

Amendment VC55 to the Victoria Planning Provisions.

On 11 November 2009, the Minister for Planning Justin Madden approved Amendment VC55 and is currently seeking parliamentary certification. The amendment is designed to implement the policy directions of Melbourne 2030: a planning update Melbourne @ 5 million. VC55 makes amendments to the Victorian Planning Scheme and to all local government planning schemes.

VC55 has made amendments to Clause 12 – Metropolitan Development and Clause 16 – Housing of the State Planning Policy Framework of the Victorian Planning Scheme including:

- (1) expanding the Urban Growth Boundary to incorporate the expected 284,000 new dwellings in Melbourne's growth areas;
- (2) the identification of Central Activities Districts and employment corridors in a move to a multi-centre city;
- (3) increasing overall residential densities to a minimum of 15 dwellings per net developable hectare in growth areas;
- (4) devising new boundaries to include two large native grassland reserves west of Melbourne;
- (5) setting out the alignment of Regional Rail Link and the Outer Metropolitan Ring/E6 Transport Corridor.

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill

The Victorian Government introduced to parliament the *Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill*. The Bill passed its first reading on 10 November 2009, just three weeks after the Bill's exposure draft was released for public comment.

The Bill's objective is to fund infrastructure projects in Melbourne's urban growth areas. These infrastructure costs include transport, community, environmental and economic financial assistance in these developing areas.

The Growth Areas Infrastructure Contribution (GAIC) will be levied at a flat rate of either \$80,000

or \$95,000 per hectare in the contribution area. The obligation to pay the GAIC will fall on either the owner or purchaser of the land.

The contribution liability will be triggered by a GIAC event. The following constitute a GIAC event:

- (1) the Responsible Authority releases a statement of compliance relating to a plan of subdivision of land in the contribution area; or
- (2) a building permit application is made to carry out building works; or
- (3) a dutiable transaction relating to land in the contribution area occurs (including a transfer of dutiable property or the transfer of interests in an entity that holds substantial dutiable property).

Where a GIAC event arises from a transfer of land, the purchaser can apply for a payment deferral with the State Revenue Office. A penalty interest rate however would be imposed on the outstanding GAIC balance.

There are several circumstances where parties are exempt or excluded from the GAIC. Lots of less than 0.41 hectares or lots between 0.41-2.03 hectares with habitable dwellings will attract the GAIC when the lots are transferred. Where a transfer of land, moreover, is exempt from duty under the Duties Act 2000 the GAIC will also not apply. Examples of such circumstances are deceased estates and marriage breakdowns. Building permits sought for works of less than \$1,000,000 will also not attract the GAIC.

The GAIC can also be reduced in exceptional circumstances where a party liable for GAIC already has a separate agreement to provide infrastructure to the State themselves.

Solar Tariff Increases

On 30 October 2009, Energy Minister Peter Batchelor announced solar tariff increases to households, community organisations and small businesses with solar panels up to 5 kilowatts (kW). These parties are eligible to receive a minimum of 60 cents per kilowatt hour for solar energy fed into the electricity grid. This amounts to more than three times the current electricity price.

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The Minister announced that households with solar panels varying from 1.5kW to 2kW would receive benefits of between \$600 and \$1200 per year. The scheme is a 15-year initiative to encourage Victorians to reduce their carbon footprint by making solar energy more accessible.

EDO Releases Proposal for a Victorian Climate Charter

In October 2009 the Environment Defenders Office (EDO) has released its Proposal for a Victorian Climate Charter - Briefing Paper. This paper proposes a Climate Charter that “sets up a legal framework to ensure that Victoria is proactively addressing climate change.” The Charter is based on the Victorian Human Rights Charter and would be an “overarching legislation that requires all other Victorian legislation to be interpreted and implemented in a way that is consistent with the Charter.” It also “requires the Government to proactively develop solutions that will lead Victoria to a low carbon future.”

Key elements to the Charter would include:

- principles which set out how climate change is to be addressed in Victoria;
- emission reduction targets of 50% by 2020 and 80% by 2050, which are binding;
- the requirement for all Victorian legislation and policy to be interpreted in a manner consistent with Climate Charter principles where possible;
- a ‘climate test’ to be implemented by all public authorities when making major government financial and administrative decisions;
- a requirement for the Environment Minister to develop a climate strategy which sets out how Victoria will meet its targets, and a requirement to report to Parliament each year on whether the strategy was implemented;
- the Climate Authority’s establishment to advise, oversee and report on climate action; and
- compliance and enforcement mechanisms to ensure the Act is implemented and applied.

The EDO is calling for comments and suggestions for the ongoing development of the Charter.

Colac Otways Shire Council’s enforceable undertaking

On 30 October 2009 DEWHA announced that as part

of an enforceable undertaking by the Colac Otways Shire Council under the EPBC Act, the Shire Council must pay \$250,000 to the Victorian Department of Sustainability and Environment over the next three years.

The undertaking relates to the council’s hiring of a contractor to carry out the roadworks in April-May 2008 on the Cressy-Shelford Road near Cressy, about 60km west of Geelong.

An investigation by the Department of Environment, Heritage and the Arts (DEWHA) found the roadworks, which had not been approved under the EPBC Act, affected more than four hectares of important habitat for the critically endangered spiny rice flower and vulnerable striped legless lizard. The \$250,000 is for conservation and recovery of these species.

The undertaking also requires council to remediate the affected area at a cost of \$180,000 and carry out training and awareness about nationally threatened species, costed at \$260,000.

Goulburn Murray Water fails to give notice to objectors

In *Conroy v Goulburn Murray Water & Ors* (Red Dot) [2009] VCAT 2108, Goulburn Murray Water failed to give notice to objectors of its decision to grant licences for the construction of a bore and to take groundwater until well after expiry of the period within which an application for review must be lodged under the *Water Act 1989* (the Act).

Whilst the Tribunal identified gaps in the Act’s procedures, it was highly critical of Goulburn Murray Water for its failure to act in accordance with the Act’s objectives. Whilst there is no obligation under the Act to give notice to objectors of its decision to grant a licence, the Act provides objectors with a right of review. Goulburn Murray Water ignored this right by failing to give the objectors the opportunity to appeal the decision. Of Goulburn Murray Water, Member Helen Gibson stated ‘[i]f this is evidence of the way the authority normally conducts its business, it is about time that it set its house in order.’(para [24]). The Tribunal demonstrated its disapproval of Goulburn Murray Water’s costs by ordering the authority to pay the costs of the other parties involved.

The Member added that the Act was drafted in

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times when water scarcity was not an issue. In the past decade however the pressure on water resources has resulted in an increased number of review applications. The Act therefore requires amendments as it is currently inadequate in 'establishing a clear process to safeguard the rights and obligations of people.' (para [26]).

The Tribunal stated that these gaps would best be addressed by amendment of the legislation. The Tribunal ultimately refused the application for an extension of time within which the objector can commence an application for review after weighing up the impacts of the decision on the applicant and respondent.

EcoMarket Funding Increased

Environment Minister Gavin Jennings has announced that the state government will provide \$5.4 million to more than 170 Victorian landholders to help them undertake environmental improvement works over almost 8,000 hectares of private land under the ecoMarket initiative. The BushTender program has been extended by \$3.3 million, including a new project in North Central Victoria. Under the Northern Plains BushTender grasslands project, 16 landholders will share in \$1.1 million and under the Port Phillip and Westernport EcoTender project, \$1 million will be provided to 38 landholders.

Water Act amendments

The *Water Amendment (Entitlements) Bill 2009* (Vic)

which was introduced into the Legislative Assembly on 24 November 2009 and received its second reading speech on 25 November 2009, proposes to amend the Water Act 1989.

According to the explanatory memorandum, the Bill would:

- make further provision in relation to rights to water in publicly accessible waterways;
- provide for the assignment of water allocations under bulk entitlements and make other amendments to the provisions in relation to bulk entitlements;
- alter the meaning of "water allocation";
- provide for various matters relating to environmental entitlements; and
- provide for various matters relating to the provisions for water shares and the water register.

Response to State of the Environment Report

The Department of Sustainability and Environment has released the Victorian Government Response - State of the Environment Report Victoria 2008, which represents the state government's position on the recommendations made by the independent Commissioner for Environmental Sustainability Dr Kate Autey in her State of the Environment Report. The report made 289 recommendations on various subject areas ranging from landfill measures to the management of land, inland waters and coasts.