

GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)

JULY 2011

On 2 December 2008, the Victorian Government detailed how land brought within the Urban Growth Boundary (UGB), would be subject to a contribution to provide state infrastructure that is needed to support the development of new suburbs. The GAIC would fund up to 15 percent of state infrastructure works in the growth areas. Land brought into the UGB in 2005-06 and 2010, inside a growth area Council and with a relevant zoning is subject to the GAIC.

The Planning and Environment (Growth Areas Infrastructure Contribution) Act 2010 largely came into effect on 1 July 2010. On 30 June 2011 an amending Act, the Planning and Environment (Growth Areas Infrastructure Contribution) Act 2011, became effective. Copies of these two Acts are available at www.legislation.vic.gov.au.

This information sheet is prepared as a broad guide to the GAIC and is not intended to supplement or to provide assistance in the legal interpretation of the legislation.

WHEN DOES GAIC COME INTO AFFECT?

The GAIC provisions (Part 9B) came into effect from 1 July 2010 for land brought within the urban growth boundary in 2005-06 and from 30 August 2010 for land brought within the urban growth boundary in 2010 and will affect any subject land on which a GAIC trigger event has occurred on or since 2 December 2008. Amendments made to the legislation in 2011, are to apply to GAIC transactions which occur after 29 June 2011, except where the legislation specifically determines otherwise.

WHAT LAND DOES THE GAIC APPLY TO?

The GAIC applies to growth area land brought into the Melbourne UGB in 2005-06 and in 2010 within a growth area which is zoned for urban development. GAIC will also be applied to any new land in a growth area Council that is brought within the growth areas and zoned as Urban Growth Zone. Land that is eligible for GAIC is known as the Contribution Area.

ZONES FOR LAND BROUGHT INTO UGB IN 2005/06

The zonings which attract a potential GAIC liability for the 2005-06 land areas are:

- All residential, industrial and business zones; and
- Comprehensive Development Zone or Priority Development Zone or Urban Growth Zone.

ZONES FOR LAND BROUGHT INTO UGB IN 2010 AND BEYOND

For growth area land brought into the UGB in 2010 and beyond, the eligible zoning for GAIC purposes is the Urban Growth Zone (UGZ).

GAIC TO BE APPLIED TO EACH SEPARATE LOT/TITLE

The GAIC will be applied to **each separate lot/title** that is subject to a GAIC trigger event (purchase/transfer, subdivision or development), and not to the land owner's or purchaser's total land holding.

The GAIC is calculated on the basis of the total area of the lot that is within the GAIC contribution area.

DETERMINATION OF GAIC RATES

The GAIC is applied uniformly to eligible land on a per hectare basis.

The GAIC rates will be indexed annually at the start of each financial year. The Minister for Planning will publish the indexed GAIC in the Government Gazette and on the DPCD website by 1 June each year.

The indexed GAIC rates for the 2011/12 financial year are:

- \$82,550 per hectare for growth area land brought into the UGB in 2005-06 and zoned as mentioned above; and
- \$98,030 per hectare for growth area land brought into the UGB after 2006 and zoned as Urban Growth Zone.

HOW DOES THE GAIC APPLY?

Land subject to the GAIC will have a notice of such recorded on the title advising of the potential GAIC liability. This notice will be removed once the GAIC has been paid, or if the land is no longer subject to the GAIC. The GAIC is only imposed once.

GAIC TRIGGER EVENT

For land that is within the area covered by the GAIC, the GAIC will be incurred on the first relevant property transaction or "trigger event" usually either: (1) a "dutiable" transaction such as purchase/transfer of title; (2) the subdivision of the land at statement of compliance or; (3) application for some building permits.

GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)

Land not zoned for urban development will not attract the GAIC, however if that land subsequently becomes available for development through a rezoning process it would be liable for GAIC at the first trigger event after the rezoning.

There are also a number of exemptions and special provisions where the GAIC does not apply. Some of these are detailed later in this Information Sheet.

PAYMENT OF THE CONTRIBUTION

The contribution, if triggered, will be payable as follows for the three types of events:

(1) DUTIABLE TRANSACTION (PURCHASE / TRANSFER)

- GAIC to be paid by the purchaser or by the person who makes a significant acquisition in a 'land rich land holder' company;
- GAIC liability is triggered by the settlement of the purchase / transfer; and
- GAIC to be paid within 3 months of settlement and prior to transfer of land being accepted by the Registrar of Titles

(2) SUBDIVISION OF LAND

- GAIC to be paid by the land owner;
- GAIC triggered by the issue of a statement of compliance for a plan of subdivision; and
- GAIC to be paid within 3 months of issue of the statement of compliance and prior to the application to register the subdivision being accepted by the Registrar of Titles.

(3) BUILDING PERMIT

- GAIC to be paid by the landowner;
- GAIC liability triggered by Building Permit application; and
- GAIC to be paid before building permit is issued.

WHEN THE LIABILITY FOR PAYMENT ARISES

The Government has made provisions for the GAIC to be paid over time in some circumstances. There are two opportunities referred to as either a 'Deferral of GAIC', or as a 'Staged Payment'. These are as outlined later in this Information Sheet

PRE-EXISTING SALES ARRANGEMENTS BEFORE 2 DECEMBER 2008

Buyers or sellers of land that have a pre-existing binding sale arrangement entered into before the relevant announcement day (either 2 December 2008 or 19 May 2009) are not required to pay the GAIC on settlement of that transaction. However, the next relevant property

transaction, subdivision or development relating to that property will attract the GAIC.

LAND TRANSACTIONS BETWEEN 2 DECEMBER 2008 & 1 JULY 2010 (2005-06 LAND) AND BETWEEN 2 DECEMBER 2008 & 30 AUGUST 2010 (2010 LAND) – TRANSITION ARRANGEMENTS

Land that had a GAIC event occur during the transition period will be regarded as liable for payment of the GAIC, which will be payable within three months of the legislation coming into effect on 1 July 2010 or 30 August 2010 respectively. These transactions will be open to the same staged payment and deferred payment opportunities as other GAIC transactions.

Any landowner or person, who considers they may be liable for a GAIC liability arising from a transition period transaction, should contact the SRO immediately to discuss the matter.

EXCLUSIONS AND OTHER SPECIAL PROVISIONS

CONTRIBUTION AREAS OF 0.41 HECTARES (OR 1 ACRE) OR LESS ARE NOT LIABLE FOR GAIC.

The legislation excludes lots with an area of .41 hectares or less from paying the GAIC in any circumstances.

OTHER CIRCUMSTANCES WHERE GAIC WILL NOT APPLY

There are a number of special circumstances where an event does not trigger a GAIC liability, but the land will retain a GAIC liability which would be triggered at the next GAIC event.

GAIC will not be triggered by a dutiable transaction (purchase/transfer) event, but only triggered by a subdivision or a building permit, in the following circumstances:

- Where the lot area is between .41 and 5 hectares; or
- Where the lot area is between 5 hectares and 10 hectares and contains a habitable dwelling.

If the land is the subject of a restrictive covenant or S173 agreement at the announcement day (2 December 2008) and at the time of occurrence of the transaction, it would not trigger the GAIC. However, if such a covenant or S173 agreement is lifted, then GAIC would apply at the occurrence of the first GAIC event after that date.

GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)

JULY 2011

In addition, there are provisions in the legislation which exclude specific subdivision transactions from GAIC. For example, where land with an existing home is subdivided in order that the house is excised onto a smaller lot of 2 hectares or less, then GAIC will not apply to that event

APPLICATION TO HAVE LAND EXCLUDED

If you believe a significant area of your land is unable to be developed you may apply to the Growth Area Authority to have it rezoned from its existing urban development purposes zoning and excluded from the GAIC prior to the precinct structure planning process being completed. If the constrained area of your land is regarded as being a significant size and your land is assessed as being undevelopable it may be able to be rezoned to a special zone that does not allow urban development, In that situation the GAIC would not be payable.

TRANSFERS WITHIN THE FAMILY WILL NOT TRIGGER THE GAIC

So long as the land isn't subdivided, land that is transferred to a family member as part of an inheritance or marriage breakdown will not attract the GAIC. However, if the land is sold as part of the realisation of an estate, the GAIC will apply. In the event of a family transfer occurring which does not attract the GAIC, the GAIC will be payable at the next applicable trigger event.

BUILDING PERMIT APPLICATIONS

An application for a building permit for a new single dwelling, or for building works with a value less than \$1,031,890 (indexed annually), amongst other exemptions, will not trigger the GAIC.

PROCEDURAL SUBDIVISIONS

These will not trigger the GAIC payment for that particular event. These include a subdivision to provide land for a public purpose, or if carried out by a public authority or municipal council for utility installations or transport infrastructure.

ABILITY FOR DEFERRED OR STAGED PAYMENT OF GAIC

There are two opportunities for the GAIC payment to be made over time; referred to as either a 'Deferred Payment' or as a 'Staged Payment'

DEFERRAL OF GAIC WHEN PURCHASING LAND

Liability for payment of the GAIC by the purchaser generally arises:

- At the point of transfer when a person buys land; or
- When a person makes a significant acquisition in a 'land rich land holder' company.

For some GAIC transactions prior to 30 June 2011 the purchaser is eligible to elect to defer 70% of the GAIC liability. For transactions that occur after that date the purchaser may elect to defer 100% of GAIC. The special conditions include:

- A purchaser may make an election to defer up to 100 percent (or 70 percent) of the GAIC if the election is made in writing to the State Revenue Office before the day on which the contribution is payable;
- The deferral election needs to be made on a form available from the State Revenue Office;
- Dependent upon whether the land has been included within a completed Precinct Structure Plan, the deferred GAIC liability will be subject to either an annual indexation based on the Consumer Price Index or a daily interest charge determined in the manner set out in the legislation;
- The interest rate is set annually effective 1 July, and is calculated daily based on the average daily yield rates for the 10 year Treasury Corporation of Victoria bonds for the previous month of May;
- The deferred GAIC liability will be a charge on the land when the liability comes due;
- The deferred GAIC liability becomes payable when the person subdivides or develops the land;
- If the land is subject to a further sale, the new purchaser will be liable for the payment of the GAIC; however the new purchaser will be able to elect a further deferral of the unpaid GAIC amount;
- Transitional provisions apply in relation to some transactions that occurred between the relevant day (2 December 2008) and the commencement day (1 July, 2010).

STAGED PAYMENTS WHEN DEVELOPING LAND (SUBDIVISIONS AND BUILDING PERMITS)

The potential impact of the timing of the GAIC payment is addressed through the GAIC provisions in a system referred to as a 'Staged Payment'. Key elements include:

- The land owner may seek the Minister for Planning's approval for a 'staged payment' of the GAIC liability;
- The applications are to be made to the Growth Areas Authority (GAA);
- The Minister for Planning may approve an application

GROWTH AREAS INFRASTRUCTURE CONTRIBUTION (GAIC)

for staged payment of the GAIC for subdivisions or building permits in full or in part, subject to conditions about payment;

- Where a staged payment is approved by the Minister, the conditions of the approval will cover:
 - The specified period of time within which the GAIC liability must be discharged;
- An approved staged payment would be treated in such a way as to allow the subdivision or building permit to proceed;
- The GAIC is payable immediately on the first stage of subdivision, with the balance of the GAIC liability to be paid in accordance with the approved terms and conditions;
- In the event of a default in payments by the land owner, the GAIC liability will be considered a debt and will be a charge on the land. If the ownership of the land under this arrangement changes whilst the staged payment agreement is in place, the new owner assumes the GAIC liability.

An information sheet is available on the GAA website entitled *Growth Areas Infrastructure Contribution Guidelines for Staged Payment Approvals*. Discussions relating to staged payment arrangements can be held with the GAA.

EXISTING AGREEMENTS FOR INFRASTRUCTURE PROVISION

It is recognised that there may be existing agreements and conditions that have been previously entered into for land within the areas covered by the GAIC. The GAIC legislation provides that such agreements may be considered as a 'credit' against a GAIC liability subject to the approval of the Minister for Planning.

This only relates to agreements entered into prior to the announcement date.

ENTERING INTO WORK IN KIND AGREEMENTS

The 2011 amendments to the GAIC legislation have enabled the Government to enter into works in kind agreements with landowners for the provision of land or capital works in lieu of GAIC. This is likely to occur when the Government and the landowner agree that it is important to bring forward the development of the growth areas and in a manner that will be a cost benefit to the Government. The legislation has put in place a number of safeguards to ensure that the community receives value for money from any works in kind that are provided to fulfill a landowners GAIC obligation. An information sheet entitled *Growth Areas Infrastructure*

Contribution Works in Kind will be made available on the GAA's website. Discussions in relation to these matters can be held with the GAA.

GAIC CAUSING UNDUE HARDSHIP?

Unintended personal financial hardship may arise in exceptional circumstances. The Government has established a Hardship Relief Board to enable a person liable to pay the GAIC to apply to the Board to have the Board consider personal hardship. The Hardship Review Board may reduce, defer or exempt all or part of the payment of the GAIC in special circumstances or reject the application. The *Growth Areas Infrastructure Contribution Hardship Relief Board (HRB) Information Sheet* may be found on the GAA website.

OTHER TRANSACTIONS

A number of transactions will be treated differently. This includes, superannuation funds, trusts company transfers, and land rich companies.

For details on other transactions please see: the State Revenue Office's website: www.sro.vic.gov.au.

HOW WILL THE GAIC FUNDS BE USED?

All funds raised by the GAIC will be used to provide vital State infrastructure and to assist development in the growth areas of Melbourne. The GAIC will be collected by the State Revenue Office (SRO) and decisions about the use of the revenue will be made as part of the State Government's annual budget process.

The GAIC has been estimated to contribute approximately 15 percent of the cost of providing State infrastructure and services in the growth areas.

The revenue collected from the GAIC will be held in two separate funds, the Growth Areas Public Transport Fund (GAPTF) and the Building New Communities Fund (BNCF). The GAA will report annually on the income and expenditure details of the funds.

HOW CAN I FIND OUT FURTHER INFORMATION?

The GAIC legislation is able to be viewed on the Victorian Government website www.legislation.vic.gov.au. For further information please contact the Growth Areas Authority on 9651 9600 or the State Revenue Office on 13 21 61, or the following websites:

www.sro.vic.gov.au
www.gaa.vic.gov.au.