

Property & development

Growth Areas Infrastructure Contribution

The Growth Areas Authority has released an information sheet regarding implementation of the Growth Areas Infrastructure Contribution (GAIC) under the *Melbourne @ 5 Million* publication. The growth areas include Casey-Cardinia, Melton-Caroline Springs, Hume-Mitchell-Whittlesea and Wyndham. *Melbourne @ 5 million* provides that an expansion of the Urban Growth Boundary (UGB) is expected to be in place by mid-to-late 2009 to meet Melbourne's metropolitan growth.

The GAIC will apply to owners of land to help share the cost of building new infrastructure more fairly. The Government will continue to meet a majority of the costs, but 'it is also important that landowners who enjoy windfall gains as a result of changes to the Urban Growth Boundary, also contribute fairly' as 'land which is brought into the Urban Growth Boundary increases significantly in value'.

The GAIC legislation has not been introduced into Parliament and therefore is not in effect (anticipated to be latter part of 2009). However, all relevant land transactions from 2 December 2008 will be subject to the GAIC.

The information sheet provides:

Application

The GAIC applies to land brought into the UGB in 2005 (\$80,000 per hectare) and land in the *Investigation Areas* which is subsequently brought into the UGB in 2009 (\$95,000 per hectare). All land that is zoned for development (usually zoned Urban Growth Zone or equivalent) is liable for the payment.

The GAIC will not apply where:

- the property is less than 0.4 hectares;
- planning permits for urban development of the property have been granted prior to 2 December 2008;
- the property was inside the UGB before 2005 (that land will have the GAIC removed as a one-off measure to boost housing affordability);
- the property is subject to a pre-existing, totally binding sale arrangement as at 2 December 2008 (but the next relevant property transaction in relation to the property will attract the contribution); or
- the land is not zoned for development (land that subsequently becomes available for development will be subject to the GAIC).

Payment

The GAIC will be triggered on either the first sale of the land or its subdivision, or the issuing of a building permit for major building works, whichever occurs first. The vendor will pay at the time of sale or subdivision, or at the time of the building approval process. If the land has not been sold prior to its subdivision or development, the owner will pay the contribution as part of the development process. The GAIC is payable only once.

Transitional arrangements

Transition arrangements apply to land sold or subdivided in the specified growth areas between 2 December 2008 and late 2009 (when the GAIC legislation is to come into effect).

If the land is sold or subdivided during this time, the land owner, at the time the legislation comes into effect, is responsible to pay the GAIC. If land in the *Investigation Areas* is brought into the UGB in 2009, the payment will either be made at the time the legislation comes into effect or when the land is brought into the UGB (if that occurs) after the legislation has been enacted.

Investigation Areas

Over the next 6 months, the Government will assess what land should be included in the UGB as possible locations for future urban development. Not all land in the *Investigation Areas* will be brought into the UGB.

What happens to the money?

The GAIC funds raised will be used to provide vital infrastructure for, and to oversee development in, the growth areas of Melbourne. The GAIC will be indexed annually, collected by the State Revenue Office and administered by the Growth Areas Authority. The GAIC will be used as follows:

- 50 per cent will be allocated to partially offset the costs of infrastructure projects in the growth areas; and
- 50 per cent will be paid into a Growth Areas Development Fund, which will provide financial assistance for capital works in the growth areas and go towards the costs of the Growth Areas Authority.

Further details will be available once the GAIC Bill is introduced into Parliament.

For a copy of the GAIC information sheet visit, www.gaa.vic.gov.au/Assets/Files/INFORMATION_SHEET_GAIC_29Dec08.pdf

New residential zones for Victoria

In February 2009, the Department of Planning and Community Development (DPCD) released a Consultation Draft of the new residential zones for Victoria.

The Minister for Planning initiated a review of the residential zones following the release of the *Making Local Policy Stronger* report and release of a discussion paper in February 2008, to which 430 submissions were received from councils, the community and industry groups.

New zones

The proposed new zones are the Substantial Change Zone, Incremental Change Zone and Limited Change Zone. The new zones will allow councils to identify key requirements such as building height, setbacks, separation distances, backyard sizes and the area of a property that can be built on.

A complete draft of each zone is included in the Consultation Draft. The zones are summarised in table 1 below.

Third party notice

Each of the zones retain third party notice, objection and review provisions, but councils can set reduced requirements in consultation with community and the DPCD.

Transition

It is proposed to replace the existing residential zones in planning schemes with the new residential zones. Local housing strategies will inform where substantial, incremental and limited change zones apply. The detail will be determined in conjunction with local councils. A general transition of the existing zones to the new proposed zones is provided in table 2 below.

Submissions

Submissions on the Consultation Draft zones will be received until 9 April 2009. The submissions will be referred to an Advisory Committee which will make recommendations on the final form of the new residential zones.

Table 1: Summary of proposed new residential zones for Victoria

Zone	Features
Substantial Change	<ul style="list-style-type: none"> – mix of housing types that includes medium to higher density housing – housing at higher densities in locations that offer good access to services and public transport – allow for increased provision of small scale office and home businesses – allow key residential and siting design requirements to be varied for different neighbourhoods – set a maximum building height of 13.5 metres (4 storeys) unless varied higher by council – require a planning permit for one dwelling on a lot less than 300m² – may take advantage of a strategic redevelopment site for new housing
Incremental Change	<ul style="list-style-type: none"> – allow medium density housing that respects the character of the neighbourhood – allow for a range of appropriate non-residential uses – allow key residential and siting design requirements to be varied for different neighbourhoods – set a maximum building height of 9 metres (3 storeys) unless varied higher or lower by council – allow a planning permit to be required for one dwelling on a lot between 300-500m² – councils will be able to identify the particular characteristics of the neighbourhood to ensure new housing fits with the preferred future vision for the neighbourhood
Limited Change	<ul style="list-style-type: none"> – enable specific characteristics of the neighbourhood to be protected through greater control over housing – protect existing neighbourhood character by providing limited opportunities for new housing – constrain a wider range of non-residential uses to main road locations – allow key residential and siting design requirements to be varied for different neighbourhoods – set a maximum building height of 9 metres (3 storeys) unless varied lower by the council – allow a planning permit to be required for one dwelling on a lot between 300-500m² – allow the number of dwellings permissible on a lot to be specified – allow a minimum subdivision lot size to be specified – provide new application requirements and new decision guidelines for non-residential use and development of land – even neighbourhoods that are close to services and public transport may be included in the zone if specific characteristics limit the opportunity for additional housing (e.g. established character, recognised heritage attributes or environmental constraints) – application of the zone will be balanced against need to ensure opportunities for sufficient housing growth are provided elsewhere

Table 2: General transition of existing residential zones to the proposed new residential zones

Existing zone	Anticipated new zone
Residential 1	Incremental Change
Residential 2	Substantial Change
Residential 3	Incremental Change
Selected Residential 1 and 3 zones that also have a relevant overlay that limits the opportunity for additional housing (e.g. neighbourhood character, heritage, environmental significance, vegetation protection)	Limited Change

Landlord liability for latent defects – recent Victorian cases

A number of recent Victorian cases have examined the duty owed by landlords to tenants and third party occupiers where injury was suffered on their premises. The common element in these cases has been to draw on the High Court case of *Jones v Bartlett* and reinforce the position that: a landlord cannot be held liable for latent defects that the landlord is unaware of; and a landlord's duty of care is not one of strict liability requiring that premises be absent of any defects.

In *Machczynski v Saunders*, the plaintiff suffered injuries after falling through the decking of an outside verandah at the home owned by the defendant. The plaintiff was visiting the occupiers of the home, who were not formally tenants at the premises, but occupiers of the property through an arrangement with the landlord. The plaintiff sued the defendant in negligence and occupier's liability, claiming that the defendant, as landlord, had breached her duty of care to properly maintain the decking. His Honour stated that, "despite the obligation on the landlord to maintain the premises in good repair it is not the same as an obligation to ensure the premises are free from any latent structural defect. The obligation to maintain and repair is an obligation to repair from time to time when the premises falls out of repair ... it is not an obligation to guarantee that the premises will be free from defect."

In *Finlayson v McDonald & Ors*, the plaintiff was the tenant at a premises where she suffered injuries after falling about eight to ten feet to the ground from a staircase at the rear of the premises. She sued the landlord and real estate agent responsible for the management of the premises in negligence and occupier's liability. The plaintiff claimed that the defendants breached the Residential Tenancies Agreement by failing to ensure the supporting structures of the staircase were in good repair and for failing to inspect the staircase at the commencement of the lease to satisfy this requirement. His Honour held that in line with *Jones v Bartlett*, although the landlord does owe a duty to take reasonable care in maintaining and repairing the premises, that duty does not extend to ordinarily requiring a landlord to arrange inspection of the premises as to building and construction unless there was some cause for alert of a latent defect in the building.

These decisions take a common sense approach to how landlords might be expected to deal with latent defects beyond their knowledge and affirms the principles in this area considered by the High Court.

Contacts

If you would like further details about the information contained in this newsletter or assistance with any property-related issues, please contact:

Ken Gray, Partner
Telephone 61 3 9229 9875
kgray@abl.com.au

Lily Tell, Partner
Telephone 61 3 9229 9848
ltell@abl.com.au

Simonne Einfeld, Special Counsel
Telephone 61 2 9226 7239
seinfeld@abl.com.au

Further information

The firm's practice areas cover a range of commercial and corporate advice, including:

- banking & finance;
- commercial & corporate;
- litigation & dispute resolution;
- native title & public interest law;
- property & development;
- public companies;
- reconstruction & insolvency;
- taxation;
- technology & intellectual property;
- trade practices;
- wealth management; and
- workplace advisory.

For copies of recent publications, or for further information about the firm, please visit the Arnold Bloch Leibler web site at www.abl.com.au.

This publication is intended to provide a general outline and is not intended to be a complete or definitive statement of the law on the subject matter covered. Further professional advice should be sought before any action is taken in relation to the matters described in this publication.

Privacy

If you no longer wish to receive this, or future, marketing publications, please contact us by email, facsimile or mail at the following addresses:

E-mail: privacy@abl.com.au
Facsimile: (03) 9229 9900
Post: Privacy Officer
Arnold Bloch Leibler
Level 21 333 Collins Street
Melbourne VIC 3000



Arnold Bloch Leibler

Lawyers & Advisers

Level 21 333 Collins Street

Melbourne VIC 3000 Australia

Telephone 61 3 9229 9999

Facsimile 61 3 9229 9900

Level 24 Chifley Tower 2 Chifley Square

Sydney NSW 2000 Australia

Telephone 61 2 9226 7100

Facsimile 61 2 9226 7120

www.abl.com.au