Bisinella
the key to your community

L. Bisinella Developments Pty. Ltd.
195 Forest Road South (P.O. Box 44)
LARA VIC 3212
p: (03) 5274 4000
e: sales@bisinella.com.au
ABN 99 006 806 677 ACN 006 806 677

Residential development. Factory construction, management and leasing.

# Submission by L.Bisinella Developments Pty Ltd to the Ministerial Panel for the Victorian Local Government Rating System Review

This submission to the Victorian Local Government Rating System Review is made by L.Bisinella Developments Pty Ltd (Bisinella).

Bisinella is a family business established more than 50 years ago in Lara and one of the largest residential and industrial land developers in the Geelong region.

The purpose of our submission is to inform the Ministerial Panel about past problems arising from the administration of a Special Rates and Charges Scheme in the City of Greater Geelong and to suggest legislative amendments that would avoid such problems in the future.

**Background**

Bisinella has been developing industrial land in northern Geelong since the 1970s and was a pioneer developer in the Heales Road area of Corio and Lara. This area, now known as the Geelong Ring Road Employment Precinct (the GREP), comprises approximately 512 hectares of industrial zoned land. Strategically located for easy access via road, rail, the Port of Geelong and Avalon Airport, the GREP is Geelong's largest designated growth area for industrial development and one of only a few in Victoria with industrial 2 zoned land.

Bisinella currently owns approximately 41 hectares of land in the GREP, including Bisinella-owned and constructed factories and warehouses leased to Impact Fertilisers, RPC Technologies and Riordan Transport, as well as approximately 27 hectares of subdivided vacant land in the Bisinella Industrial Estate.

In 2008, the City of Greater Geelong (the Council) commenced a marketing campaign to sell approximately 130 hectares of publicly-owned land in the GREP (acquired by the former Geelong Regional Commission and subsequently inherited by the Council). In the same year, Bisinella lodged a planning application to subdivide and develop 25 hectares of our land.

Three years later, the Council, having failed to sell any of its land, and with Bisinella's planning application remaining unresolved, proposed a Special Rates and Charges Scheme to construct a regional drainage system in the catchment containing approximately 80 hectares of Council land as well as approximately 40 hectares of Bisinella land.

Under the unusual "progressive" calculation applied by Council officers, the proposed Scheme would have required Council (as landowner) to pay approximately $2.4 million for approximately 80 hectares and Bisinella to pay more (approximately $2.8 million) for half as much land (approximately 40 hectares).

This proposed Scheme appeared on the Council meeting agenda in November 2011 and May 2012. Although consideration of the item was deferred each time, the threat of the proposed scheme

continued indefinitely and made it commercially unviable for Bisinella to proceed with development, even after final planning approval (including a "local" drainage solution costing less than half of the proposed Bisinella contribution to the regional scheme) was eventually obtained in mid-2013.

The impasse extended to 2016-17 when Council adopted an amended Scheme calculated on an equal area basis, reducing Bisinella's liability to approximately $1.4 million (half the initial demand). Bisinella agreed to pay upfront to expedite construction of the drainage works needed to develop our land. These works were completed early last year, but the balance of the Scheme remains unconstructed.

Bisinella issued the Supreme Court proceedings against the Council in October 2016 and an out-of-court confidential settlement was reached in January this year.

**Issues**

The GREP dispute was very costly and damaging for the Geelong region. Investment and jobs were lost or delayed in a strategically-important industrial growth area for the better part of a decade.

Until 2009, Bisinella had constructed a new industrial facility in Geelong's north every two years, on average, for more than 25 years. When eventually able to resume development in late 2017 after an eight-year hiatus, we quickly achieved seven land sales and the first new facility (Civil Mart, employing 30 people) was completed within 12 months.

The key factor which caused this loss and delay in investment and jobs was the Council's proposed Special Rates and Charges Scheme.

Leaving aside the obvious conflicts of interest peculiar to this case study (i.e. between the Council's roles as landowner, economic development facilitator, planning authority and drainage authority) and whether or not these conflicts have been appropriately managed, some relatively simple changes to the law would avoid similar circumstances arising in the future.

We make the following points for consideration by the Panel -

1. The other option for Councils to levy landowners for a development such as the GREP is a Development Contributions Plan (DCP). The Council considered this alternative before proceeding with the proposed Special Rates and Charges Scheme in 2011. There is a major difference between the two mechanisms: a DCP requires Ministerial approval before it can be placed on exhibition. Similar Ministerial oversight could be introduced for Schemes over a certain value (say $2 million) or in certain zonings (say industrial and commercial). We believe Ministerial oversight may well have averted the GREP issues.

2. Councils appear to be unconstrained in their power to propose a Special Rates and Charges Scheme and then, without formally adopting the Scheme, allow the threat of it to continue indefinitely. An affected landowner cannot challenge a Scheme in VCAT until it has been declared. This situation can have the effect of discouraging and unreasonably delaying development, investment and job creation, and could be avoided by:
    - Requiring earlier formal notice that a Scheme is being prepared;
    - Providing a right to appeal or review in respect of a proposed Scheme at VCAT;
    - Introducing a time limit (say two years) from the point of an "intention to declare" a Scheme and its actual declaration, together with defined parameters as to when an "intention to declare" must be published.

3. Current legislation and VCAT precedent give broad discretion to the local authority when preparing and declaring a Special Rates and Charges Scheme. The balance of power is weighted heavily in favour of the proponent and against the potential objector. While there are good reasons for this, we would argue that our experience demonstrates that the power imbalance can be an impediment to economic development and some careful realignment would be in the public interest.

**Conclusion**

Our purpose in making this submission is not to rehash issues that have been resolved through the ultimate adoption of a fair and equitable Scheme in the GREP and the Supreme Court settlement.

Our summary of the GREP dispute is deliberately brief, but we would be happy to provide further detail if it would assist the Panel.

We are making this submission because we know from our discussions with other businesses and the messages of support we received regarding the Supreme Court proceedings that many other businesses have experienced similar frustrations and adverse consequences in their dealings with local authorities on such matters. The fact is that most businesses are loathe to take a stand as we did.

If the Panel were to recommend changes to the law and practice relating to Special Rates and Charges Schemes designed to redress the current power imbalance and avoid similar damaging disputes in the future, it could only have a positive impact on economic development, investment attraction and job creation in Geelong and Victoria.

Yours sincerely

**Richard Bisinella**
**Development Manager**
**L.Bisinella Developments Pty Ltd**
**30 October 2019**