

CORRECTED VERSION

OUTER SUBURBAN/INTERFACE SERVICES AND DEVELOPMENT COMMITTEE

Inquiry into urban growth boundary

Melbourne — 22 October, 2009

Members

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Executive Officer: Mr S. Coley
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Witnesses

Presenting

Mrs Gila Schnapp (affirmed), and

Mrs Esther Caspi (affirmed).

The CHAIR — I declare the meeting officially open and welcome the public to this hearing of the Outer Suburban/Interface Services and Development Committee. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act, the Parliamentary Committees Act 2003, the Defamation Act 2005 and legislation in any other state jurisdictions where the same provision applies. This means all states and territories. Any comments made outside the hearing may not be afforded such privileges. However, the transcript is covered and people who use the transcript may do so. We are ready to take our first witnesses, Mrs Caspi and Mrs Schnapp. Could you provide the committee with your mailing addresses? Are you familiar with the process?

Mrs CASPI — Yes, thank you, Chair. My mailing address is P.O. Box 2142, Templestowe Heights 3107.

Mrs SCHNAPP — My mailing address is the same as Mrs Caspi. This is a group submission so we will all be under the one mailing address.

The CHAIR — You have 20 minutes to make your submission and that will give us 10 minutes for questions and discussion.

Mrs CASPI — Thank you, Chair, Mr Sean Coley and the Outer Suburban/Interface Services and Development Committee. In presentation of our submission today, we appreciate being able to fill the cancellation spot. As this only became available at approximately 5.15 p.m. on Monday, 19 October, please understand this public submission has been rushed and we are only lay people. It concerns stakeholders of properties in the suburb of Diamond Creek, township of Yarrambat, shire of Nillumbik, Victoria.

They are: [REDACTED] Ironbark Road, Diamond Creek, Freeman family, 5 acres; [REDACTED] Ironbark Road, Diamond Creek, (Freeman family Trust), adjoining 40 acres; [REDACTED] Pioneer Road, Yarrambat, (Schnapp), may have been referred to as Tanks Corner, Plenty or Diamond Creek in the past planning texts, 14.5 acres — (The above three properties are Freeman-family related adjoining each other and distinctive as a group); [REDACTED] Pioneer Road, Yarrambat, (Bennett family); and, in our opinion, in support of others in both Ironbark Road and Pioneer Road, Diamond Creek and Yarrambat, who have been in the process with us requesting planning correction.

Thank you for allowing us to present our views on the impact of the state government's decision to change the Urban Growth Boundary. Changing this impacts on all of Victoria, not just the designated growth areas. Our presentation today will concentrate on paragraph (d) of the terms of reference, that of unintended consequences. Any errors, omissions or irregularities relating to the current urban growth boundary need to be first corrected. In our situation the above properties, in the previous Plenty growth corridor, not green wedge, have been wrongly excluded from new growth, and we view expansion of the UGB to be unconscionable unless this is equitably corrected and planning adjusted accordingly.

No families that were in this Plenty growth corridor should be targeted for continued exclusion, (from growth) irrespective of the form it takes, whether it be by township, UGB or other expansion. This is particularly applicable to the above stakeholders, whose lands are known to have had distinctive, attached, urban, reticulated infrastructure and full capacity for residential land use and development until gazettal of the new format Nillumbik planning scheme in June 2000.

Please note from the evidence that reticulated water capital costs for lots [REDACTED] Ironbark Road — that is, our family — were compulsory and the highest paid, based on being assessed as the greatest residential land value in the 70s. This was despite already having a private commercial supply of water for intensive poultry farming.

Please note the above previous urban residential lands were able to be serviced with all utilities for development, including capacity allowances in the Eltham sewer.

Our latest submissions, including this one, are requesting the combined assistance of planning expertise from qualified personnel involved in the new planning panels and processes — for example, new residential zones, the Planning and Environment Act, Melbourne @ 5 Million — in support of our claims and to share with us any knowledge gaps. We would appreciate this inquiry referring our case to legal town planning and legal water specialists for our mutual exchange of knowledge. You can see examples of our hard evidence in support of our submission. Note the most recent evidence found is that of a 1974 rate notice. This evidence provides the missing link, proving the lands were residential. It was on this basis that the compulsory infrastructure was established and charged for.

What has happened to the above lands, we believe, is against all planning principles. You would not make one group of people pay for infrastructure with the intention of planning for others to use it instead, because we keep being told that infrastructure and planning are not related. Planning was definitely directly infrastructure driven.

The above lands had already paid for growth, directly and indirectly, and should be exempt from any new contributions or growth areas tax. If the lands were zoned correctly in year 2000, they would have been automatically included in the urban growth boundary and therefore not subject to any tax. All stakeholders should have the option of developing their lands directly without the extra burden of a growth areas tax.

We advocate strongly that any new growth areas tax only be due and payable after settlement of that particular land subdivision. Please add subdivision on that line in your books. We suggest that the GAIC is used to contribute to compensation due to landowners who cannot develop their land and provide open space and other amenities to the land zoned for urban development. Were social and emotional impacts studies done and considered on those excluded from the new urban growth boundary? These stakeholders have been described as the losers. Their lands have to be considered on a case-by-case basis.

In conclusion, we reiterate that it is essential for the above lands to be included in the growth corridor in order to recognise their entitlements and urban residential values, not conservation. This would also then enable equitable transfer of infrastructure and associated property rights where, and if, required in order to best achieve new community aspirations, including the green wedge.

Again, we would humbly ask the Premier and relevant ministers to finally meet with us, as stakeholders who will be seriously impacted on, in order to move forward. Corrective equitable actions for our listed lands would not set a precedent because of their unusual and extenuating circumstances. Stakeholders should not be

disadvantaged for protecting the green wedge, nor should they dread the native vegetation and fauna mapping project. This should not be used as a weapon to exclude landowners from the urban growth boundary. Conservation objectives can still be achieved by designation of such within the urban growth or township boundaries.

Mrs SCHNAPP — I will continue. The above-listed stakeholders hereby draw urgent attention to the parliamentary inquiry to the fact that the above lands in the suburb of Diamond Creek, the township of Yarrambat, were originally in the city of Heidelberg, then Diamond Valley before becoming the Shire of Nillumbik. They were in the legislated Plenty growth corridor, which you will see on the map. You will see the highlighted line which shows our properties, and Ironbark Road are located directly north of the original historic Diamond Creek township centre.

These previously urban, not rural, residential properties had been back-zoned in error in the year 2000 to environmental rural, which is now rural conservation, the most restrictive of all zones. This is a travesty of justice, denying even land sustainability. The promised closest-fit zone translation should have been Residential One or Township in compliance with the then applicable legislation, and preservation of the lands' attached prepaid for distinctive urban reticulated infrastructure and associated property rights, which are being eroded continually with new laws, strategies and policies. The stakeholders' long-term, legitimate expectations and certainty need to be realised. Stubbornness or failure to act equitably for approximately nine years appears to be occurring on the incorrect basis that the lands were zoned or designated for residential purposes.

Mrs CASPI — Were never zoned.

Mrs SCHNAPP — Sorry, on the incorrect basis that these lands were never zoned or designated for residential purposes. It has now been proved beyond doubt that this is not the case.

Now, with the government's revision of and imminent parliamentary approval of the expansion of Melbourne's urban growth boundary, the stakeholders hereby request this inquiry draw our serious issues to the urgent attention of the Premier, Mr John Brumby; the Deputy Premier and Attorney-General, the Honourable Rob Hulls; the Minister for Planning, the Honourable Justin Madden; the Minister for Local Government, the Honourable Richard Wynne; the Minister for Community Development, the Honourable Peter Batchelor; the Minister for Water, the Honourable Tim Holding; and the Victorian state government to assist us in the cause of justice and:

- Ensure that the lands are reinstated into the new urban growth boundary or other growth — for example, township-linear expansion — and included in old and new growth servicing strategies;
- Rezone the lands into their year 2000 promised closest-fit zone, residential 1, the equivalent new residential substantial change zone or township zone, as applicable, irrespective of final site-specific land use;
- Ensure equitable planning corrections for any of the above properties if they were discriminatorily or mistakenly treated differently at any time in the past, compared with neighbouring like lands. Proper process did not occur and stakeholders were not notified if this was the case, thereby making them unable to protect their interests.

- For the greater benefit of the community, conservation/green wedge, open space, utility use of or any other old or new aspirations are not legitimate excuses to deny these properties their proper zoning, property rights, entitlements and values as these can still be incorporated by designation of such in the overall development plan of any residential area. Cementing the lands in a green wedge corridor is only taking financial advantage. Please note that the infrastructure was directly tied to the value of the lands and thus developmental certainty. Please ensure the return of the lands' attached distinctive reticulated infrastructure, its full urban capacity and thus distinctive land capabilities.
- Mediate for compensation or remuneration for damages and losses, including the value of the lands between Residential One and conservation, and loss of distinctive attached urban reticulated infrastructure with associated property rights and entitlements if the above actions are now not possible.
- Make planning corrections promptly,

(a) to prevent further impacts from new state, federal or local government legislation, including proposed new taxes, policies and strategies, and

(b) to ensure an accurate foundation upon which the imminent local Nillumbik planning scheme is reviewed can be corrected, adjusted and revised.

This includes Diamond Creek 2020 and the associated new Diamond Creek major activity centre structure plan. We believe this plan is flawed and unbalanced, thus continuing to disenfranchise, disadvantage and materially seriously impact the above stakeholders and others whose lands are also located in the original historic Diamond Creek township centre, Chute Street, Precinct One, its then-associated structure plan and surrounding acreage that was previously the planned growth.

Please meet with the stakeholders to facilitate these actions.

In the back of the book we have given out today is attached evidence. There is an index. They are just examples proving our case, but I would like to draw your attention to a few of these. It is difficult to see — —

The CHAIR — If you walk away from the microphone we cannot hear you. You have to stay here, otherwise Hansard will not get your evidence recorded.

Mrs CASPI — We need to table this one in particular because the whole basis is we were residential. It has been very upsetting for nine years.

Mrs SCHNAPP — The residential rate notice — if you open up to the evidence in the attachment A— it is the first attachment, on page 14. It shows a valuation by the then Diamond Valley shire. The general rate is 2.599 cents in the dollar. There were three other ratings. They were the general rate, the urban farm rate and the farm rate.

Mrs CASPI — General is residential.

Mrs SCHNAPP — If you turn to page 5 of the submission, it is explained a little better.

This new evidence proves our case beyond doubt. It refers to the rate notice covering [REDACTED] Ironbark Road, Diamond Creek. The residential rate was defined as general rate. On the bottom of the notice you will see 'R' — status R — which is for residential. There were three rating categories. They were either general, which was residential, urban farm or farm — (that is, rural). The urban farm rate and farm rate was half the general rate, being 1.253 cents in the dollar — see attachment 40 in the submission. The unimproved capital value was \$34 000. Please remember the figures

I am giving you are 1970 values. You can see that the 2.599 cents to the dollar was the highest possible rating.

Attachment 40 shows the general rating, residential, as being 2.599 in the dollar. The residential rate on the rate notice was \$883.66 — almost 10 times the minimum rate of \$90. Please note the net annual valuation of this rate notice was \$2000. The same net annual valuation is shown on attachment 13. You will notice on that table there is an old net annual valuation of the land as rural, showing it as \$500, and then the new net annual valuation is \$2000, as residential. That is a 400 per cent increase. The \$2000 figure was used for two-thirds of the forced capital costs for the reticulated water infrastructure. You will also notice from the table that this particular property paid the highest for reticulated services. It was valued the most in that whole extension.

The CHAIR — So we get that on the record, it has attachment 2 on it.

Mrs SCHNAPP — This particular attachment shows the location of the properties. You will note where the area is highlighted there is the \$2000 again, confirming that this was used for the net annual valuation for one of the water infrastructure charges for capital costs.

Attachment 16 shows the total cost for the infrastructure for the Ironbark Road scheme. You will note the total costs were approximately \$71 348.24. Consumers were liable for total costs under 310A of the water scheme. Attachment 15A confirms that under section 310A of the Water Act 1958 consumers were liable for total costs. Attachment 7 is when Melbourne and Metropolitan Board of Works took over the Plenty-Yarrambat Waterworks Trust, with all its duties, liabilities and responsibilities.

The CHAIR — You have got about 2 minutes left for your presentation.

Mrs SCHNAPP — What attachment number is that?

Mrs CASPI — It has not got a number on it.

Mrs SCHNAPP — That attachment shows the gazettal by the Governor in Council in 1975 of the extension of both the waterworks and urban district. This was necessary before landowners could be charged and the infrastructure constructed.

The CHAIR — Is that part in your submission?

Mrs SCHNAPP — Yes. All the attachments that I have managed to show today are listed, with an index, in the book that you have been given today. I have only given a few examples. What is that one on the bottom, Esther?

The CHAIR — One more and then we will have to wind it up.

Mrs SCHNAPP — That is just another one from the gazette. I think we have already shown that one.

The CHAIR — Is that it?

Mrs SCHNAPP — Thank you.

The CHAIR — Thank you very much for all the work you have put in in preparing the submission and presenting the case to the committee. You have done a lot of research and a lot of preparation on it. That is the excellent part of it. As we say, consultation in public hearings does

not necessarily mean that governments — and that applies to all three spheres; local, state and federal governments — actually implement what people say to them. They weigh up the pros and cons of the merits for it, and then find the middle way through it; it all still assists the programs. This is how processes operate. I have been the chair of numerous committees for many years. At the end of the day, a committee makes recommendations when it gets all the information from all the different sources.

Ms HARTLAND — I would have to agree with George. I think you have given us a really interesting presentation. I am not sure where this committee can actually take it. I was just looking in your attachments and your last letter between yourself and council was 2003. Have those issues with council been resolved?

Mrs SCHNAPP — No. We have not given any of the recent material. All of the recent material has been given to other committees that were mentioned earlier. We thought if we drew attention to it in this submission, you could refer to that information. We did not find out until yesterday that you were only considering what is being presented today and are not looking at what is on the internet. That is why it has been so rushed.

Ms HARTLAND — We cannot do that.

Mrs CASPI — That did have the latest information and correspondence to council.

Ms HARTLAND — Through which committee?

Mrs SCHNAPP — It was the Growth Areas Authority.

Ms HARTLAND — Your submission to them?

Mrs CASPI — Our submission to Growth Areas Authority has all that information, so you can look into that.

Mr GUY — I have no questions; I have taken some notes.

Ms GREEN — Thank you, Mrs Caspi and Mrs Schnapp, for your extensive research. I suppose I am struggling a bit in terms of the relevance of the research, which I know you have done for reference to this committee, because you talked about section (d) of the terms of reference. But I think it needs to be read in conjunction with the first paragraph of what is before this committee's inquiry about the:

... government's decision to change the urban growth boundary on land-holders and the environment and plans announced by the government to introduce an increased development contribution for land in designated growth areas ...

That is probably the hurdle that you are not able to overcome at this point. But I would ask how far is the subject land that you are referring to from the existing urban growth boundary? How many kilometres is it? I would also ask how far is it from heavy rail and bus routes, and how far is it to the nearest designated main road, because I understand all those are local roads there. I understand what you are saying about water infrastructure, but that is only part of the decision that needs to be made when you are looking at urban expansion.

Mrs SCHNAPP — It is not just water infrastructure.

Ms GREEN — No. Can I have an answer to how far it is from the urban growth boundary? How many kilometres are the properties you are talking about from the urban growth boundary?

Mrs SCHNAPP — It would be one road parallel if you went by — —

Ms GREEN — No, how many kilometres — 5, 10, 2, 3?

The CHAIR — As the crow flies.

Mrs SCHNAPP — It would be 3 kilometres along arterial Ironbark Road where the residential development was originally planned.

Ms GREEN — No, from the current urban growth boundary, because if you are saying it should be included, I think my understanding is we are talking about a big leap, but if you can say — and it is important that you can say — how many kilometres it is from the current urban growth boundary to the properties that you are talking about?

Mrs CASPI — Can we, Danielle, get back to you on that?

Ms GREEN — Yes, that would be good.

The CHAIR — Get back to the committee on it.

Mrs SCHNAPP — It is very close as the crow flies, but I would have to measure it exactly to tell you.

Mrs CASPI — A couple of bends, so work backwards.

The CHAIR — Thank you very much for your presentation and the time you have put into it, because it is important that we take all views into account in our deliberations. In due course you will get a copy of the transcript for proofreading.

Mrs SCHNAPP — We thank you very much for the privilege of being allowed to speak to this committee.

Mrs CASPI — And please remember we are lay people.

Mrs SCHNAPP — I apologise for the evidence, too, if I did not give it as concisely as I would liked to have done.

The CHAIR — That is fine. It is in the written documents and you have spoken to them.

Witnesses withdrew.