land is ultimately subdivided (on the issue of a statement of compliance), or when an application for a building permit is made (whichever first occurs). Where land subject to a deferred GAIC is sold, the liability to pay the deferred GAIC passes to the purchaser. Subject to Ministerial approval, payment of the deferred GAIC may also be staged.

The deferred GAIC is subject to interest and indexation.

## EXEMPTIONS FROM THE GAIC

Exemptions from the GAIC include:

- 1 Dutiable Transactions relating to land, if the contract was entered into before:
  - 2 December 2008 for Type A land; or

- 19 May 2009 for Type B-1 or B-2 land; or
  - the date the land was included in the UGB for Type C land.
- 2 Dealings with land which is not within the Urban Development Area.
  - 3 Dealings with land with an area of 0.41 hectare or less.
  - 4 Sale of land with an area of between 0.41 and 5 ha. However, if the land is later subdivided, or if an application for a building permit is later made, the GAIC will apply.
  - 5 Sale of land with an area of between 0.41 and 10 ha which has a habitable dwelling before the Commencement Date. However, if the land is later subdivided, or if an application for a building permit is later made, the GAIC will apply.
  - 6 Sale of land which is encumbered by a registered restrictive covenant, or a section 173 agreement which prohibits the subdivision of the land, or which limits the use of the land to residential purposes having a single dwelling only.

If an exemption ceases to apply, the GAIC will be levied when a GAIC trigger event occurs.

### NEXT STEPS

Once the GAIC bill has been enacted, it is envisaged that the Government will seek to introduce an amendment (Amendment VC67) to all Victorian planning schemes.

Amendment VC67 will complete the GAIC package by:

- Including type B1 and B2 land into the UGB; and
- Setting aside land within the UGB, for:
  - the Outer Metropolitan Ring Road;
  - the Regional Rail link; and
  - particular types of reserves.

It is our understanding that these areas would not be subject to the GAIC.

We will advise of any updates regarding the GAIC as they come through.



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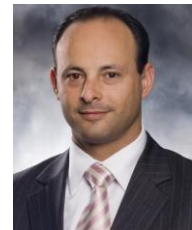
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