

## PRODUCT RULING - BR Prd 04/03

This is a product ruling made under section 91F of the Tax Administration Act 1994.

### Name of the Person who applied for the Ruling

This Ruling has been applied for by Infrastructure Auckland.

### Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of:

- Section 2
- Section 3A
- Section 5(1)
- Section 5(6D)
- Section 8(1)
- Section 10(2)
- Section 20(3)

### The Arrangement to which this Ruling applies

The Arrangement is the making of grants by Infrastructure Auckland (“IA”) on the basis of applications from potential recipients to carry out specific transport or stormwater infrastructure projects within the Auckland region. Further details of the Arrangement are set out in the paragraphs below.

#### *Background*

1. IA is a body corporate which was established pursuant to the Local Government Amendment Act 1998, and the Infrastructure Auckland Deed.
2. Section 707ZZK(1) of the Local Government Act 1974 (“LGA”) provides that the principal function of Infrastructure Auckland is to contribute funds, by way of grants, in respect of projects, or parts of projects, undertaken in the Auckland Region for the purpose of providing:
  - (a) Land transport; or
  - (b) Any passenger service; or
  - (c) Any passenger transport operation; or

(d) Stormwater infrastructure;

where the projects or parts of projects generate benefits to the community generally in addition to any benefits that accrue to any identifiable persons or groups of persons. (Despite the repeal of the Local Government Act 1974 by the Local Government Act 2002, the provisions relating to Infrastructure Auckland in Part 44C (sections 707ZZH to 707ZZZZG) continue to have effect as if those provisions were still in force: section 313, Local Government Act 2002.)

3. IA's asset base was originally derived from the Auckland Regional Council (the "ARC"). In 1992, certain assets and liabilities of the ARC relating to its non-core activities were transferred to the Auckland Regional Services Trust ("ARST") under Part XLIVB of the LGA. However, ARST did not inherit all the functions of the ARC and its primary role was to manage its assets, reduce the liabilities and dispose of specified assets as required under the provisions of the LGA.
4. In 1998, the Government decided that the assets held by ARST should be applied for developing the infrastructure of the Auckland region and it was decided to create IA to facilitate this decision. Pursuant to section 707ZZZL of the LGA, on 1 October 1998 the assets and liabilities of ARST were transferred to IA, with the following exceptions:
  - \$10 million was paid to the ARC for the purposes of regional parks;
  - \$10 million was paid to the territorial authorities of the Auckland region to be applied to significant projects in the Auckland region in the area of arts and culture;
  - the assets and liabilities of ARST in relation to the Pikes Point walkway were transferred to the Auckland City Council; and
  - the shares in Watercare Services Limited were divided between the territorial authorities of the Auckland region.
5. Regional Treasury Management Limited, a subsidiary of the ARST, was also dissolved at that time and its assets and liabilities vested in IA.

*The making of grants*

6. Section 707ZZL(1) of the LGA provides that any local authority which, or other person who, intends to undertake within the Auckland Region a project in respect of which IA may make a grant in the exercise of its functions under section 707ZZK(1) may apply to IA for such a grant.
7. IA, in deciding whether or not to contribute funds to projects or parts of projects or components of projects in the exercise of its principal function



under section 707ZZK, must be guided by the criteria specified in clause 5.2 of the Infrastructure Auckland Deed, which provides:

- 5.2 Criteria: The criteria, in relation to each such project, are as follows:
- (a) The extent to which the project generates benefits to the community generally in addition to those that accrue to any identifiable persons or groups of persons; and
  - (b) The extent to which the benefits generated to the community generally by the project exceed the costs (including the external costs) of the project by a margin greater than the assessed risk that the project will not deliver its intended net benefits; and
  - (c) Whether the project satisfies the requirements of clause 4.1; and
  - (d) The extent to which the project contributes and gives effect to any Auckland Regional Land Transport Strategy or the Auckland regional growth strategy or any regional policy statement or proposed regional policy statement adopted under the Resource Management Act 1991 or any regional stormwater strategy as adopted by the Regional Growth Forum; and
  - (e) The principle that the costs of the project, including the external costs, should be:
    - (i) Allocated in a manner that is consistent with economic efficiency; and
    - (ii) Where practicable, recovered from those persons or groups of persons who--
      - benefit from the project; or
      - contributed to such costs; andin a manner that matches the extent to which those persons or groups of persons benefit from the project or contributed to such costs; and
  - (f) The extent to which the project will be in the best interests of the inhabitants of the Auckland Region; and
  - (g) The extent to which the project provides the greatest benefit to the greatest number of people in the Auckland Region; and
  - (h) The extent to which the project provides for a geographical spread of public benefits across the Auckland Region; and
  - (i) The degree to which the project may improve economic performance in the Auckland Region; and
  - (j) The degree to which the project may contribute to regional environmental outcomes; and
  - (k) The degree of urgency for the project.

8. Clause 4.1 of the Infrastructure Auckland Deed sets out further matters which IA must have regard to in making grants. It states:



Infrastructure Auckland must ensure that grants it makes under section 707ZZK(1)--

- (a) Are made primarily for the purpose of funding the capital components of projects; and
  - (b) Are not inconsistent with any Auckland Regional Land Transport Strategy or the Auckland regional growth strategy or any regional policy statement or proposed regional policy statement under the Resource Management Act 1991; and
  - (c) Are made having regard to Transfund New Zealand's funding policies; and
  - (d) Are not for services for which funding has already been identified. (As required by section 707ZZZA(1)(c))
9. The vast majority of the grants made by IA have been made (and will continue to be made) to local authorities and commercial transport operators who carry on taxable activities and must account for GST in respect of supplies they make.

*Terms and conditions attaching to grants*

10. The grants IA makes are usually subject to terms and conditions.
11. IA has a broad discretion, pursuant to section 707ZZL of the LGA, to make grants subject to such terms and conditions as IA sees fit.
12. However, in practice, there are three broad categories under which IA will impose conditions in relation to a grant. These are:
- (a) Conditions which do no more than ensure the efficient and proper application of the grant funds, consistent with section 707ZZK(1) and 707ZZL(2) of the LGA, as well as other relevant statutory requirements, including one or more of the following conditions:
    - (i) The grant recipient warranting that it has disclosed all information material to the grant, and that all information supplied is correct;
    - (ii) The grant recipient completing any due diligence or further enquiry (if appropriate) for the purpose of ensuring the feasibility of the project;
    - (iii) The grant recipient obtaining all relevant statutory and other consents and approvals (such as resource consents, building consents, local body and regulatory authority approvals) on terms and conditions that enable it to complete the grant project in accordance with the plans, specifications and project description submitted with the grant application;



- (iv) The grant recipient obtaining all relevant board and shareholder approvals;
- (v) The grant recipient having the legal capacity to carry out the project and enter into the requisite contractual arrangements;
- (vi) The grant recipient entering into the principal contracts required to complete the relevant project;
- (vii) The grant recipient establishing an appropriate entity to hold assets and/or carry out the project;
- (viii) The grant recipient obtaining all property and other legal rights that are necessary for the project;
- (ix) The grant recipient obtaining any additional funding required to carry out the grant project (to the extent that the grant made by IA does not provide sufficient funding);
- (x) That any contract for work to be done in relation to the project must, as far as is practicable:
  - Be awarded following a competitive process approved by the grant recipient's governing body and which involves the receipt and consideration of at least two competing bids from independent parties;
  - Provide certainty on pricing and completion; and
  - Be on an industry standard form published by Standards New Zealand or similar;
- (xi) That the project will be carried out in accordance with all legal requirements (in particular the Resource Management Act 1991 and the Health and Safety in Employment Act 1992);
- (xii) Where the grant recipient is not a local authority, IA will designate a local authority to be responsible for ensuring the grant is applied to its approved purpose;
- (xiii) The project will be completed to specified standards;
- (xiv) The grant recipient carrying out the project as stated in the grant application. The grant recipient must obtain IA's approval if it cannot complete the project in accordance with the plans, specifications and project description provided in the grant application, or if variations or modifications are required;
- (xv) The grant recipient obtaining certificates from the project engineer or other qualified, impartial, independent contract



administrator approved by IA (who acknowledges that he or she owes a duty of care to IA):

- That a project milestone (as agreed with IA) has been completed as outlined in the grant application;
  - That the project has been completed in accordance with the plans, specifications, and project description included in the grant application, and a completion certificate issued; and
  - Showing the amount of capital expenditure on the project from the date IA approved the grant to the date the project was completed, and copies of the final accounts issued under the construction contract, for consultants and other project costs.
- (xvi) The grant recipient providing regular reports to IA at specified intervals including information on the progress of the project and costs, adverse events that have arisen, and the outcome of the project following its completion; and
- (xvii) The grant recipient acknowledging that the assistance provided by IA in respect of the project is limited to the amount of the grant, and IA will have no residual liabilities in respect of the project;
- (b) Conditions that ensure that the benefit of the grant is obtained by the Auckland people and region; provided that in any such case any benefit connected with any specified person or group of persons is incidental to and/or a necessary and unavoidable result of generating benefits to the community generally in the Auckland Region, including one or more of the following conditions:
- (i) The grant recipient allowing competitors to use assets that are funded by grants;
  - (ii) The grant recipient allowing general public access to certain assets;
  - (iii) The grant recipient informing the public of the existence of the services, assets or improvements (as the case may be) arising from the grant project; and
  - (iv) The grant recipient acknowledging the contribution of IA to the funding of the grant project.
- (c) Conditions that are contingent on the occurrence of some future event that would alter the assumptions inherent in making the grant, including one or more of the following conditions:



- (i) The grant recipient agreeing not to sell or dispose of its interest in assets acquired or approved as part of a project in respect of which a grant has been made unless authorised by IA;
- (ii) A condition providing that, if assets are disposed of, those assets must continue to be used in a manner that will deliver benefits to the Auckland Region generally, whether by reason of being transferred to a local authority, a subsidiary of a local authority, a competitor or otherwise;
- (iii) Rights to grants provided by IA may not be assigned;
- (iv) The grant applicant maintaining the project for the life of the asset in accordance with sound business practice;
- (v) A right for IA to cancel a grant and require repayment of amounts paid in respect of the grant if:
  - the grant recipient cannot complete the project by the specified date; or
  - the specified purpose for which the grant was made cannot be achieved; or
  - the grant was made in reliance on information that was incorrect or misleading; or
  - there are variations to the project to which the grant funds were applied that are not authorised by IA and will have a material adverse impact on the amount of benefit to the community that the project will generate; or
  - a condition upon which a grant is made is not satisfied;
- (vi) The grant recipient ensuring that any assets created as a result of the grant project remain available to be used for the benefit of the Auckland Region where the grant recipient disposes of its ownership of the assets or ceases to use them for the purposes for which the grant was made; and
- (vii) The grant recipient obtaining IA's consent prior to moving certain assets to another physical location or changing the ownership of such assets.

*Membership of IA*



13. IA is required to be operated by up to seven “members” who are appointed in accordance with the Infrastructure Auckland Deed. The members are responsible for the appointment of the Chief Executive Officer.
14. The members are appointed by a body known as the Electoral College. The Electoral College is established pursuant to the LGA and its function is set out in section 707ZZT, which provides:
  - (1) The functions of the Electoral College are—
    - (a) To appoint, in accordance with this Act and the Infrastructure Auckland deed, members of Infrastructure Auckland:
    - (b) To appoint, in accordance with this Act and the Infrastructure Auckland deed, the chairperson of Infrastructure Auckland:
    - (c) To discharge, in accordance with this Act and the Infrastructure Auckland deed, its duties in relation to Infrastructure Auckland’s statement of corporate intent:
    - (d) To monitor the performance of Infrastructure Auckland:
    - (e) To consult with the Minister from time to time about amendments to the Infrastructure Auckland deed:
    - (f) To carry out such other functions as are conferred on it by this Act or any other Act.
15. The Electoral College has eight members with each of the Manukau City Council, the Auckland City Council, the Waitakere City Council, the North Shore City Council, the Papakura District Council, the Rodney District Council, the Franklin District Council and the Auckland Regional Council being entitled to appoint one member.

*Central government involvement with IA*

16. The Minister of Local Government (“the Minister”) has a minor degree of involvement with IA.
17. The Minister has been required to prepare and sign the Infrastructure Auckland Deed. In addition the Infrastructure Auckland Deed may be amended from time to time by Order in Council made on the recommendation of the Minister after consultation with the Electoral College.
18. Pursuant to clause 46.1 of the Infrastructure Auckland Deed, the Minister, in consultation with the Electoral College, must, in the period of 12 months ending with the close of 30 September 2008, conduct a review of the activities and future of IA for the purpose of determining whether there is a continuing need for IA to make grants under section 707ZZK(1).
19. In all other material respects, IA is totally divorced from central government involvement.

### **Conditions stipulated by the Commissioner**

This Ruling is made subject to the following conditions:

- a) No direct benefit to IA will arise in respect of grants made by IA except for a market rate return to compensate IA for temporary loss of use of funds where circumstances arise which necessitate repayment of a grant previously made.
- b) Any benefit resulting from any project in respect of which a grant is made which arises to specified or identified persons or groups of persons is incidental to IA's overall purpose of providing a benefit to the Auckland Region generally.
- c) No direct benefit will arise to any member or employee of IA from any project in respect of which a grant is made except in that member or employee's capacity as a member of the community generally living in the Auckland Region.
- d) This ruling only applies in respect of grants made subject to no conditions, or subject to one or more of the conditions listed in paragraphs 12(a), 12(b), or 12(c) of the Arrangement, and will not apply in respect of any grant which contains conditions which are not listed in paragraphs 12(a), 12(b), or 12(c) if such conditions are inconsistent with the conditions listed in such paragraphs.
- e) The criteria specified in clause 5.2 of the Infrastructure Auckland Deed are the sole criteria that IA will use in determining whether to offer a grant.

### **How the Taxation Law applies to the Arrangement**

Subject in all respects to any assumption or condition stated above, the Taxation Law applies to the Arrangement as follows:

- The grant payments that the grant recipients receive from IA will not be deemed to be consideration for a supply of goods or services pursuant to section 5(6D).
- The grant recipients will not be required to account for GST pursuant to section 8(1) in respect of the grant payments they receive from IA.

### **The period or income year for which this Ruling applies**

This Ruling will apply for the period from 5 May 2004 to 4 May 2009.

This Ruling is signed by me on the 12<sup>th</sup> day of March 2004.

**M L Spelman**  
Manager (Corporates)