

Preliminary Submission by Delta Group on Minister's Part C submission

- 1 The new infrastructure contribution provisions have been devised for outer metropolitan growth areas. There are some important differences between these areas and urban renewal areas, such as Fishermans Bend, that make the scheme unsuitable and unfair for Fishermans Bend.
- 2 **First**, the prospect of, and the event of, urban rezoning of outer metropolitan areas typically has the effect of increasing the value of the land (above existing use value) by an order of magnitude (that is, land with an urban zoning is typically worth more than 10 times the non-urban *existing use* value of the land). This is not the case for Fishermans Bend *generally*; and, just as importantly, will not be the case for *particular* land in Fishermans Bend, such as improved land, land with favourable tenancy arrangements, and land of special value to an industry that seeks proximity to the CBD. In other words, the extent of the betterment, above existing use value, created by a rezoning is substantially different between outer metropolitan areas and urban renewal areas. The extent of betterment has an important bearing on the fairness of an ICP land capture scheme.
- 3 **Second**, land values in outer metropolitan areas being rezoned for urban purposes are relatively even; and usually reflect land value only (that is, improvements add little value). This makes an equalisation scheme much more practical, as a "percentage take" of land will generally reflect the same "value take" of land. In Fishermans Bend the land values are likely to be uneven, due to differential improvements and other factors. For example, the provisions of the amended Act in relation to land contributions do not account for the situation (likely to arise in Fishermans Bend) where a landowner has less than the average percentage of its land identified for public purposes, but where the value of this land is more than the average value of land identified for public purposes.
- 4 **Third**, development in outer metropolitan areas usually occurs within a confined development window (say 10 to 15 years). By contrast, the development window for an urban renewal area like Fishermans Bend is likely to be much longer. This makes the use of a land contribution ICP problematic for the *timely* delivery of land for public purposes; and, if early acquisition of land is used to overcome this, it is potentially very unfair. (A landowner, not wishing to develop, but wanting to continue an existing use, could have their land taken with no compensation! That would be outrageous and a gross breach of the Charter of Human Rights.)
- 5 **Fourth**, the size of lots in outer metropolitan areas, in proportion to the area of land required for a public purpose, tends to be much larger than in an

urban renewal area such as Fishermans Bend. This means that, in outer metropolitan areas, few landowners have all or most of their land identified for a public purpose.

6 The new ICP land capture scheme relies on *all* of these four factors to achieve an acceptable result.

7 When the ICP land capture scheme was introduced to the parliament, the Minister's Human Rights statement dealt with the issue of fairness. The Minister commenced:

The aspects of the bill of most relevance to this statement of compatibility are those that relate to the requirements on landowners to contribute land to facilitate the provision of essential infrastructure (such as public open space, recreation facilities and transport infrastructure) to new communities. The bill introduces a model in which developers of land in certain areas are required to contribute to the provision of essential infrastructure in that area through a combination of transfers of land and payment of money, as part of an overall infrastructure contributions scheme. One of the purposes of this amended scheme is to secure the efficient transfer of land set aside for public purposes ('public purpose land') early in the development of a new community. [Emphasis added.]

8 The Minister continued:

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public, and are formulated precisely.

The bill authorises the deprivation of property in certain circumstances and therefore engages this right. [Emphasis added.]

9 The Minister then noted, correctly:

Clause 10 of the bill inserts new section 46GV into a new part 3AB of the Planning and Environment Act 1987. This section provides that where an approved infrastructure contributions plan identifies land to be set aside for public purposes on a parcel of land, the owner or developer of that parcel must transfer the public purpose land to a collecting agency or development agency when the parcel is being developed (for example, when the parcel is being subdivided).

10 The Minister did not refer to the extraordinary power to compulsory acquire land, with no compensation, where land was required for a public purpose before development of that land.

11 The Minister then expressed the opinion:

The power conferred by section 46GV is not arbitrary. It is confined to the transfer of public purpose land that has been identified, tested

and approved through a structured and transparent statutory process.
In particular:

- a The public purpose land that must be provided by a landowner must be clearly identified in an approved infrastructure contributions plan. The plan must explicitly set out the relationship between the need for the public purpose land and the proposed development in the plan area. A landowner is only required to provide the public purpose land identified in the plan, and the land may only be used and developed for the public purpose specified in the plan.
- b The infrastructure contributions plan identifying the public purpose land will implement a precinct structure plan or other strategic plan that is incorporated into the relevant planning scheme by way of a planning scheme amendment. This process involves public exhibition of the amendment and is a contestable process. All landowners affected by the plan will have the opportunity to review the plan, make submissions about the type, purpose, size or location of the public purpose land, and have an opportunity to be heard by a planning panel (if the planning authority does not accept the landowner's submission).
- c The public purpose land provided by a landowner forms part of the landowner's contribution to essential infrastructure in the broader plan area.
- d The land that must be contributed is confined to land required to meet the infrastructure requirements associated with proposed development in the infrastructure contributions plan area (such as land for public open space, arterial roads, and community facilities).
- e To ensure that the obligation to provide public purpose land is spread equitably across all landowners in the infrastructure contributions plan area, the bill provides a method for 'equalising' contributions based on the proportion of public purpose land being provided on each parcel of land. As the starting point, the plan must identify the average public land contribution across the whole plan area (the 'ICP land contribution percentage') and the percentage of public purpose land that must be contributed by each parcel within the plan area. Landowners that provide less public purpose land than the ICP land contribution percentage must pay a land equalisation amount to the collecting agency. The collecting agency must then use this money to pay land credit amounts to landowners that provide more public purpose land than the ICP land contribution percentage, thereby compensating them for the additional land provided.

The obligation to provide public purpose land as part of an infrastructure contribution arises in clear and confined circumstances. As such, in my view, any interference with property occasioned by

new section 46GV is in accordance with law and therefore compatible with the charter.

- 12 For the reasons given above, the fairness of the ICP land contribution scheme is quite different in outer metropolitan areas to urban renewal areas.
- 13 But even if one accepts that the ICP land contribution scheme could apply to an urban renewal area, by the Minister's own words, it is a model in which developers of land in certain areas are required to contribute to the provision of essential infrastructure in that area through a combination of transfers of land and payment of money. Yet the application of the scheme in Fishermans Bend could result in an owner not seeking to develop (hence not a developer), having their land taken against their will (under s 172D) with either no compensation (s 172G) or compensation that does not reflect the loss of the owner, but is based on generic land values (s 172F). Such an outcome cannot be accepted as fair.
- 14 Moreover, this is not a case where the "clear and confined circumstances", referred to by the Minister, exist.
- 15 The current process is not one where the future transfer of "public purpose land" that has been identified, tested and approved through a structured and transparent statutory process. The current process has been a moving feast, has not enabled thorough testing, is not transparent; and, I emphasise, is not statutory. The process envisaged in the Human Rights Statement to parliament was one that involves public exhibition of an amendment, is a contestable process, with all landowners affected by the plan having the opportunity to review the plan, make submissions about the type, purpose, size or location of the public purpose land, and have an opportunity to be heard by a planning panel.
- 16 Further, the Minister relied on a method for 'equalising' contributions which is based on the *proportion* of public purpose land being provided on each parcel of land. This method may work where land values are even, but is totally inappropriate in an urban renewal area where, by reason of differential improvements, land values are uneven.

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