

7. GST & FINANCIAL CONTRIBUTIONS MADE UNDER THE RESOURCE MANAGEMENT ACT

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The purposes of this report are:

1. To seek comment on whether the Council should make a submission on the draft public rulings on Goods & Services Tax (GST) on financial contributions made under the Resource Management Act (RMA) and, if it does, whether the submission should be based on the attached advice provided by Denis Sheard of Buddle Findlay.
2. To seek confirmation as to whether the Council wishes to change the manner in which it sets the amounts of the financial contributions it collects under the Resource Management Act to prevent any possible problems should the draft public rulings be issued in their current form.

This report is being considered by both the Regulatory and Consents Committee and the Strategy and Finance Committee.

BACKGROUND

Under section 91D of the Tax Administration Act 1994, the Commissioner of Inland Revenue Department can issue binding public rulings that prescribe how specified sections of the GST Act are to be interpreted.

The Commissioner has prepared four draft rulings to replace public ruling BR Pub 97/2 that was published in TIB Volume 9, No 3, March 1997, and applied up until 30 April 2000. The Inland Revenue Department advises, "The conclusion reached in the earlier ruling has tentatively changed." If these draft rulings are adopted as the new public binding rulings then roads, reserves, etc, that vest with the Council on subdivision will no longer be regarded as taxable supplies and therefore GST will not apply to the transactions. Similarly, cash in lieu of reserve contributions would no longer be regarded as taxable supplies and therefore GST would not apply to these transactions.

The proposed GST changes above could potentially advantage the Council and disadvantage property developers. Where the financial contributions are calculated on a GST inclusive basis then the Council will not have to account for any on the payment but the developer will be unable to make a claim. For example, if a cash in lieu of reserve contribution was based on a GST inclusive value of a subdivision of \$120,000 then the amount payable would be \$9,000. Currently, the Council pays \$1,000 of the amount received to the Inland Revenue Department as GST leaving a net contribution received of \$8,000.

Attached is a legal opinion from Denis Sheard of Buddle Findlay which outlines in more detail the implications for the Council of the draft rulings and the issues that could or should be included in a submission.

OPTIONS

Do not make a submission and leave the basis for calculation of financial contributions under the RMA as they currently are.

Advantages

No action is required now.

Effort would not be wasted if the Inland Revenue reverses its proposed draft public rulings. However, this is unlikely.

Disadvantages

The Council and other local authorities may be bound by a public ruling that is confusing and does not correctly address all the relevant issues.

The Council may be forced during the coming financial year to amend its basis for calculation of financial contributions under the RMA so the developers and the Council are in the same net cost and revenue positions.

Make a submission but leave the basis for calculation of financial contributions under the RMA as they currently are.

Advantages

Reduced likelihood of the Council and other local authorities being bound by a public ruling that is confusing and does not correctly address all the relevant issues.

Disadvantages

The Council may be forced during the coming financial year to amend its basis for calculation of financial contributions under the RMA so the developers and the Council are in the same net cost and revenue positions as currently exist.

Make a submission and change the basis for calculation of financial contributions under the RMA so they are all calculated based on the GST exclusive value of the development plus GST if any.

Advantages

Reduced likelihood of the Council and other local authorities being bound by a public ruling that is confusing and does not correctly address all the relevant issues.

The Council would not be forced during the coming financial year to amend its basis for calculation of financial contributions under the RMA so the developers and the Council are in the same net cost and revenue positions if the substance of the draft public rulings are adopted as the public rulings issued.

Disadvantages

Effort would be wasted if the Inland Revenue reverses its proposed draft public rulings. However, this is unlikely.

Staff

- Recommendation:**
1. That a submission be made on the draft public rulings incorporating the points raised in the attached legal opinion from Buddle Findlay.
 2. That the basis for calculation for all financial contributions under the RMA be changed so they are all calculated based on the GST exclusive value of the development plus GST if any.

Chair's

- Recommendation:** That the above recommendation be adopted.