



CR 2013/41 - Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to enforcement activities, essential services, provision of information, use of professional and staff time and works

 This cover sheet is provided for information only. It does not form part of *CR 2013/41 - Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to enforcement activities, essential services, provision of information, use of professional and staff time and works*

 This document has changed over time. This is a consolidated version of the ruling which was published on *12 June 2013*



Class Ruling

Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to enforcement activities, essential services, provision of information, use of professional and staff time and works

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- Section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act);
- Division 81 of the GST Act; and
- Regulation 81 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (GST Regulations).

Unless otherwise stated, all legislative references in this Ruling are to the GST Act.

Class of entities

3. The class of entities to which this Ruling applies consists of all councils that are members of the Local Government and Shires Association of New South Wales (NSW).
4. Within this Ruling the class of entities is collectively referred to as Council.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 11 to 18 of this Ruling.
7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then this Ruling:
 - has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - may be withdrawn or modified.
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Date of effect

9. This Ruling applies from 1 July 2013 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

10. The following description of the scheme is based on information provided by the applicant.
11. The scheme incorporates the supplies made and payments received by NSW Councils in relation to management and enforcement of regulatory functions, essential services, fines, information, professional time, staff time and works.
12. Council is an Australian government agency.
13. Council is registered for goods and services tax (GST).
14. The supplies made by Council are connected with Australia and made in the course or furtherance of Council's enterprise.
15. By force of section 220 of the *Local Government Act NSW 1993* (LG Act), Council is a body politic of the State of NSW with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
16. Council is empowered under the LG Act to:
 - provide goods, services and facilities and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
 - maintain responsibility for administering the regulatory systems under the LG Act, and
 - manage, improve and develop the resources of their local government areas.
17. Council levies charges for goods and services under various sections of the LG Act and the other NSW State statutes¹. In particular, under subsection 608(1) of the LG Act, Council may charge and recover a fee for any service it provides.

Ruling

18. This Ruling addresses the GST treatment of supplies made by Council in relation to enforcement activities, essential services, provision of information, use of professional and staff time and works services for which particular fees and charges are imposed. The following table sets out the GST treatment.
19. In this Ruling:
 - when we indicate a fee or charge relates to a taxable supply under section 9-5, we assume that all of the requirements of section 9-5 have been met and that the supply is not otherwise GST-free or input taxed under other provisions of the GST Act; and

¹ Details of these statutes are contained in Appendix 2.

- if a fee or charge is not consideration for a supply and is not subject to GST by virtue of Division 81, it is referred to as being 'exempt'.

Enforcement Activities

Fees and Charges	Description	GST Treatment
Fee for combined EPA Act section 121ZP and LG Act section 735A certificate	Combined Local Government (LG) Notice in relation to land and buildings under section 735A of the <i>Local Government Act 1993</i> (LG Act) and an Environmental Planning and Assessment (EPA) Notice under section 121B of the <i>Environmental Planning and Assessment Act 1979</i> (EPA Act). Where the 2 certificates are applied for at the same time and council charges a single fee for both.	Exempt – subsection 81-10(5) as a fee relating to information
Fee for Certificate as to outstanding notices and orders section 121ZP of the EPA Act	Generally relates to outstanding Notices and Orders relevant to building and development activities.	Exempt – subsection 81-10(5) as a fee relating to information
Fee for LG Act section 735A certificate as to outstanding notices and orders	Relates to any outstanding notice, order, direction or demand but only to those matters issued under the Local Government Act.	Exempt – subsection 81-10(5) as a fee relating to information.
Penalty Infringement Notice (PIN) under EPA Act	Statutory fine for unauthorised works or activities or failure to comply with an Order under the Environmental Planning and Assessment Act, section 126 EPAA – Penalties; Schedule 5 and clause 284, EPA Regulation – Penalty notice offences.	Not subject to GST. Penalty; the payment is not in connection with, in response to or for the inducement of a supply.
Compliance Inspection fee (PEOA)	This fee may be used for the recovery of compliance costs under the Protection of the Environment Operations Act 1997 (PEOA). Includes cost of land remediation. PEOA section 104 – Compliance cost notices.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Clean Up Notice Administration fee	Overgrown land and clearing of same under LG ACT and PEOA	Exempt – paragraph 81-15.01(1)(d) of the

Fees and Charges	Description	GST Treatment
(PEOA)	<p>section 94.</p> <p>The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving clean-up notices.</p> <p>A person who is given a clean-up notice by a regulatory authority must within 30 days pay the prescribed fee to the authority.</p>	GST Regulations.
Fee for a notice under the PEOA	<p>Protection of the Environment Operations Notice. Generic descriptor if type of notice is not specified.</p> <p>Fee for the administration of a notice given under the PEOA, such as a clean-up notice; prevention notice; noise control notice; compliance cost notice; it includes call out costs for staff (per hour). It is not mandatory to charge the prescribed fee of \$455. Council will advise on each particular instance.</p> <p>PEOA section 100 – Fee:</p> <p>(1) The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving prevention notices.</p> <p>(2) A person who is given a prevention notice by a regulatory authority must within 30 days pay the prescribed fee to the authority.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Noise Control Notice Administration fee	<p>Includes inspection fees for noise control monitoring.</p> <p>PEOA s 267A – Fee:</p> <p>(1) The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving noise control notices.</p> <p>(2) A person who is given a noise control notice by a regulatory authority must</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	within 30 days pay the prescribed fee to the authority.	
Food premises Improvement notice fee – including inspection	An authorised officer may issue an Improvement Notice under the Food Act. Regulation 6 of the Food Regulation 2010, prescribes a fee of \$330 where an Improvement notice is issued.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Environmental Audit fee	Environmental Auditing fee – flat fee or based on time charged. Includes fee for reinspection / re-audit after a section 18 of PEOA notice. Environmental Monitoring section 608 of the LG Act Section 172 of PEOA, Nature of environmental audit An environmental audit is a documented evaluation of an activity (including an evaluation of management practices, systems and plant) for either or both of the following purposes: (a) to provide information to the persons managing the activity on compliance with legal requirements, codes of practice and relevant policies relating to the protection of the environment, (b) to enable those persons to determine whether the way the activity is carried on can be improved in order to protect the environment and to minimise waste.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Prevention Notice Administration fee (PEOA)	Overgrown land and clearing of same under LG Act. Protection of the Environment Operations Act 1997 section 100 – Fee: (1) The purpose of this section is to enable a regulatory authority to recover the administrative costs of preparing and giving prevention notices.	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	A person who is given a prevention notice by a regulatory authority must within 30 days pay the prescribed fee to the authority.	
Administration fee	Fee for unreported road openings.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Administration fee in relation to fines	<p>Administration fee in relation to fines. May include fee charged for validation of a fine, such as the provision of digital photographs.</p> <p>This fee is designed to recoup council's costs in undertaking the regulatory activity of imposing fines for offences.</p>	<p>Exempt – subsection 81-10(5) as a fee relating to information</p> <p>Also exempt under paragraph 81-15.01(1)(d) of the GST Regulations</p>
OHS / WorkCover Inspection fee	<p>Occupational Health and Safety inspections. These inspections are to ensure compliance with occupational health and safety, workers compensation and injury management legislation. Compliance with the relevant legislation is required for employers to continue working. Employers must submit to inspections in order to operate and therefore the inspection is in the nature of a permission / licence or authority to carry on business.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Essential Services		
Recovery of government charges	<p>Recovery of fee paid to the Fire Commissioner for the Commissioner to produce a report prior to council issuing an occupation certificate.</p> <p>A NSW Fire Brigades Final Fire Safety Report is required by Clause 152 of the Environmental Planning and Assessment Regulation.</p> <p>May also include recovery of fees imposed by NSW Fire & Rescue (or another government body) for consulting services tendered.</p>	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	Any charge invoiced to Council by the NSW Fire Brigades under Clause 54 of the Fire Brigades Regulation 2008, payable by the relevant Occupation Certificate applicant prior to Council issuing any Occupation Certificate for the building development.	
Annual Inspection fee	Annual Inspection – An inspection that is a regulatory function or related to a permission or licence to conduct business or is health related.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Provision of Information		
Service fee for distribution of information on behalf of a third party	Fee charged to a third party for council's services in supplying information prepared by the third party to ratepayers. For example, where council charges a fee to the Valuer General's office to insert an informational pamphlet / flyer in rates notices posted to ratepayers.	Taxable section 9-5 Consideration is in connection with a supply of distribution services for the third party.
Fee for Certified Copy of document, map or plan	Certified copy of document, map or plan. Includes a zoning plan certified under section 150. Includes zoning certification. Certified zoning plan, fee for certification of survey plans – clerk's certificate. Issue of EPA, subsection 150(2) certified copy. EPA Regulation 262. Fee for certified copy of document, map or plan held by Department or council (clause 108 of EP&A Regulation 1994). The prescribed fee for a certified copy of a document, map or plan referred to in subsection 150 (2) of the EPA Act is \$53.	Exempt – subsection 81-10(5) as a fee relating to information
Flood Certificate fee	Fee for the provision of a Flood Certificate from Council. Also includes a Development Restrictions Certificate – Flooding/Tidal Inundation'. Certificate provides information	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	<p>on observed and probable flood levels, ground levels, floor levels of existing buildings, filling requirements, compliance with Council's floor height requirements, policies for construction of new buildings and extensions to existing buildings and other information pertaining to flooding. Where council and where applicant supplies survey plan(s) showing site levels & building floor heights on AHD.</p> <p>Flood control land certificate.</p>	
Flood Level Report fee	<p>Fee for obtaining a flood level report for an area. Includes residential, development/duplex areas, and commercial areas. Also includes associated administration fees, application fee, and file search fees.</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Food Business Notification Fee	<p>Fee payable when Council opts to accept notifications on behalf of the Food Authority and forward those notifications to the Food Authority.</p> <p>Food Regulation 2010, Part 3, Clause 18.</p> <p>(3) A local council that performs the service of accepting and forwarding a notification under subclause (2) may charge a fee for that service not exceeding the following:</p> <ul style="list-style-type: none"> (a) if the notification relates to 5 food premises or less – \$50, (b) if the notification relates to more than 5 food premises – \$10 per premises 	Exempt – subsection 81-10(5) as a fee relating to information.
Food Premises Data Notification (NAFSIS) fee	<p>Most businesses that sell food in NSW must officially notify food standards enforcement agencies of their food business details.</p> <p>Food Act 2003, s 100 – Notification of conduct of food business.</p> <p>(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written</p>	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted.	
Open Access Information	Government Information Public Access Act 2009 (GIPA Act). Note: Charges may apply, provided one method of access is free (section 6). Reasonable photocopying charges apply – (GIPA Regulations, Clause 4(1)(b)).	Exempt – subsection 81-10(5) as a fee relating to information.
Formal Access Applications – Other information	Application fee includes first hour of processing – GIPA Act, subsection 64(3). Includes application and processing fees for amendment of records.	Exempt – subsection 81-10(5) as a fee relating to information
Processing fee for formal access applications – personal and other	GIPA Act.	Exempt – subsection 81-10(5) as a fee relating to information.
Formal Access Applications – Personal information	GIPA Act: Personal information applications include the first 20 hours of processing free (GIPA Act, subsection 64(3)). Includes application and processing fees for amendment of records.	Exempt – subsection 81-10(5) as a fee relating to information.
Information released informally upon request	Fees may not be applied.	Exempt – subsection 81-10(5) as a fee relating to information.
Information released proactively	Authorised proactive release of government information. Either free of charge or at the lowest reasonable cost to Council (GIPA Act, section 7).	Exempt – subsection 81-10(5) as a fee relating to information.
Internal Review GIPA	Application for an internal review – (GIPA Act, section 85). No fee is payable for an internal review of a deemed refusal.	Exempt – subsection 81-10(5) as a fee relating to information.
GIS fees	Geographic Information Systems (GIS) Fees (Digital Mapping). For planning series maps, standard base maps, standard	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	<p>planning maps, custom base maps, custom planning maps, street maps, GIS data extras (via email, CD or other digital storage medium).</p> <p>Geographic Information System (GIS) data, is a digital representation of the real world used to depict spatial features and topographic data in maps.</p> <p>Charged by size of print that is A4, A3, A2, A1 and in black & white, colour or air photo. Eview print. GIS plots including Aerial Photography. ALS spot heights or ALS contours, (airborne laser scanning).</p> <p>Digital Orthophotography which combines the image characteristics of an aerial photograph with the geometric qualities of a map. Unlike a typical aerial photograph, distortions due to relief displacement (hills, stream valleys, and buildings), camera lens, and aircraft attitude have been removed so that all ground features are shown in their correct ground positions. This makes a true image map possible and permits direct measurement of distances, areas, angles, and the detailed portions of ground features that are typically omitted or generalized on traditional maps. In a digital format, orthophotography fulfills a fundamental role as a geometrically accurate base map. All electronic forms of data eg PDF, TIPP, JPG format.</p>	
Raster Data fees	<p>Raster Data – Raster graphics is the representation of images as a collection of pixels and is used as the graphic type for actual digital photographic images. Per Square-km based on Council's Index Grid.</p> <p>Provided under the NSW Government Information (Public Access) Act 2009 (GIPA Act).</p>	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
Vector Data fees	Vector graphics are the representation of images as a collection of points, lines, curves and polygons, and is used as the graphic type for computer generated images. Per Square-km based on Council's Index Grid.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	<p>The NSW Government Information (Public Access) Act 2009 (GIPA) came into force on 1 July 2010, replacing the NSW Freedom of Information Act.</p> <p>Under GIPA, all information retained by council is 'government information' subject to disclosure unless there is an overriding public interest against disclosure or if the information is protected by the Privacy and Personal Information Protection Act 1998 (PIPA Act).</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Fee to access required Information	<p>View the register required under section 308 of the <i>Protection of the Environment Operations Act 1997</i> (PEO Act).</p> <p>Obtain a copy or extract of the register.</p> <p>Section 308 of the PEO Act provides for a register of information to be kept. Section 309 requires council to make the information in the register available.</p> <p>(1) A copy of the public register is to be available for public inspection at the principal office of the regulatory authority and at such other places as that authority thinks fit.</p> <p>(2) A copy of any part of the register may be obtained by members of the public from the regulatory authority.</p> <p>(3) The regulations may prescribe any or all of the following:</p> <p>(c) fees for the inspection of the register,</p>	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	(d) fees for copies of parts of the register.	
Certification of Section 603 rates certificate	<p>Rates Certificate under section 603 of the LG Act; Includes fees associated with electronic service delivery of certificate via email / fax.</p> <p>Includes subsequent enquiry to check details (not changed) and reprinting the rates certificate and rates notices.</p> <p>Under section 603 of the LG Act a person may apply to the council for a certificate as to the amount (if any) due or payable to the council, by way of rates, charges or otherwise, in respect of a parcel of land.</p> <p>The application must be in the approved form and be accompanied by the approved fee.</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Section 605 Expenses of tracing persons	<p>Section 605 LG Act Expenses of tracing persons, the expenses may be recovered as rates or charges.</p> <p>A council may add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.</p> <p>Those expenses may be recovered as rates or charges, at the same time as any rates or charges and without the need to give any notice concerning them.</p>	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.
Section 603 -Certificate as to rates and charges	<p>Section 603 Refund Penalty Charge</p> <p>This fee relates to the supply of information that is of a regulatory nature.</p>	Exempt – subsection 81-10(5) as a fee relating to information
Recovery of costs incurred in performing a function or reaching a decision	<p>Recovery of costs of entry and inspection for enforcement action under Section 197 of the Local Government Act.</p> <p>If a person, authorised by a council, enters any premises under this Part for the purpose of</p>	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	making an inspection and as a result of that inspection, under a power conferred on the council, the council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.	
Recovery of costs incurred in performing a function or reaching a decision	<p>Recovery of costs for provision of information that council is required to provide – where council elects to only recover the costs it incurred in either producing the publication or whatever or obtaining the publication/otherwise from its source.</p> <p>This fee is designed to compensate council for costs incurred in undertaking a regulatory activity and is also related to information that is of a regulatory nature.</p>	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.
Fee for swimming pool register	<p>Refers to a fee for a list of all pools that have been registered and certified by council.</p> <p>This fee relates to the supply of information that is of a regulatory nature.</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Relationship Registry fee	<p>Where Council maintains a registry of <i>de facto</i> and same sex couples as a means of recognising the relationship of both same sex and <i>de facto</i> couples. Although registration does not confer legal rights, it allows couples to make a written declaration that they are mutually committed to sharing their lives together.</p> <p>This fee relates to the supply of information that is of a regulatory nature.</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Purchasing Enquiry report fee	<p>Purchasing Enquiry Report for prospective buyers of commercial premises – hourly rate.</p> <p>This fee relates to the supply of information that is of a regulatory</p>	Exempt – subsection 81-10(5) as a fee relating to information

Fees and Charges	Description	GST Treatment
	nature.	
Fee for accessing or printing required information	Search and copies of Plans This fee relates to the supply of information that is of a regulatory nature LG Act Section 608(2).	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Copy of call recording. This fee relates to the supply of information that is of a regulatory nature.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Exempt – Information.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Electronic copies of hydrologic and / or hydraulic mathematical models – including copy of relevant plan(s) and provided on CD or email. This fee relates to the supply of information that is of a regulatory nature.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Fee for provision of standard engineering specifications such as development design, development construction and road works. This fee relates to the supply of information that is of a regulatory nature.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee to access required Information	View Immunisation Records. Outstanding notice certificate – health. Includes fees charged to perform a search and any fees payable to copy records/produce extracts of the records. This fee relates to the supply of information that is of a regulatory nature.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Adopted Plans & Policies: Fees for the provision of Local Environmental Plans (LEPs); Planning Scheme Ordinances; Development Control Plans (DCPs); Section 94 of the <i>Environmental Planning and Assessment Act 1979</i> (EPA Act) Contributions Plans; stormwater management specifications;	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	<p>planning agreements policies; Local Approvals Policy; Engineering Guide for Developments; Works Specifications; Standard Terms of Recital of Easements ALSO includes Copy of documents where documents must be certified/stamped; all documents required to be made public under LG ACT including contaminated land information, Site Audit Statements; Reports such as State of Environment Report; Planning Maps; Developer Contributions Plans; Studies; Reviews; Policies; Plans of Management; Strategies; Local Approvals Policies; Management Plans; May include file retrieval fees. Includes engineering plans and other engineering assets. May include fee to produce a copy of a certificate, such as an occupation certificate or other Part 4 certificates. Includes fee to access.</p> <p>Development and Building information (in writing or otherwise). Contaminated Land; LEP; DCP; Planning Maps; engineering plans; engineering assets; planning studies; heritage studies; corporate plan; annual financial report; annual budget; section 94 EPA Act contribution plans; flood studies; flood management plan; fee for accessing photograph from infringement.</p> <p>LG Act section 608; LG ACT section 167 – Public availability of local policy; LG ACT section 364 – Public availability of the code.</p> <p>EPA Act section 25AC – Purchase of copies of development control plans.</p> <p>Copies of a development control plan (including any document referred to in a development control plan such as a supporting map, plan, diagram, illustration or other material) are to be made</p>	

Fees and Charges	Description	GST Treatment
	available for purchase from the principal office of the relevant planning authority that prepared the plan. EPA Act section 38 – Copies of contributions plans to be publicly available.	
Fee for accessing or printing required information	Reference to a Valuation List/Rate Book and furnishing information as to valuations including certificate of valuation, details as to Rates and Charges, Balances or reporting the result of such reference. Rate information for domestic or commercial, mining, or farmland. Includes fees for enquiries such as a written property enquiry, property reports, sales listings, notices of sale, rates notice, rates instalment notice. Supervision fee for council staff to supervise the perusal or search of files. Property Listings(CD version), including provision of Council staff to supervise the perusal of files/records	Exempt – subsection 81-10(5) as a fee relating to information
Fee for accessing or printing required information	Fee per enquiry – Furnished verbally for flat fee if enquiry less than 5 minutes to answer but if more than 5 minutes charged per half hour; or search of prior valuation records or rate book if microfilmed – per hour or part thereof.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Search of prior valuation records or rate book if microfilmed – per hour or part thereof.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Section 11 of the LG Act gives reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, a Council meeting.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Verbally supplied where customer prepays annual fee. Information services.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing	Verbally supplied where annual charge unwarranted, then hourly	Exempt – subsection 81-10(5)

Fees and Charges	Description	GST Treatment
required information	fee.	as a fee relating to information.
Fee for accessing or printing required information	Requests for statistical information, etc. will be charged at different rates depending on the type of customer.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Directories, lists of entries, such as DAs (whether annual, one off, etc) – cost will be dependent on contents). Publications/council papers including monthly/annual delivery fee.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Schedule of rates contracts, tender documents and plans.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Business papers on any basis, such as a one off or yearly basis, company search / business search. Annual reports. Delivery plans.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Committee papers, transcripts of meetings, charged per copy or per annum or per hour.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	From Council's Microform	Exempt – subsection 81-10(5) as a fee relating to information
Fee for accessing or printing required information	Photocopying from Council Documents; includes administration fees; overtime fees; fees for preparing a record for copying.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Application, processing fee per hour, review fee.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Photocopy Charges associated with the provision of miscellaneous regulatory information	Exempt – subsection 81-10(5) as a fee relating to information
Fee for accessing or printing required information	Property Search Processing Fee Provision of photocopies, tapes etc.(per hour or by other basis). Access to Information. Where a written reply and a search of council's records is required.	Exempt – subsection 81-10(5) as a fee relating to information

Fees and Charges	Description	GST Treatment
Fee for accessing or printing required information	Access to Information Where an audio recording is required of a council meeting.	Exempt – subsection 81-10(5) as a fee relating to information
Fee for accessing or printing required information	Fee for access to personal information pursuant to sections 13 & 14 of the Privacy & Personal Information Protection Act 1998 (PIIP Act). A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Application or renewal fee for Council to release, vary or modify real property documents	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Search of cemetery records	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Request for Information. Provision of Airborne Laser Scanning – Digital Elevation Model data.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Mapping data provided in ASCII format only Cost per tile (that is 1 tile = 1km ²) Minimum size per order is one tile. Data.	Exempt – subsection 81-10(5) as a fee relating to information.
Administrative / Processing fee for accessing or printing required information	This fee is designed to compensate council for costs incurred in the provision of information that is of a regulatory nature.	Exempt – subsection 81-10(5) as a fee relating to information.
Notification of DA approvals	Includes notification services, such as those notifying subscribers of sale of buildings/development approval records.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for utilisation of staff for various activities	Council staff such as librarian or archivist carries out detailed search/research, preliminary or professional search for a fee. Includes valuations conducted by	Exempt – subsection 81-10(5) as a fee relating to information.

Fees and Charges	Description	GST Treatment
	Council's appointed Valuer or any other situation where council must act or perform and activity in order to provide government information upon request.	
Tender documents fee	Fee to obtain tender documents and expressions of interest documents under section 608 LG Act and Regulation 170 of Local Government (General) Regulation 2005.	Exempt – subsection 81-10(5) as a fee relating to information.
Fee for accessing or printing required information	Includes Statement of Available Pressure Flow	Exempt – subsection 81-10(5) as a fee relating to information.
Outstanding Rates Certificate fee	<p>Relates to water rates.</p> <p>Water Management Act section 360 – Certificate as to amount due:</p> <p>(1) A charging authority must, on written application being made to it and payment of the fee determined by it, issue to the applicant a certificate:</p> <p>(a) Containing particulars of any amounts payable to the authority in respect of a parcel of separately assessed land, or</p> <p>(b) to the effect that there are no such amounts.</p>	Exempt – subsection 81-10(5) as a fee relating to information.
Professional Time		
Administration fee for Council processing professionally-prepared advice and documents	<p>Where Council has had to process/prepare/ consider professionally prepared (either in-house or via an external service provider) advice and/or documents in relation to matters dealing with Council property or matters where council needs to make a decision.</p> <p>Examples are preparing leases, sale of council property/land or development applications or the issuing of certificates etc.</p> <p>Includes road closure requests,</p>	<p>Supplies may be taxable or exempt.</p> <p>Whether the consideration is for a taxable supply will depend on what, if anything, is supplied.</p> <p>This fee is taxable except to the extent the fee is to compensate council for costs incurred in undertaking</p>

Fees and Charges	Description	GST Treatment
	<p>licences/leases, consents to assignment, surrenders and other dealings.</p> <p>Council's costs may also include costs paid to external consultants and service providers for writing reports for council.</p>	<p>regulatory activities, or for a supply that is regulatory in nature.</p> <p>Exempt under paragraph 81-15.01(1)(d) or paragraph 81-15.01(1)(f) of the GST Regulations.</p>
<p>Recovery of professional fees and charges incurred when dealing with Council Property</p>	<p>Where Council has been billed for professional services for the provision of services when dealing with Council property – i.e. preparing leases, sale of council property/land etc. Includes road closure requests, licences/leases, consents to assignment, surrenders and other dealings. Includes recovery of charges incurred for external services, such as title searches, registration fees etc.</p> <p>This fee is taxable except to the extent the fee is to compensate council for costs incurred in undertaking regulatory activities. Council's costs may also include costs paid to external consultants and service providers for writing reports for council.</p>	<p>Taxable if related to a supply of property</p> <p>Recovery of cost in relation to regulatory activity is exempt – paragraph 81-15.01(1)(d) of the GST Regulations.</p>
<p>Professional fees for time of Professional Officer of Council – Enforcement staff</p>	<p>Labour Costs for Waste Enforcement Officer, Regulations Inspectors and Supervisors.</p> <p>This fee is to compensate council for costs incurred in undertaking regulatory activities under the <i>Protection of the Environment Operations Act 1997</i>.</p>	<p>Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.</p>
<p>Professional fees for time of Professional Officer of Council – Enforcement staff</p>	<p>Request for food premises inspection and the provision of a written status report.</p> <p>Under the <i>Food Act 2003</i> it is an offence to handle food in an unsafe manner.</p> <p>This fee is to compensate council for costs incurred in undertaking regulatory activities.</p>	<p>Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.</p>
<p>Professional fees for time of Professional</p>	<p>Includes time spent referring a matter of dispute/subject to amendment (or documents/plans</p>	<p>Exempt – paragraph 81-15.01(1)(f) of the</p>

Fees and Charges	Description	GST Treatment
Officer of Council – Internal review building and planning	relating to any such matter) internally or otherwise.	GST Regulations.
Professional fees for time of Professional Officer of Council – Testing and analysis services related to building and planning applications	May include preparation of Shadow analysis testing for development applications.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Professional fees for time of Professional Officer of Council – Testing and analysis services related to building and planning applications	Energy Efficiency Rating Assessments under the Nationwide House Energy Rating Scheme (NatHERS). NatHERS enables the design of a home to be assessed by skilled professionals using sophisticated computer modeling programmes to improve the quality of design and achieve building approvals.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Professional fees for time of Professional Officer of Council – Testing and analysis services related to building and planning applications	Also includes review and approval of minor internal changes to sewer, drainage and pump station plans, also includes extension of same.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Professional fees for time of Professional Officer of Council	For time spent by a Professional Officer dealing with matters such as call outs for pollution outbreaks, fire safety surveys of buildings, other specialised services inclusive of those associated with related council programs. Includes time spent processing requests to purchase Council land (such as easements, access ways etc), including establishing market value. Includes fees charged for town planning enquiries. Also includes advisory services, such as the provision of road widening advice. For time spent by council	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	providing an assessment of a matter/to determine the status of a matter. Fire safety advice fee.	
Staff Time		
Administration fee for in-house meeting requested by applicant	<p>Fee for administration & staff attendance at 'in-house' meetings with Councillors when requested by applicant & agreed to by Director.</p> <p>This is a special or out of the ordinary type of meeting where a development application applicant can request a special meeting with councillors for a fee. Equivalent to pre DA meeting which become taxable under the Div 81 and Regulations.</p>	Taxable section 9-5
Fee for lifeguard hire	Beach events; Lifeguard hire for private function e.g. picnic or birthday etc. or on beach; lifeguard on jetbike or jetski or Inflatable Rescue Boat (IRB) or 4 x 4; at council beach; per hour rate. Lifeguard may also be hired for waste removal from beach after event.	Taxable section 9-5.
Fee for Caretaking Service	Fee charged where council performs landscaping and/or caretaking services on the green / natural areas in front of commercial properties with public road frontage.	Taxable section 9-5.
Fee for preparation of documents for appeals / legal proceedings	Fee for Council's time in preparing or amending documents for use in appeals or other proceedings. May involve the time spent by council, its expert or otherwise in the preparation of any such documents used in appeals or legal proceedings. Includes fee for provision of copy of deed of agreement as shown on 149 certificates.	Taxable section 9-5.
Ranger fees	Generally an hourly fee per ranger where there are activities or incidents on Crown land that required the attendance of rangers or organised events requiring the attendance of	Taxable section 9-5.

Fees and Charges	Description	GST Treatment
	<p>rangers.</p> <p>Unless relating to impounding of animals in which case the ranger fees are for a supply that is regulatory in nature and is therefore exempt.</p>	
Supervision fee	<p>Admin and supervision charges for new road works including vehicle crossings. May also include an additional fee per car on site. Also includes where council charges a fee for supervision over implementation of subdivision plans and where council charges a fee for supervision of a sewer pumping station installation.</p> <p>These fees are typically charged by council in relation to protection of council's assets such as footpaths and roadways. For example, if a ratepayer wants to rebuild a footpath, the council may let them do it but charge a fee to ensure compliance with standards.</p> <p>If the fee is related to supervision in connection with a construction certificate for subdivision works, then this fee is contestable and taxable. If the supervision is related to the issue of a subdivision certificate, then the fee is not contestable and is exempt.</p> <p>If the fee is related to supervision of a sewer pumping station or some other infrastructure that becomes council property then the fee is regulatory in nature and exempt.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Labour hire fee	Trade Services : Fee for provision of labour for various services, including handypersons, carpenters, plumbers, electricians, gardeners, painting, graffiti removal, installation or removal of signs or banners, building cleaning, carpet cleaning etc.	Taxable section 9-5
Fee for utilisation of staff for various	Activities include exam supervision. Includes vegetation	Taxable section 9-5

Fees and Charges	Description	GST Treatment
activities	management services such as seed collection, bush regeneration, vegetation management, environmental technical services, etc. Also includes council's central reservation service for booking accommodation and tickets for various activities as well as registering guests.	
Fee for venue staff for hired halls, theatres, public halls etc.	Venue staff for hired halls, set up equipment or venue, theatres, public halls, council properties etc. Includes supervision fees where the hire of a hall/venue must be supervised. Venue supervisor, after hours staffing, security staff, technician, Usher, tour guides, wait/bar staff, merchandise seller, front of house manager, cleaning etc.	Taxable section 9-5
Line marking fee	Driveway line marking such as 'no parking' next to a private driveway. The requirement to mark local roads with lines indicating where cars can park or not park etc is an example of a council exercising its regulatory authority and the fee is for the exercising or amendment of that authority.	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Investigation fee	May be a flat fee but amount of fee dependent on staff time involved. This fee is exempt to the extent it is to compensate council for costs incurred in providing information that is of a regulatory nature.	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.
Preparation of space fee	Preparation of facility space by staff prior to use by the hirer of the facility.	Taxable section 9-5 and paragraph 81-10.01(1)(c) of the GST Regulations.
Works Services		
On-site meeting fee	Australian Rail Track Corporation (ARTC) On-site meeting fee.	Taxable section 9-5
Works charge	Compulsory contribution to the cost of constructing or paving	Exempt – paragraph 81-15.01(1)(f) of the

Fees and Charges	Description	GST Treatment
	<p>any kerb, gutter and/or footpath construction. Also includes recovery of all of the cost of constructing or repairing a special crossing. Infrastructure maintenance fees such as access to property maintenance and installation including gutter crossings, driveways and piped accesses.</p> <p>Section 217 of the Roads Act 1993 provides that a Roads Authority may recover cost of paving, kerbing and guttering footways:</p> <p>(1) The owner of land adjoining a public road is liable to contribute to the cost incurred by a roads authority in constructing or paving any kerb, gutter or footway along the side of the public road adjacent to the land.</p> <p>(2) The amount of the contribution is to be such amount (not more than half of the cost) as the roads authority may determine.</p> <p>(3) The owner of land the subject of such a determination becomes liable to pay the amount determined on receiving notice of that amount.</p> <p>Section 218 of the Roads Act 1993 provides that a Roads Authority may recover cost of constructing or repairing a special crossing:</p> <p>(1) The owner of land adjoining a public road is liable to pay to the appropriate roads authority the cost incurred by the roads authority in constructing or repairing any special crossing over a footway in the public road for the traffic of vehicles across the footway to or from the land.</p> <p>Section 7 of the Roads Act 1993 provides that a council is a roads</p>	<p>GST Regulations.</p>

Fees and Charges	Description	GST Treatment
	authority.	
Works Inspection fee	<p>Inspection fee for vehicle Crossing or Entrances undertaken by ratepayer to council specifications. Any reinspection fee for non conformance or otherwise.</p> <p>The requirement for an inspection of the vehicle crossing is a regulatory function of council and is a condition for the permission to undertake the construction of the works. The crossing joins a road for which council is a roads authority.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Works Inspection fee	<p>Fee for inspection of works – charged by the hour or part thereof. Applies to residential, multi-unit or commercial premises.</p> <p>Property entrance inspection fees.</p> <p>Fee for inspection of stormwater and drainage works.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Private Works charge – owner/developer initiated	<p>Council can supply works services to customers either on private land or on the road (which includes footpaths, driveway crossings and nature strips). The customer may be a ratepayer, a developer or a public authority. Council is authorised under section 67 of the LG Act to provide private works which means that a council may, by agreement with the owner or occupier of any private land, carry out on the land any kind of work that may lawfully be carried out on the land. Section 67 provides examples including paving and road marking; kerbing and guttering; fencing and ditching; tree planting and tree maintenance; demolition and excavation; land clearing and tree felling; water, sewerage and drainage connections; gas and electricity connections. If a ratepayer needs a driveway or footpath constructed or repaired,</p>	Taxable under section 9-5 for a supply of materials and/or services.

Fees and Charges	Description	GST Treatment
	the ratepayer needs authority from the council under the Roads Act. Council may provide the permission for the works to be constructed and may also provide the construction service at a fee. These construction services could also be provided a private contractor.	
Works charge	<p>Erection of barricades etc.: when requested by Council and not provided by the developer. This fee is for a supply that is regulatory in nature.</p> <p>The requirement for the erection of barricades and other safety measures is a condition for a building consent. If the developer does not build barricades etc then council may step in and do it as a public safety matter. Council charges the developer a fee and this is related to the permission to build.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Fee for Registration of Notice of Class 2 Remediation works	<p>Registration of notice of intention to carry out Class 2 remediation works under Clause 16 of the <i>State Environmental Planning Policy No 55 (Remediation of Land)</i> made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> and recommendation made by the Minister for Urban Affairs and Planning.</p> <p>This fee is for a supply that is of a regulatory nature and is therefore exempt.</p>	Exempt – paragraph 81-15.01(1)(f) of the GST Regulations.
Restoration fees under section 101 of the Roads Act	Various utilities have the right to dig up a road to repair their assets such as electrical cables, pipes, conduits, phone lines, etc. Under section 101 of the Roads Act, Council in its capacity as a roads authority may direct the utility to restore the road to its previous condition or may restore the road itself and charge and recover from the utility the costs of the restoration work. The utility may contract out the work to a private contractor in which case council may charge and recover	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.

Fees and Charges	Description	GST Treatment
	the costs of the restoration work from the private contractor.	
Restoration fees under section 102 of the Roads Act	<p>Fee to compensate council for damage to public roads.</p> <p>Section 102 of the Roads Act provides that a person who causes damage to a public road, or to any road work on a public road or any traffic control facility on a road or road related area within the meaning of the Road Transport (General) Act 2005 (other than a road or road related area that is the subject of a declaration made under section 15 of that Act relating to all of the provisions of that Act), is liable to pay to the appropriate roads authority the cost incurred by that authority in making good the damage.</p>	Exempt – paragraph 81-15.01(1)(d) of the GST Regulations.

Commissioner of Taxation

12 June 2013

Appendix 1 – Explanation

ⓘ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

20. Subsection 7-1(1) provides that GST is payable on taxable supplies. As such, Council is liable to pay the GST payable on any taxable supply it makes. Section 9-5 states:

9-5 Taxable supplies

You make a **taxable supply** if:

- (a) you make the supply for *consideration;
- (b) the supply is made in the course or furtherance of an *enterprise that you carry on;
- (c) the supply is *connected with Australia; and
- (d) you are *registered, or *required to be registered.

However, the supply is not a *taxable supply to the extent that it is *GST-free or *input taxed.

(* Asterisked terms are defined in the Dictionary in section 195-1)

21. As Council is registered for GST and makes supplies in carrying on its enterprise in Australia, the issue that arises under section 9-5 is whether such supplies are supplies for consideration.

22. Section 9-39 provides special rules in relation to making taxable supplies. In particular, item 8 in the table in section 9-39 provides that where there is a payment of taxes, fees and charges the special rules in Division 81 may apply.

Division 81

Australian tax

23. Section 81-5 considers the effect of the payment of a tax. It states:

81-5 Effect of payment of tax

Australian tax not consideration

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an *Australian tax.

Regulations may provide for exceptions

- (1) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of *consideration to the extent the payment is an *Australian tax that is, or is of a kind, prescribed by the regulations.
- (2) For the purposes of subsection (2), the *consideration is taken to be provided to the entity to which the tax is payable, for a supply that the entity makes to you.

24. The term 'Australian tax' is defined in section 195-1 as:

Australian tax means a tax (however described) imposed under an *Australian law.

25. 'Tax' is not defined in the GST Act. However, the following is the usual description of a tax, as cited in the High Court case of *Roy Morgan Research Pty Ltd v. CMR of Taxation* [2011] HCA 35 (Roy Morgan), as per Latham CJ in *Matthews v. Chicory Marketing Board (Vic)* (1938) 60 CLR 263.

.....a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered ...

26. The above description includes the words 'not a payment for services rendered'. It was discussed in *Air Caledonie International v. Commonwealth* (1988) 165 CLR 462 that in order to be classified as a fee for service rather than a tax, the fee or charge must be exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment.

27. Apart from recoveries of rates or payments in the nature of rates, none of the payments, or the discharging of a liability to make such payments, as detailed in the table commencing on page 5 are a tax.

Australian fees and charges

28. Sections 81-10 and 81-15 consider the effect of certain fees and charges and state:

81-10 Effect of payment of certain fees and charges*Certain fees and charges not consideration*

- (1) A payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is an *Australian fee or charge that is of a kind covered by subsection (4) or (5).

Prescribed fees and charges treated as consideration

- (1) However, a payment you make, or a discharging of your liability to make a payment, is treated as the provision of consideration to the extent the payment is an *Australian fee or charge that is, or is of a kind, prescribed by the regulations.
- (2) For the purposes of subsection (2), the consideration is taken to be provided to the entity to which the fee or charge is payable, for a supply that the entity makes to you.

Fees or charges paid for permissions etc.

- (1) This subsection covers a fee or charge if the fee or charge:
 - (a) relates to; or
 - (b) relates to an application for;

the provision, retention, or amendment, under an *Australian law, of a permission, exemption, authority or licence (however described).

Fees or charges relating to information and record-keeping etc.

- (1) This subsection covers a fee or charge paid to an *Australian government agency if the fee or charge relates to the agency doing any of the following:
 - (a) recording information;
 - (b) copying information;
 - (c) modifying information;
 - (d) allowing access to information;
 - (e) receiving information;
 - (f) processing information;
 - (g) searching for information.

81-15 Other fees and charges that do not constitute consideration

The regulations may provide that the payment of a prescribed *Australian fee or charge, or of an Australian fee or charge of a prescribed kind, or the discharging of a liability to make such a payment, is not the provision of *consideration.

29. The term 'Australian fee or charge' is defined in section 195-1 as:

Australian fee or charge means a fee or charge (however described), other than an Australian tax, imposed under an *Australian law and payable to an *Australian government agency.

Australian law

30. The term 'Australian law' is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and relevantly includes a State law. It includes acts and law making powers which are delegated by parliaments, such as regulations, by-laws, proclamations and orders made under Acts.

Australian government agency

31. The term 'Australian government agency' is defined in section 995-1 of the ITAA 1997 and means:

- the Commonwealth, a State or Territory; or
- an authority of the Commonwealth or of a State or a Territory.

32. For the purposes of this Ruling it is accepted that Council comes within the definition of Australian government agency.

GST Regulations

33. Division 81 gives effect to the principles contained in the *Intergovernmental Agreement on Federal Financial Relations* (Intergovernmental Agreement). Payments of taxes are exempt from the GST. Payments of fees and charges generally constitute consideration and if the requirements of section 9-5 are satisfied, the payment is for a taxable supply. Some supplies are excluded and are exempt. Division 81 provides for Regulations that prescribes payments that constitute consideration for a supply and, conversely, prescribe payments that are otherwise taxable as being a fee or charge that does not constitute consideration.

Australian fees and charges that constitute consideration

34. Regulation 81-10.01 of the GST Regulations sets out those fees and charges that do not fall within the principles contained in the Intergovernmental Agreement, and therefore supplies to which they relate are not intended to be exempt from GST. These fees or charges include a fee for the non-regulatory provision of information and a payment for a commercial sale of books by a government bookshop. These fees or charges are treated as consideration for a taxable supply if the other conditions of section 9-5 are met.

35. Regulation 81-10.01 of the GST Regulations also ensures that the regulatory activities of government made in competition with the private sector are subject to GST where the other requirements of section 9-5 are satisfied.

36. The ES explains that the regulations ensure that the regulatory activities of government made in competition with the private sector are subject to GST where the other requirements of section 9-5 are satisfied. It states:

Fees and charges in this category are not excluded from being consideration for a taxable supply. This is consistent with the National Competition and Consumer Policy guidelines and ensures that a government entity is not given a competitive advantage over a private sector supplier making the same type of supply.

This covers situations in which government agencies have authorised private agencies to perform activities that form part of a regulatory process, for example, certification activities which are required for a regulatory process to be followed. Where government agencies, as well as government certifiers, have authorised private certifiers to perform certification activities these fees and charges will continue to be consideration for a supply that is subject to GST. This ensures competitive neutrality between supplies made by government and non-government agencies.

This paragraph applies only where a government agency is providing a supply in a competitive market, or where private suppliers have been accredited or authorised to make a supply over which the agency would otherwise have a monopoly.

This paragraph does not cover supplies of information that are regulatory in nature and can only be supplied by government agencies, notwithstanding that the public may obtain such information through a private sector supplier acting as a conduit for the information from the government agency. The supply is only a taxable supply where the private sector entity charges for the supply in its own right.

Australian fees and charges that do not constitute consideration

37. Regulation 81-15.01 of the GST Regulations sets out those fees and charges that are prescribed for section 81-15 and which do not constitute consideration. Because these fees and charges do not constitute consideration, the supplies to which they relate, if any, do not satisfy the requirements of section 9-5 and are not taxable supplies.

38. Those prescribed include a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry and a fee or charge for a supply of a regulatory nature made by an Australian government agency.

39. However, sub-regulation 81-10.01(2) of the GST Regulations provides that despite sub regulation 81-10.01(1), a fee or charge, the payment of which is covered by subsections 9-17(3) or (4), which are about payments made by government related entities to another government related entity, and the payment is specified in regulations made for this purpose, is not the provision of consideration.

Australian fees and charges covered by both regulations 81-10.01 and 81-15.01 of the GST Regulations

40. If a fee or charge is covered by both regulations 81-10.01 and 81-15.01 of the GST Regulations, regulation 81-15.02 of the GST Regulations determines which regulation would prevail.

41. Subregulation 81-15.02(2) of the GST Regulations provides that the paragraphs under Regulation 81-10.01 would prevail and the fee would constitute consideration for a supply.

Enforcement of regulatory functions, essential services, provision of information, professional time, staff time and works services

42. The following comments and explanation refer to particular groups of items in the table on pages 4 to 24 of this Ruling.

Enforcement of regulatory functions

43. Generally, the payments received in relation to enforcement of regulatory functions are regulatory in nature and exempt from GST under paragraphs 81-15.01 (1)(d) or (f) of the GST Regulations as fees or charges imposed to compensate an Australian government agency for costs incurred in undertaking regulatory activities or for a supply of a regulatory nature. The applications of the GST to specific payments are detailed in this Ruling.

Essential services

44. Fees or charges for essential services include those levied to recover costs imposed by another government agency (for example, for mandatory fire safety reports or health related inspections to enable Council to grant a business licence or occupation certificate for building development).

45. These fees are for services that are regulatory in nature. The consideration paid for a service that is regulatory in nature is exempt under section 81-15 and paragraph 81-15.01(1)(d) or (f) of the GST Regulations.

Provision of information

46. Under subsection 81-10(5) a payment, or the discharging of a liability to make a payment, is not the provision of *consideration to the extent the payment is a fee or charge paid to an *Australian government agency if the fee or charge relates to the agency doing any of the following:

- (a) recording information;
- (b) copying information;
- (c) modifying information;
- (d) allowing access to information;
- (e) receiving information;
- (f) processing information; or
- (g) searching for information.

47. The term 'information' is not defined in the GST Act and takes its ordinary meaning. The Macquarie Dictionary Online provides the following relevant meanings:

- 1. knowledge communicated or received concerning some fact or circumstance;
- 2. knowledge on various subjects, however acquired; and
- 3. the act of informing.

48. Where an Australian government agency charges a fee for supplying or accepting information in any form such as paper, electronic, disk etc. the fee will be exempt from GST under subsection 81-10(5).

49. Where an Australian government agency charges a fee to a third party for supplying to the public information prepared by the third party, the payment is exempt under subsection 81-10(5) if it relates to the agency allowing access to information.

Professional time

50. Councils use internal or external professionals to carry out certain activity. The activity may be a solicitor preparing a lease for a supply of land or a scientist to perform an analysis of material samples to aid a regulatory investigation.

51. In some cases the Council may require a business owner to meet the cost of the activity or it may be included in the fee for an application. An individual may have a choice to provide a professionally prepared document or meet the cost of the Council obtaining it.

52. An administration fee for Council processing professionally-prepared advice or documents will be exempt under GST Regulation 81-15.01 if the activity is regulatory in nature.

Staff time

53. A fee charged for council officers to provide a service that is not of a regulatory nature will be consideration for a supply.

Works

54. A council may impose a fee or agree a charge for works carried out on private or council land.

55. Where the works are carried out on private land (such as works provided under section 67 of the *Local Government Act 1993*), the owner of the land is the recipient of the works. The payment by the owner of the land is consideration in connection with the supply of the works. Assuming the requirements of section 9-5 are satisfied, the payment is consideration for a taxable supply.

56. Payments of inspection fees for works carried out on private or public land are fees or charges imposed to finance regulatory activity or for a supply of a regulatory nature. The consideration paid for a service that is regulatory in nature is exempt under section 81-15 and paragraphs 81-15.01(1) (c), (d) or (f) of the GST Regulations.

Appendix 2 – Legislative references

New South Wales Acts

57. The following New South Wales Acts were considered in preparing this ruling:

- *Environmental Planning and Assessment Act 1979* (NSW) (EPAA Act)
- *Food Act 2003* (NSW)
- *Government Information (Public Access) Act 2009* (NSW) (GIPA)
- *Local Government Act 1993* (NSW) (LG Act)
- *Privacy and Personal Information Protection Act 1998* (NSW)
- *Protection of the Environment Operations Act 1997* (NSW)
- *Road Transport (General) Act 2005* (NSW)
- *Roads Act 1993* (NSW)
- *State Emergency Services Act 1989* (NSW)
- *Water Management Act 2000* (NSW)

Local Government Act 1993 (NSW)

58. Section 220 of the LG Act states:

220 Legal status of a council

1. A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.
2. A council is not a body corporate (including a corporation).
3. A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).
4. A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

Regulatory Functions

59. Chapter 7 of the LG Act relates to the regulatory functions of Councils. The introduction to this Chapter states:

Chapter 7 – What are the regulatory functions of Councils?

The major regulatory functions of Councils are found in this Chapter. It lists the activities that are regulated and it sets out the means of their regulation.

A Council, in relation to a range of activities within its area, exercises regulatory functions of 2 main kinds.

First--various activities can only be carried out if the Council gives its approval (for example, the operation of a caravan park). Some of these approvals may also be granted as part of the development consent process under Part 4 of the *Environmental Planning and Assessment Act 1979*.

Second--a Council can order a person to do, or to stop doing, something (for example, a Council can order a person to keep fewer animals on specified premises).

Failure to obtain or to comply with an approval and failure to comply with an order are made offences under sections 626, 627 and 628.

A Council is not given power to regulate activities by other means. For example, the Chapter does not confer power to require a person to hold a periodic licence.

In exercising its regulatory functions, the Council must observe any relevant statutory criteria and any other criteria contained in a local policy it may have adopted after public consultation.

Approvals

60. Part 1 of Chapter 7 of the *Local Government Act 1993* details the activities that require the approval of council. These are:

A. Structures or places of public entertainment

1. Install a manufactured home, moveable dwelling or associated structure on land.

B. Water supply, sewerage and stormwater drainage work

1. Carry out water supply work;
2. Draw water from a council water supply or a standpipe or sell water so drawn;
3. Install, alter, disconnect or remove a meter connected to a service pipe;
4. Carry out sewerage work;
5. Carry out stormwater drainage work; and
6. Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer.

C. Management of waste

1. For fee or reward, transport waste over or under a public place;
2. Place waste in a public place;
3. Place a waste storage container in a public place;
4. Dispose of waste into a sewer of the council;
5. Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility; and
6. Operate a system of sewage management (within the meaning of section 68A).

D. Community land

1. Engage in a trade or business;
2. Direct or procure a theatrical, musical or other entertainment for the public;
3. Construct a temporary enclosure for the purpose of entertainment;
4. For fee or reward, play a musical instrument or sing;
5. Set up, operate or use a loudspeaker or sound amplifying device; and
6. Deliver a public address or hold a religious service or public meeting.

E. Public roads

1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway.
2. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

F. Other activities

1. Operate a public car park;
2. Operate a caravan park or camping ground;
3. Operate a manufactured home estate;
4. Install a domestic oil or solid fuel heating appliance, other than a portable appliance;
5. Install or operate amusement devices;
6. Use a standing vehicle or any article for the purpose of selling any article in a public place; and

7. Carry out an activity prescribed by the regulations or an activity of a class or description prescribed by the regulations.

61. Under Part 10 of Chapter 15 of the *Local Government Act 1993* Councils are authorised to charge and recover an approved fee for applications for approvals they provide.

Orders or Notices

62. Part 2 of Chapter 7 of the *Local Government Act 1993* authorises a council to order a person to do or to refrain from doing a thing. The orders a council may give under the *Local Government Act 1993* include:

1. Orders requiring or prohibiting the doing of things to or on premises;
2. Orders requiring that premises be used or not used in specified ways;
3. Orders requiring the preservation of healthy conditions;
4. Orders requiring the protection or repair of public places; and
5. Orders requiring compliance with approval.

63. Councils are authorised to charge fees in relation to the issue of such notices. The fees cover the costs incurred in performing compliance work and inspections.

Fees

64. Chapter 15 of the *Local Government Act 1993* (LG Act) relates to how Councils are financed. A Council may, in accordance with Chapter 15 of the LG Act, obtain income from.

- rates
- charges
- fees
- grants
- borrowings and
- investments

65. Under Part 10 of Chapter 15 of the LG Act, Councils are authorised to charge and recover an approved fee for any service they provide. Section 608 of the LG Act states:

608 Council fees for services

- (1) A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496 or 501.
- (2) The services for which an approved fee may be charged include the following services provided under this Act or any other Act or the regulations by the council:
 - supplying a service, product or commodity;
 - giving information;
 - providing a service in connection with the exercise of the council's regulatory functions-including receiving an application for approval, granting an approval, making an inspection and issuing a certificate; and
 - allowing admission to any building or enclosure.
- (3) In particular, a council may charge an approved fee for inspecting premises that are reasonably required to be inspected in the exercise of the council's functions, whether or not the inspection is requested or agreed to by the owner or occupier of the premises.
- (4) However, a council may not charge an approved fee for the inspection of premises that are not used for a commercial activity, except where it is necessary to inspect the premises in connection with an application for an approval concerning the premises or in connection with any inspection that is reasonably necessary to determine if an approval has been complied with.
- (5) If inspections of premises are reasonably necessary to determine if an approval has been complied with:
 - (a) an approved fee may be charged for such an inspection only if the charging of the fee has been included as a condition of the approval, and
 - (b) an approved fee may not be charged for such an inspection before the approval is granted, and
 - (c) an approved fee may not be charged for the inspection of any thing for which the council relies on a certificate under section 93 that the thing has been done in compliance with the approval.
- (6) An approved fee charged for inspecting premises must be repaid to the person who paid it if the inspection is not carried out.
- (7) An approved fee charged in connection with a service provided at an airport established and maintained by the council may be recovered from the holder of the certificate of registration issued under the *Civil Aviation Regulations* of the

Commonwealth for the aircraft in respect of which the service was provided. This subsection applies whether or not the holder is the person to whom the service is actually provided.

66. Under section 496, a council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available.

67. Under section 501, a council may make an annual charge for the following services:

- water supply services
- sewerage services
- drainage services
- waste management services (other than domestic waste management services); and
- any services prescribed by the regulations

68. In determining the amount of a fee for a service, a Council must take into consideration the following factors:

- (a) the cost to the council of providing the service,
- (b) the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department of Local Government,
- (c) the importance of the service to the community, and
- (d) any factors specified in the regulations.

Appendix 3 – Detailed contents list

69. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

- GSTR 2001/4

Subject references:

- Division 81 – Payment of taxes, fees and charges
- Government entities
- GST
- GST consideration
- GST regulations

Legislative references:

- ANTS (GST)A99 7-1(1)
- ANTS (GST)A99 9-5
- ANTS (GST)A99 9-17(3)
- ANTS (GST)A99 9-17(4)
- ANTS (GST)A99 9-39
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- ANTS (GST)A99 81-5
- ANTS (GST)A99 81-10
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- Copyright Act 1968
- ITAA 1997 995-1
- TAA 1953
- Environmental Planning and Assessment Act 1979 (NSW)
- Environmental Planning and Assessment Regulations 2000
- Food Act 2003 (NSW)
- Food Regulation 2010
- Government Information (Public Access) Act 2009 (NSW)
- Local Government Act 1993 (NSW)
- Local Government (General) Regulation 2005
- Privacy & Personal Information Protection Act 1998 (NSW)
- Protection of the Environment Operations Act 1997 (NSW)
- Road Transport (General) Act 2005 (NSW)
- Roads Act 1993 (NSW)
- Water Management Act (NSW)

Case references:

- Roy Morgan Research Pty Ltd v. CMR of Taxation [2011] HCA 35
- Matthews v. Chicory Marketing Board (Vict) (1938) 60 CLR 263
- Air Caledonie International v. Commonwealth (1988) 165 CLR 462

Other references:

- Explanatory Statement to ANTS (GST) Amendment Regulation 2012 (No. 2)

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