


CR 2019/61 - South Australian Councils - GST treatment of fees and charges imposed

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Class Ruling

South Australian Councils – GST treatment of fees and charges imposed

📌 Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the GST treatment for certain fees and charges imposed by South Australian Councils.
2. Full details of the scheme ruled upon are set out in paragraphs 10 to 15 of this Ruling.
3. All legislative references are to the provisions of *A New Tax System (Goods and Services Tax) Act 1999* unless otherwise indicated. References to 'the GST Regulations' are to the *A New Tax System (Goods and Services Tax) Regulations 2019*.

Who this Ruling applies to

4. This Ruling applies to you if you are a Council that is a member of the Local Government Association of South Australia. These Councils are collectively referred to in this Ruling as 'the Council'.

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When this Ruling applies

5. This Ruling applies from 1 July 2019.

Ruling

6. This Ruling addresses the GST treatment of supplies made by the Council in relation to:

- matters involving permits, licences, development, planning, commercial services, community, information, animals, private works, waste management, water, and
- payments received by the Council that are not in relation to supplies for which particular fees and charges are imposed.

7. 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.

8. In this Ruling, 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'.

9. The following tables set out the GST treatment.

Permits and licences

| Fees and charges | Description | GST treatment |
|---------------------|--|---|
| Event permit fees | Fee for permission to conduct an event on the Council's land and related fees: <ul style="list-style-type: none"> • application/processing/late processing fees • road closure permit fee • supervision fee. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| | Other fees related to permission to conduct an event on the Council's land: <ul style="list-style-type: none"> • hire of venue or location/site fee charged on a per day basis • hire of the Council's equipment or facilities. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Filming permit fees | Fee for permission to film commercials and feature films in the Council's areas and related fees: <ul style="list-style-type: none"> • application/processing/late processing fees • road closure permit fee • supervision fee. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |

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| Fees and charges | Description | GST treatment |
|------------------------------------|---|---|
| | Other fees related to permission to film commercials and feature films in the Council's areas: <ul style="list-style-type: none"> • a location/site fee charged per day of filming • hire of the Council's equipment • additional vehicle fee if the permit holder requires more than 3 vehicles to have access to parking charged on a per vehicle per day basis. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Grazing lease fees | Fees for grazing leases of parcels of land. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Rent for residential accommodation | Rent charged for residential accommodation (such as a council-owned house) under a rental or leasing agreement. | Input taxed: <ul style="list-style-type: none"> • section 40-35. |
| Rent for commercial property | Rent or lease fees charged for a commercial property under a rental or leasing agreement. | Taxable: <ul style="list-style-type: none"> • section 9-5 . |
| Road rents | Rent and lease fees charged for the use of roads and road reserves. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Lease fees for Road rents | Fees for leases of parcels of land that are future road corridors. | Taxable: <ul style="list-style-type: none"> • section 9-5 . |
| Outdoor dining permit fee | Fee for permission only to operate an outdoor dining or eating area. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Mobile food vendor permit fee | Fee for a mobile food vendor permit. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Road closure permit fee | Fee for permission only to close a road for a certain period of time for the purposes of an event or to exclude vehicles from the whole or part of a road or public place. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Burning permit fee | Fee for permission only to carry out burning. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Diving permit fee | Fee for permission only to conduct diving activities such as cave diving. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fireworks permit fee | Fee for permission only to discharge or use fireworks. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |

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| Fees and charges | Description | GST treatment |
|---|---|---|
| Taxi and hire car licence fees | Fees for the provision, renewal or transfer of taxi and hire car licences. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Marine permit, licence and authority fees | Fees for the following permissions only (not being fees for the use of a facility): <ul style="list-style-type: none"> • river access permit • mooring facilities licence • transfer fee river access permit/or mooring facilities licence • boat ramp permit/authority. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fees for use of marine facilities | Fees for the use of marine facilities such as boat ramp fees, user fees, launching fees and lease fees/rent for moorings. | Taxable: <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |
| Parking permit fees | Fees for permission only to park vehicles on the Council's land in accordance with parking permits including Temporary Parking Controls Permits, Residential Parking Permits, Replacement of Residential Parking Permits). | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Under-road pipelines licence fee | Fee for a licence providing permission only to lay pipelines under a road. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Horse on foreshore permit fee | Fee for permission only allowing horses to enter a foreshore. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Trading permit fee | Fee for permission only to conduct trading activities. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fee for consultation in relation to a liquor or entertainment licence | Fee for pre-lodgment advice or consultation that relates to an application for a liquor or entertainment licence requested by an applicant seeking clarification on licensing and related planning issues where it is not compulsory to seek such advice/consultation and the Council is not required to consult in relation to licence conditions. | Taxable: <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|---|---|---|
| Fees for approvals in relation to liquor licences | Fees for approvals required for an application for the issue of a liquor licence by the Office of the Liquor and Gambling Commissioner including those in relation to a limited licence (addressing conditions such as date, time, use of public address system, disposal of litter, appropriate behaviour and parking) and those for new premises or changes to an existing licensed or entertainment area (addressing relevant planning, building and permits). | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Signs and banners permit fee | Fee for permission only to erect/place a sign or banner on the Council's land. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Seed collection permit fee | Fee for permission only to collect seeds for tree planting purposes from the Council's land. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Firewood collection permit fee | Fee for permission only to collect firewood from roadsides. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fee for vehicles to cross reserves permit | Fee for permission only allowing vehicles to travel across the Council's reserves/foreshores. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Hoarding permit fee | Fee for permission only to erect a hoarding including erecting temporary fencing around construction sites to prevent public entry. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Encroachment permit fee | Fee for permission only allowing developments to encroach (including an unauthorised encroachment) on the Council's land including roads. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Helicopter landing permit fee | Fee for permission only to land a helicopter on the Council's land. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |

CR 2019/61**Development and planning**

| Fees and charges | Description | GST treatment |
|--|--|---|
| Lodgment fees for development approvals | Lodgment fees (including additional lodgment fees) for development approvals involving non-complying development, division of land, building rules consent or a swimming pool, spa and/or a safety fence. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Development plan assessment and consent fees – residential development code | Fees for assessing a development plan including granting consent under the residential development code. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Development plan assessment and consent fees – other than residential development code | Fees for assessing a development plan including granting consent under a code other than the residential development code. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Administration fees for non-complying development | Fees for administering an application for development plan assessment and consent for a non-complying development where there is a requirement for concurrence with the Development Assessment Commissioner or a regional development assessment panel for the Council to grant consent. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Non-complying development assessment and consent fees | Fees for assessing a development plan including granting consent for a non-complying development. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Referral fee for development plan assessment and consent | Fee for referring an application for development plan assessment including consent to a relevant body where required for a specific category of development. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Public notification and advertising fees | Fees for public notification and advertising of an application for development plan consent for a specific category of development. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(d) of the GST Regulations as not the provision of consideration). |

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| Fees and charges | Description | GST treatment |
|--|---|---|
| Building rules assessment and consent fees | Fees for assessing a development including granting building rules consent. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Variance with building rules assessment and consent fees | Fees for assessing a development at variance with the building rules including granting consent. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for referral to the Building Rules Assessment Commission | Fees for referring an application for assessment and building rules consent for a development that is at variance with the performance requirements of the building code, to the Building Rules Assessment Commission, where there is a requirement for concurrence for the Council to grant consent. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for development authorisation (staged consents) | Fees for development authorisation where a development requires granting of both development plan consent and building rules consent. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fees for amendment of planning, building and private certification approvals | Fees for amending a planning approval, building approval or private certification approval. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fees for classification of a building and a change in classification | Fees for assignment of a classification to a building or a change in the classification of a building. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Certificate of occupancy fee | Fee for issue of a certificate of occupancy. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Essential safety provisions application fee | Fee for the issue of a schedule of essential safety provisions specifying the essential safety provisions for a building and the standards or other requirements for maintenance and testing in respect of each of the essential safety provisions. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |

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| Fees and charges | Description | GST treatment |
|--|--|---|
| Land management agreement registration fee | Fee for registering a land management agreement. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(5)). |
| Fees for inspection of land management agreement register and copy of agreements | Fees for inspection of a land management agreement register and for a copy of an agreement. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(5)). |
| Land management agreement preparation service fee | Fee for providing a service of preparing a land management agreement (being a separate fee that is not a registration fee or a fee for a copy of the agreement). | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fee for extension of time for lapsed consent or approval | Fee for an extension of a period time for which a development consent or approval remains operative. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Certificate of title service fee | Fee for providing a service of obtaining a certificate of title. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Building demolition assessment and consent fees | Fees for building demolition assessment including granting of consent. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(h) of the GST Regulations as consideration for subsection 81-10(2)). |
| Regulated and significant tree development contribution | Developer cash contribution to the Council urban trees fund imposed as a condition of development consent in lieu of planting one or more replacement trees at a development site. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |
| Car parking fund development contribution | Developer cash contribution to car parking fund imposed as a condition of development consent in lieu of sufficient car parking spaces being provided at a development site. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |

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| Fees and charges | Description | GST treatment |
|---|---|---|
| Developer contributions for land division | Developer contributions (cash and in kind) imposed as a condition of development consent where the proposed development involves land division. | Exempt/not subject to GST: <ul style="list-style-type: none"> section 81-15 / Division 82 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |
| Sale of maps | Sale of maps. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(f) of the GST Regulations as consideration for subsection 81-10(2)). |
| Enforcement notice fee | Fee for recovery of costs incurred in giving directions and issuing enforcement notices (being a separate fee that is not an expiation fee) | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(d) of the GST Regulations as not the provision of consideration). |

Commercial services

| Fees and charges | Description | GST treatment |
|---|---|---|
| Caravan park and camping ground fees | Fees for the use of caravan park and camping ground facilities including fees for: <ul style="list-style-type: none"> camp sites caravan sites use of on-site facilities and equipment such as cabins, recreational facilities, showers and washing machines utilities such as lighting/electricity, water and gas. | Taxable: <ul style="list-style-type: none"> section 9-5. |
| Airport and aeronautical fees and charges | Airport and aeronautical fees and charges including: <ul style="list-style-type: none"> landing fees for fixed wing aircraft and helicopters refuelling charges passenger airport arrival and departure fees airport car parking fees aircraft parking fees rent for business leases of space in a terminal lease fees for hangars and aerodromes. | Taxable: <ul style="list-style-type: none"> section 9-5. |

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| Fees and charges | Description | GST treatment |
|---|---|---|
| Electricity charges and charges for other services related to the supply of electricity | Charges for the retail supply of electricity and charges for other services related to the supply of electricity including connection, disconnection and meter reading. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Sale yard fees and charges | Fees for the use of cattle and sheep sale yards, droving charges for herding livestock in sale yards and fees for other sale yard supplies including: <ul style="list-style-type: none"> • yard dues (cattle, cow and calf, sheep and lamb, pig) • market fees • fees for use of facilities within the sale yard (pavilions, conference rooms, complexes, canteens, agent offices, truck wash) • agents flag fall fees • paddocking fees • RFID tag replacement fees • fees for disposal of defective or dead stock. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for use of recreation/sporting centres, golf courses, swimming centres and hire of equipment | Fees for use of recreation/sporting centres, golf courses, swimming centres and hire of equipment including: <ul style="list-style-type: none"> • hire of tennis, squash, netball or basketball courts or areas • hire of fields for touch football or oz tag • hire of a skate park, race track or gym (for yoga and fitness classes) • fees for playing golf or booking a golf course/clubhouse function • hire of a kiosk, control room or canteen • fees for use of swimming centres for lane swimming, aqua classes (aqua aerobics) or hire of the centre for birthday parties or swimming carnivals • hire of equipment Also includes fees for hire of all or part of a facility for events such as a tennis tournament, athletics carnival, triathlon or fun run. | Taxable: <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |

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| Fees and charges | Description | GST treatment |
|---|--|--|
| Fees for learn to swim classes | Fees for enrolment in a learn to swim class that primarily incorporates personal aquatic survival skills Includes classes provided to a child or adult in a private learn to swim class or to a school in a swimming program. | GST-free: <ul style="list-style-type: none"> • section 38-85. |
| Storage fees | Fees for storing equipment based on length of time or size of the equipment being stored. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fee for electricity usage in relation to hire of sporting/recreational facilities | Fee for recovery of electricity costs incidental to the hire of a facility. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for maintenance of sports field | Fees for maintenance of sports fields including line marking, maintenance of nets and goal posts (setting up and packing away). | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Hire of play café | Fees for hire of a play café in a sports and recreation centre including entrance fees and party booking fees. | Taxable: <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for professional services | Fees for services provided at a person's request where the fee for the service is calculated by reference to costs incurred in providing the service (such as cost of the Council's employees or travel costs involved in supplying the service) and it is not compulsory for the person to seek the service from the Council. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for advertising, business card and post office box services | Fees for the following services provided to ratepayers and businesses (at the customer's request and where it is not compulsory to seek the service from the Council) being: <ul style="list-style-type: none"> • advertising services (such as advertising in the Council's community newsletter mailouts), sign writing, erecting and dismantling advertising material • services of designing and printing business cards • post office box hire. | Taxable: <ul style="list-style-type: none"> • section 9-5. |

CR 2019/61**Community – equipment, property, facilities, tourism and events**

| Fees and charges | Description | GST treatment |
|--|---|---|
| Fees for the use of general equipment (non-council documents) | Fees for a member of the public to use the Council's equipment at a civic centre, community centre, library, visitor centre or the Council's offices including: <ul style="list-style-type: none"> • photocopying, printing, binding, laminating, scanning or facsimile his or her own document • making a telephone call using the Council's telephone • wi-fi internet access on a person's own devices irrespective of the location • internet access using a Council-owned computer or device irrespective of the location. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for services involving the use of general equipment (non-council documents) | Fees for services provided by the Council's staff using the Council's equipment at a civic centre, community centre, library, visitor centre or the Council's offices, including: <ul style="list-style-type: none"> • photocopying, printing, binding, laminating, scanning or sending a facsimile of that person's own document • transferring information to a USB device • saving information to a CD • emailing information • posting information by mail. | Taxable: <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|--|--|--|
| Security deposits and bonds – vehicle charter, facilities, keys and power supply (refunded) | Deposits and bonds, that are not forfeited and are not applied as consideration, in relation to: <ul style="list-style-type: none"> • hire or charter of a Council-owned bus or other vehicle • hire or lease of the Council's property or facilities (including the Council's chambers, meeting rooms, halls, community centres, sporting grounds and facilities, theatres and a Road and Cycle Safety Centre) • damage, additional cleaning costs and loss of keys in relation to lease, hire and rental of the Council's property or facilities • excessive or undisclosed power use in relation to hire of power supply. | Not subject to GST: <ul style="list-style-type: none"> • subsection 99-5(1) (where it relates to a security deposit that is not forfeited and not applied as consideration for a supply). |
| Security deposits and bonds – vehicle charter, facilities, keys and power supply (forfeited) | Deposits and bonds, that are forfeited, in relation to: <ul style="list-style-type: none"> • hire or charter of a Council-owned bus or other vehicle • hire or lease of the Council's property or facilities (including Council chambers, meeting rooms, halls, community centres, sporting grounds and facilities, theatres and a Road and Cycle Safety Centre) • damage, additional cleaning costs and loss of keys in relation to lease, hire and rental of the Council's property or facilities • excessive or undisclosed power use in relation to hire of power supply. | Taxable: <ul style="list-style-type: none"> • section 9-5 (where it relates to a security deposit that is forfeited and applied as consideration for a taxable supply). |
| Cancellation fees | Fees for administrative services to give effect to the cancellation of the hire or lease of the Council's property or facilities (including Council chambers, meeting rooms, halls, community centres, sporting grounds and facilities and theatres). | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Hire of property and facilities | Fees for the hire or lease of property or facilities owned, controlled, managed or maintained by the Council (including Council chambers, meeting rooms, halls, community centres, sporting grounds and facilities, theatres and a Road and Cycle Safety Centre). | Taxable: <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |

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| Fees and charges | Description | GST treatment |
|--|---|--|
| Fees for ancillary services in relation to hire of property and facilities | <p>Fees for ancillary services provided in relation to hire or lease of property or facilities owned, controlled, managed or maintained by the Council to the hirer or lessee of the property or facility including for:</p> <ul style="list-style-type: none"> • cleaning • insurance • call out – where the hirer contacts the Council for either the Council’s staff or a contractor to attend due to unexpected issues (such as facilities not being provided as agreed or the hirer being locked out) • security – for the provision of security where the number of people in a building exceeds a designated number or where alcohol is being served • catering – such as the supply of morning tea, afternoon tea or lunch when a venue is hired for a meeting • venue staff and contractors –for the provision of staff or external contractors to perform duties such as front of house, box office, staging for theatres or serve food and drinks • replacement of lost keys or provision of additional keys • power supply – for power usage or access to three phase power supply. | <p>Taxable:</p> <ul style="list-style-type: none"> • section 9-5. |
| Hire of parks and reserves | <p>Hire fees for the use of parks and reserves owned, controlled, managed or maintained by the Council such as local ovals, tennis courts, netball courts and soccer pitches. Includes hire fees for fitness trainers to use open space charged on a per head basis and ancillary cleaning fees (does not include permits or permissions only to allow the use of the parks and reserves).</p> | <p>Taxable:</p> <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |
| Hire of plant and equipment | <p>Hire of plant and equipment such as glasses, tables, chairs, data projectors, bunting, witches hats and shade tents. Includes ancillary fees for set up and packing away, cleaning and repair or replacement of breakages</p> | <p>Taxable:</p> <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|--|--|---|
| Admission fees to museums, exhibitions and visitor centres | Fees for admission to museums, exhibitions and visitor centres such as farm museums, shark exhibitions, railway museums, model railway exhibitions, South Australia Whale Centre, Steelworks Tours, cultural centres, Wadlata Outback Interpretative Centre, for local history or heritage and visitor centres. Includes charges for entry to displays and interpretative areas and for guided tours. | Taxable: <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for the use of equipment in tours, workshops and other events | Fees for the use of the Council's equipment in relation to tours, workshops and other events organised and run by the Council including local festivals, cruises on a Council owned paddle steamer, weaving and art workshops, horse trams and history tours and events | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Advertising and display fees | Advertising and display fees charged for: <ul style="list-style-type: none"> • advertising a third party in tourism brochures prepared by the Council • displaying brochures (racking fee) for third parties on the Council's property such as at a visitor centre • hire of space or a display area to third parties for advertising in a visitor centre (including display racks and boards for displaying tourism brochures and maps). Usually charged as a set time-based fee and includes stallholder related fees for Council staff time in setting out and maintaining the display • use of the Council's tourist information bay infrastructure located on a main road, outside of a visitor centre or at a shopping centre. Includes fee for Council staff time in setting out and maintaining the display. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Sale of merchandise, hire of equipment, sales commissions and event ticket sales | Sale of miscellaneous items (such as souvenirs and books) at a visitor centre, time-based hire of bicycles, commissions and booking fees charged by the Council to tourism operators where the Council facilitates the booking of accommodation, event and festival tickets, tours, experiences and transport | Taxable: <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|-------------------------------------|---|--|
| Membership fees for visitor centres | Fees for membership of a visitor centre or the South Australia Whale Centre. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Sponsorship fees | Fees for event sponsorship packages (including sports events) where the sponsor receives particular benefits such as advertising, signage or the prominent use of their product throughout the event. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Luggage storage fee | Fee for the use of a secure Council facility (such as at a visitor centre) by a tourist to store luggage. | Taxable <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(c) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for tourism-related signage | Fees for the supply of tourism-related signage such as road signs providing directions to tourist locations (charged as a set fee that includes costs of application, sign, installation, use of the Council's infrastructure to place the signage and new post). | Taxable <ul style="list-style-type: none"> • section 9-5. |

Community – libraries, home assistance, transport, community programs, child care and other

| Fees and charges | Description | GST treatment |
|--|---|--|
| Security deposit for temporary library membership (refunded) | Deposit for temporary library membership that is not forfeited and the deposit is refunded. | Not subject to GST: <ul style="list-style-type: none"> • subsection 99-5(1) (where it relates to a security deposit that is not forfeited and not applied as consideration for a supply). |
| Fee for inter-library loans | Fee for an item obtained from another library. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for library programs | Fees for attendance at programs and events run by the library such as, children's story telling, meet the author, writer's groups/workshops, learning how to research and school holiday programs. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Sale of library merchandise and vending machine sales | Sale of items such as books, magazines, DVDs, CDs, USBs, pre-loved books, library bags, headphones, earphones and other library materials and vending machine sales of tea and coffee or other refreshments by a library. | Taxable: <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|---|---|---|
| Membership fee for library book clubs | Fee for membership of a book club organised by the Council and run at a library (or on other Council property or facilities). | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fee for utilisation of library staff for various activities | Fees for utilisation of library staff for various activities such as supervision of an exam on library premises. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Vehicle hire or charter and cleaning fees | Fees for hire or charter of a community bus or other vehicle and cleaning. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for community programs and activities | Fees for attendance at Council-run community classes, programs, activities and workshops open to the general public. Includes disability social and recreation programs, men's shed program, outdoor recreation programs, quilting, mothers' groups, mahjong, english language, holiday programs, let's dance, tai chi, learning to paint and draw, strength for life, yoga, classic music and lunch programs. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Membership fees for community centres | Fee for membership of a community centre. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fees for child care services | Fees for the supply of a child care service by the Council which is an approved child care service under <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> . Includes late fees charged where a child is picked up after the centre's prescribed operating hours. | GST-free <ul style="list-style-type: none"> • section 38-145. |
| Common antennae TV (CATV) service charge | Service charge for a common antennae television retransmission service. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Application fee for a community group loan | Application fee for a loan to a community group. Includes management fees and processing fees for the application. | Input taxed: <ul style="list-style-type: none"> • section 40-5. |
| Application fee for allocation of a rural property address number | Application fee for a rural address number to be allocated to a building or allotment adjoining a public road. | Exempt: <ul style="list-style-type: none"> • section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration) |

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| Fees and charges | Description | GST treatment |
|--|---|---|
| Sale and installation of rural property address plates | Fees for the sale and installation of rural property address plates (including supply of individual number plates and posts) and fees for replacement or additional plates. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Car parking fees | Fees for the use of a commercial car parking station or for ticketed street car parking as per the street signage (on-street ticket machines). | Taxable: <ul style="list-style-type: none"> • section 9-5. |

Information services

| Fees and charges | Description | GST treatment |
|--|---|---|
| Sale of council documents covered by section 132 of the LG Act | <p>Sale of the following documents covered by section 132 and Schedule 5 of the <i>Local Government Act 1999</i> (SA) (LG Act):</p> <ul style="list-style-type: none"> • reviews of the Council's constitution, wards and boundaries (representation options papers and reports on reviews of the Council's composition or ward structure, reports of the Minister in relation to Council initiated proposals and public initiated submissions provided to the Council by the Minister and summary of issues surrounding a proposal to be submitted to a poll) • registers and returns (registers required under the LG Act or the <i>Local Government (Elections) Act 1999</i> (SA) (LGE Act) other than the Register of Interests and campaign donations returns • codes of conduct or codes of practice under the LG Act or the LGE Act • meeting papers (notice and agenda for meetings of the Council, Council committees and electors, minutes of meetings, documents and reports to the Council or a Council committee that are able to be supplied to members of the public and recommendations adopted by resolution of the Council) • policy and administrative documents (record of delegations under the LG Act other than delegations made by the Minister, contract and tenders policies, policy for the reimbursement of members' expenses, strategic | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(5)). |

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| Fees and charges | Description | GST treatment |
|--|--|--|
| | <p>management plans, annual business plan and summary, annual budget, audited financial statements, annual report, extracts from the Council's assessment record, list of fees and charges, public consultation policies, management plans for community land, policy on the making of orders, procedures for the review of the Council's decisions and any report, charter for subsidiaries established by the Council or for which the Council is a constituent Council, the most recent information statement and any policy document of the Council under the <i>Freedom of Information Act 1991</i>)</p> <ul style="list-style-type: none"> • by-laws made by the Council. | |
| Freedom of information request fees | <p>Fees charged under the <i>Freedom of Information Act 1991</i> (SA) (FOI Act) including:</p> <ul style="list-style-type: none"> • application fees for access to the Council's documents • fees for dealing with an application and giving access to the Council's documents • fees for photocopying the Council's documents • application fees for a review of a determination made by the Council under section 29 of the FOI Act (internal reviews). | <p>Exempt:</p> <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(5)). |
| Fee for a certificate of liabilities – rates and charges | <p>Fee for a certificate of liabilities in relation to rates and charges on land under section 187 of the LG Act.</p> | <p>Exempt:</p> <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(5)). |
| Search fee – land and business sale and conveyancing | <p>Fee for undertaking a search in accordance with section 7 of the <i>Land and Business (Sale and Conveyancing) Act 1994</i> (SA).</p> | <p>Exempt:</p> <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(5)). |
| Archive search fee | <p>Fee for undertaking an archive search for information of a non-regulatory nature.</p> | <p>Taxable:</p> <ul style="list-style-type: none"> • section 9-5 (prescribed under paragraph 81-10.01(1)(f) of the GST Regulations as consideration for subsection 81-10(2)). |

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| Fees and charges | Description | GST treatment |
|--|---|---|
| Fees for access to development records | Fees for access to development records, including application fees and fees in respect of giving access to the records, for information of a non-regulatory nature. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(f) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fees for photographs and negatives | Fees for the provision of photographs and/or negatives (including heritage documents) of a non-regulatory nature. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(f) of the GST Regulations as consideration for subsection 81-10(2)). |

Animals

| Fees and charges | Description | GST treatment |
|---|--|--|
| Deposit – dog collars and traps (refunded) | Deposit for a dog collar (barking, citronella or dangerous dog) and traps (cats, possums, rats or birds) where the deposit is not forfeited. | Not subject to GST: <ul style="list-style-type: none"> subsection 99-5(1) (where it relates to a security deposit that is not forfeited and not applied as consideration for a supply). |
| Deposit – dog collars and traps (forfeited) | Deposit for a dog collar (barking, citronella or dangerous dog) and traps (cats, possums, rats or birds) where the deposit is forfeited. | Taxable: <ul style="list-style-type: none"> section 9-5 (where it relates to a security deposit that is forfeited and applied as consideration for a taxable supply). |
| Sale or hire of animal-related equipment and other goods (including late return fees) | Sale or hire of animal-related equipment and goods including dog collars, refills for dog collars (citronella, gas, battery replacement), traps (cat, possum, rat or bird), dangerous dog signs, dog and cat accessories (dog waste bags, pooch pouches, bone holders and other dog or cat related items) and rat bait. Includes fees for: <ul style="list-style-type: none"> late return of a hired dog collar or animal trap cleaning an animal trap upon return to the Council a trap returned damaged or damaged beyond repair and must be replaced. | Taxable: <ul style="list-style-type: none"> section 9-5. |

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| Fees and charges | Description | GST treatment |
|---|--|--|
| Fee for receiving trapped cat | Fee for the Council's cat management officer receiving a cat where the cat has been trapped in a cat cage or otherwise seized by an individual. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |
| Impounding fees – dogs | Fees for impounding of dogs including fees for the initial seizure and detention, daily holding fees, sustenance fees, release fees, after hours pick up fees, euthanasia fees (including fees for the transport of the dog to the Animal Welfare League and the recovery of the League's euthanasia charge to the Council), fees for the relinquishment of a detained dog, veterinarian consultation fees and vaccination fees. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |
| Fee for transfer of dog from pound to residential address | Fee for the Council transferring a dog from the pound or another facility where the dog is returned to a residential address. | Taxable: <ul style="list-style-type: none"> section 9-5. |
| Impounding fee – cats, cattle, horses, goats, poultry, deer, pigs, mules and camels | Fee for impounding of cats, cattle, horses, goats, poultry, deer, pigs, mules and camels by the Council | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(f) of the GST Regulations as not the provision of consideration). |
| Dog and cat expiation fees | Dog and cat expiation fees levied under the <i>Dog and Cat Management Act 1995</i> (SA) or the Council's by-law. | Not subject to GST: <ul style="list-style-type: none"> no supply being made by the Council. |
| Dog and cat registration fees | Fees for the registration of dogs and cats under including part-year registrations. Includes fees for replacement dog and cat registration discs or tags and for registering a transfer of dog registration or a change of address. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Application fee for registration of more than the prescribed number of dogs | Fee for the registration of more than the prescribed number of dogs. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Dog business registration fee | Fees for the registration of a kennel business for breeding or training dogs or the provision of security or other services involving the use of dogs. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Fee for an extract from dog register | Fee for an extract from the dog register including an ownership record of an individual dog. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(5)). |

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| Fees and charges | Description | GST treatment |
|---|--|---|
| Breeding cat registration fee | Fees for registration as a cat breeder. | Exempt: <ul style="list-style-type: none"> • subsection 81-10(1) (covered by subsection 81-10(4)). |
| Animal kennelling fees (excluding pound) | Fees for the boarding of dogs and cats in kennel facilities owned by the Council including handling fees, sustenance and food fees and daily holding fees. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Dog training fees | Fees for the Council's dog obedience or training classes. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Fee for voluntary destruction of a dog or cat | Fee for the voluntary destruction of a dog or cat at the owner's request. | Taxable: <ul style="list-style-type: none"> • section 9-5. |

Private works, waste management and water

| Fees and charges | Description | GST treatment |
|---|--|---|
| Private works – fees for repair of damage | Fees for recovery of the Council's costs of carrying out works on roads, footpaths, stormwater pipes, culverts, driveway inverts, kerbing and crossovers to repair damage caused by another party or by faulty infrastructure owned or controlled by another party. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Private works – other fees | Fees charged in relation to the Council carrying out private works including for: <ul style="list-style-type: none"> • hire of plant and equipment (including a street sweeper) • hire of facilities (including a truck washing facility) • labour costs • professional or technical advice provided by staff • consumables (including bitumen, gravel, pavers, concrete, chemicals, sand and loam) • utility costs • removal of graffiti from private property • provision of gardening services (including street tree removal) • supply and installation of information signs and other street signs • installation of outdoor equipment (including seats, benches and outdoor settings). | Taxable: <ul style="list-style-type: none"> • section 9-5. |

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| Fees and charges | Description | GST treatment |
|--|--|---|
| Fees in relation to the kerbside collection of waste | Service rates, services charges and other fees for the kerbside collection of waste (rubbish, green waste and recyclables), treatment or disposal (including by recycling) and for the supply, exchange or removal of bins or crates (including additional bins or crates) used in connection with collection. | Exempt: <ul style="list-style-type: none"> section 81-15 (prescribed under paragraph 81-15.01(a) of the GST Regulations as not the provision of consideration). |
| Sale of bin accessories | Sale of accessories for bins such as bin locks and tow ball hitches. | Taxable: <ul style="list-style-type: none"> section 9-5. |
| Waste disposal facility fees | Fees for the use of a waste disposal facility. | Taxable: <ul style="list-style-type: none"> section 9-5 (prescribed under paragraph 81-10.01(1)(d) of the GST Regulations as consideration for subsection 81-10(2)). |
| Fee for the disposal of portaloos | Fee for the disposal of the waste in a portaloos. | GST-free: <ul style="list-style-type: none"> section 38-290. |
| Sales of waste related goods and services | Sales of waste related goods and services including: <ul style="list-style-type: none"> mulch, compost and worm farms bins (compost, compost aerator, indoor recycling and indoor household refuse) and compostable bin liners scrap metal sharps and needle containers (including pick up and disposal of containers) delivery services. | Taxable: <ul style="list-style-type: none"> section 9-5. |
| Annual service charge for water supply | Annual service charge for the provision of water supply. | GST-free: <ul style="list-style-type: none"> section 38-285. |
| Bore water licence fee | Fee for a bore water licence. | Exempt: <ul style="list-style-type: none"> subsection 81-10(1) (covered by subsection 81-10(4)). |
| Volumetric (per kilolitre) water charges | Volumetric (per kilolitre) water charges for water deliveries within the local government area (including cartage charges), excess water usage and interim water supply. | GST-free: <ul style="list-style-type: none"> section 38-285. |
| Water connection fee | Fee for water connection charged to the recipient of the water. | GST-free: <ul style="list-style-type: none"> section 38-285. |

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| Fees and charges | Description | GST treatment |
|--|---|---|
| Water standpipe and desalination plant fees | Fees for the provision of water via a water standpipe or desalination plant (includes coin operated stand pipes, annual fee for a standpipe key and fee for a plant swipe card). | GST-free: <ul style="list-style-type: none"> • section 38-285. |
| Charge for recycled water supply | Charge for the provision of reclaimed water supply. | GST-free: <ul style="list-style-type: none"> • section 38-285. |
| Community wastewater management system (CWMS) service charge | CWMS service charge for the collection and management of wastewater. | GST-free: <ul style="list-style-type: none"> • section 38-290. |
| Connection fee – CWMS (per new allotment) | Fee for connection to a CWMS. | GST-free: <ul style="list-style-type: none"> • section 38-290. |
| Desludging fee | Fee for emptying and disposing of sludge and liquid (including bio-solids) from a septic tank. | GST-free: <ul style="list-style-type: none"> • section 38-295. |
| Stock crate wash (per crate) | Fee for washing a stock crate. | Taxable: <ul style="list-style-type: none"> • section 9-5. |
| Storm water drainage fees | Fees and charges for services consisting of draining storm water where occurring up to and including the point of supply and charged to the recipient of the supply including: <ul style="list-style-type: none"> • drainage connection • clearing of storm water drainage • quality tests and inspections • repair, maintenance, replacement and relocation of recipient's assets. | GST-free: <ul style="list-style-type: none"> • section 38-300. |
| Fees related to water meter installation | Fees for water meter (including meter box) installation, disconnection, reconnection, repair, replacement and relocation and call out. | GST-free: <ul style="list-style-type: none"> • section 38-285. |
| Fees for water meter reading and testing | Fees for water meter reading and testing. | GST-free: <ul style="list-style-type: none"> • section 38-285. |

Scheme

10. The following description of the scheme (circumstances ruled upon) is based on information provided by the applicant. If the circumstances are not carried out as described, this Ruling cannot be relied upon.

11. The scheme for the purposes of this Ruling incorporates the supplies made by the Council in relation to matters involving permits, licences, development, planning, commercial services, community, information, animals, private works, waste management and water and payments received by the Council that are not in relation to such supplies.

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Page status: **legally binding**

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12. The Council is registered for GST.

13. Under sections 35 and 36 of the *Local Government Act 1999* (SA) (LG Act), the Council is a body corporate with perpetual succession and the legal capacity of a natural person.

14. The Council is an Australian government agency that is empowered under the LG Act to:

- provide services and facilities that benefit its area, ratepayers, residents and visitors which include general public services or facilities (such as electricity, gas and water services and waste collection, control or disposal services or facilities) and health, welfare, cultural or community services or facilities
- administer regulatory systems for the good rule and government of its area and for the convenience, comfort and safety of its community, under the LG Act or another Act
- manage, improve and develop the resources available to the Council.

15. The Council levies fees and charges for goods and services and in relation to other matters under the LG Act and the South Australian statutes.¹ In particular, under section 188 of the LG Act a council may impose fees and charges for services it provides.

Commissioner of Taxation

2 October 2019

¹ Details of these statutes are contained in Appendix 2 of this Ruling.

Appendix 1 – Explanation

ⓘ *This Explanation 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.*

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Taxable supply

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

You make a **taxable supply** if:

- (a) you make the supply for *consideration; and
- (b) the supply is made in the course or furtherance of an *enterprise that you *carry on; and
- (c) the supply is *connected with the indirect tax zone; 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.

17. As the Council is registered for GST and makes supplies in carrying on its enterprise in the indirect tax zone (being, generally, Australia), the issue that arises under section 9-5 is whether such supplies are supplies for consideration.

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

Division 81

Australian fees and charges

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

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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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.

20. 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

21. 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.

22. An Australian law 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

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

- (a) the Commonwealth, a State or Territory, or
- (b) an authority of the Commonwealth or of a State or a Territory.

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

GST Regulations

24. Division 81 gives effect to the principles contained in the *Intergovernmental Agreement on Federal Financial Relations*. Payments of fees and charges generally constitute consideration and, if the requirements of section 9-5 of are satisfied, the payment will be for a taxable supply. Some supplies are excluded and will be exempt.

25. The GST Act provides for regulations to prescribe 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 do not constitute consideration

26. Section 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. Section 81-15.01 of the GST Regulations states:

Fees and charges which do not constitute consideration

Subject to section 81-15.02 of this instrument, for the purposes of section 81-15 of the Act, payment of the following kinds of Australian fees and charges, or the discharging of a liability to make such a payment, is not the provision of consideration:

- (a) a fee or charge for:
 - (i) the kerbside collection of waste; or

- (ii) the supply, exchange or removal of bins or crates used in connection with kerbside collection of waste;
- (b) royalties charged in relation to natural resources;
- (c) a fee or charge imposed on an industry to finance regulatory or other government activities connected with the industry;
- (d) a fee or charge to compensate an Australian government agency for costs incurred by the agency in undertaking regulatory activities;
- (e) a fee or charge imposed in relation to a court, tribunal, commission of inquiry or sheriff's office;
- (f) a fee or charge for a supply of a regulatory nature made by an Australian government agency;
- (g) a fee or charge for entry to a national park.

Australian fees and charges that constitute consideration

27. Section 81-10.01 of the GST Regulations sets out Australian fees and charges that are prescribed fees and charges which are treated as consideration for subsection 81-10(2). Subsection 81-10.01(1) of the GST Regulations states:

Fees and charges which constitute consideration

Subject to section 81-15.02 of this instrument, for the purposes of subsection 81-10(2) of the Act, the following kinds of Australian fee or charge are prescribed:

- (a) a fee for parking a motor vehicle in a ticketed or metered parking space;
- (b) a toll for driving a motor vehicle on a road;
- (c) a fee for hire, use of, or entry to a facility, except for an entry fee to a national park;
- (d) a fee for the use of a waste disposal facility;
- (e) a fee for pre-lodgment advice if:
 - (i) the advice relates to an application to which subsection 81-10(4) of the Act applies; and
 - (ii) it is not compulsory to seek the advice;
- (f) a fee or charge for the provision of information by an Australian government agency if the provision of the information is of a non-regulatory nature;
- (g) a fee or charge for a supply of a non-regulatory nature;
- (h) a fee or charge for a supply by an Australian government agency, where the supply may also be made by a supplier that is not an Australian government agency.

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

28. Section 81-15.02 of the GST Regulations deals with how fees and charges are treated if they are covered by both sections 81-10.01 and 81-15.01 of the GST Regulations and states:

Fees and charges covered by sections 81-10.01 and 81-15.01

Fee or charge for a supply of a non-regulatory nature is not consideration if covered by section 81-15.01

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- (1) For the purposes of section 81-15 of the Act, payment of, or the discharging of a liability to pay, a fee or charge covered by both paragraph 81-10.01(1)(g) and section 81-15.01 of this instrument is not the provision of consideration.

Other fees or charges covered by section 81-10.01 are consideration even if covered by section 81-15.01

- (2) Section 81-15.01 does not apply in relation to an Australian fee or charge covered by subsection 81-10.01(1) (other than one covered by paragraph 81-10.01(1)(g)).

GST-free

29. Subsection 9-30(1) provides that a supply is not a taxable supply to the extent that it is GST-free and states:

A supply is **GST-free** if:

- (a) it is GST-free under Division 38 or under a provision of another Act; or
- (b) it is a supply of a right to receive a supply that would be GST-free under paragraph (a).

Input taxed

30. Subsection 9-30(2) provides that a supply is not a taxable supply to the extent that it is input taxed and states:

A supply is **input taxed** if:

- (a) it is input taxed under Division 40 or under a provision of another Act; or
- (b) it is a supply of a right to receive a supply that would be input taxed under paragraph (a).

In kind developer contributions

31. Division 82 provides that GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) in return for the supply by an Australian government agency of a right to develop land. Subsections 82-5 and 82-10 state:

82-5 Supplies of rights to develop land do not constitute consideration in certain cases

- (1) The supply, by an *Australian government agency, of a right to develop land is not treated as *consideration for another supply if the other supply complies with requirements imposed by or under an *Australian law.
- (2) It does not matter whether the other supply is made to the *Australian government agency.
- (3) This section has effect despite section 9-15 (which is about consideration).

82-10 Supplies by Australian government agencies of rights to develop land are not for consideration

- (1) The supply, by an *Australian government agency, of a right to develop land is treated as a supply that is not made for *consideration to the

extent that it is made in return for another supply that complies with requirements imposed by or under an *Australian law.

- (2) It does not matter whether the other supply is made to the *Australian government agency.
- (3) If the other supply constitutes the payment of:
 - (a) an *Australian tax prescribed by regulations made for the purposes of subsection 81-5(2); or
 - (b) an *Australian fee or charge prescribed by regulations made for the purposes of subsection 81-10(2);

this section overrides those regulations in relation to the payment.

- (4) This section has effect despite section 9-15 (which is about consideration).

Security deposits

32. Subsection 99-5(1) provides that a deposit held as security for the performance of an obligation is not treated as consideration for a supply in certain circumstances and states:

Giving a deposit as security does not constitute consideration

- (1) A deposit held as security for the performance of an obligation is not treated as *consideration for a supply, unless the deposit:
 - (a) is forfeited because of a failure to perform the obligation; or
 - (b) is applied as all or part of the consideration for a supply.

Sales, facilities, water, sewerage, child care, financial supplies, residential premises, security deposits and bonds

33. The following comments and explanations refer to particular groups of fees and charges in the tables at paragraph 9 of this Ruling.

Sales

34. Generally, the supplies of goods and services made by the Council for consideration are taxable supplies unless the supply is GST-free or input taxed.

35. Where the payment is not treated as consideration under Division 81, the supply is not a taxable supply under section 9-5.

36. Where the payment is treated as consideration under Division 81, and the positive requirements of section 9-5 are met, the supply is a taxable supply.

Facilities

37. The payment of an Australian fee or charge that relates to, or relates to the application for, the provision, retention or amendment under an Australian law of a permission, exemption, authority or licence is not the provision of consideration under subsection 81-10(4). However, to the extent the fee is a fee for the hire, use of or entry into a facility (except for an entry fee to a national park), the payment will be consideration for a supply under paragraph 81-10.01(1)(c) of the GST Regulations.

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38. Accordingly, a fee or charge for the hire or entry to a Council facility or the use of the Council's equipment is consideration for a supply. Where a supply satisfies the positive requirements of section 9-5, the supply is taxable. However, the supply is not a taxable supply to the extent that it is either GST-free or input taxed.

Water and sewerage

39. Subdivision 38-I deals with supplies of water, sewerage or sewerage like-services, emptying of septic tanks and drainage. Where the provisions of Subdivision 38-I are satisfied the supply of such services by the Council is GST-free. Goods and Services Tax Ruling GSTR 2000/25 *Goods and services tax: GST-free supplies of water, sewerage and sewerage-like services, storm water draining services and emptying of a septic tank* provides the Commissioner's view on what activities are covered by the relevant supplies referred to in Subdivision 38-I.

Child care

40. Subdivision 38-D deals with supplies of child care services by approved child care services under the family assistance law or other child care services and supplies directly related to child care. Where the provisions of Subdivision 38-D are satisfied the supply of such services by the Council is GST-free.

Financial supplies and supplies of residential premises

41. Subdivisions 40-A and 40-B deal with financial supplies and supplies of residential premises. Where the provisions of these Subdivisions are satisfied such supplies made by the Council are input taxed.

Security deposits and bonds

42. Division 99 deals with deposits held as security for the performance of an obligation. Security deposits and bonds are required by the Council for a variety of reasons, such as for security against potential damage to footpaths and roads (in connection with building and development) or to the Council's property (in relation to the hire of a Council hall for a function).

43. Where the deposit or bond is refunded in full there are no GST consequences. Where the amount is forfeited, the payment is applied to the underlying supply (the obligation that has not been satisfied) with the appropriate GST treatment applicable to that supply. If the underlying supply is either GST-free or input taxed, the forfeited deposit will not be consideration for a taxable supply.

44. Goods and Services Tax Ruling GSTR 2006/2 *Goods and services tax: deposits held as security for the performance of an obligation* provides the Commissioner's view on the operation of Division 99 and discusses the characteristics of a security deposit to which Division 99 applies. GSTR 2006/2 also explains the special rules for the attribution of GST on taxable supplies relating to security deposits in more detail.

Appendix 2 – Legislative references

❶ ***This Appendix sets out South Australian Acts and regulations considered in preparing the Ruling. It does not form part of the binding public ruling.***

45. The following South Australian Acts were considered in preparing this Ruling:

- *Land and Business (Sale and Conveyancing) Act 1994 (SA)*
- *Local Government Act 1999 (SA)*
- *Local Government (Elections) Act 1999 (SA)*
- *Development Act 1993 (SA)*
- *Dog and Cat Management Act 1995 (SA)*
- *Freedom of Information Act 1991 (SA)*
- *Road Traffic Act 1961 (SA).*

46. Sections 35, 36 and 188 of the *Local Government Act 1999 (SA)* state:

35 Corporate status

- (1) A council is a body corporate with perpetual succession and a common seal.
- (2) A council bears the name assigned to it under this Act.
- (3) A council consists of the members appointed or elected to the council in accordance with this Act or the *Local Government (Elections) Act 1999*.

36 General powers and capacities

- (1) A council—
 - (a) has the legal capacity of a natural person and, in particular—
 - (i) may enter into any kind of contract or arrangement; and
 - (ii) may sue and be sued; and
 - (iii) may act in conjunction with another council or authority, or a person; and
 - (b) has the other powers and capacities conferred by or under this or another Act; and
 - (c) has the power to do anything necessary, expedient or incidental to performing or discharging its functions or duties or to achieving its objectives.
- (2) A council may act outside its area—
 - (a) to the extent considered by the council to be necessary or expedient to the performance of its functions; or
 - (b) in order to provide services to an unincorporated area of the State.
- (3) A council should, in the arrangement of its affairs, take reasonable steps to separate its regulatory activities from its other activities.
- (4) A council must not do anything inconsistent with a law of the State or Commonwealth.

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- (1) A council may impose fees and charges—

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- (a) for the use of any property or facility owned, controlled, managed or maintained by the council;
 - (b) for services supplied to a person at his or her request;
 - (c) for carrying out work at a person's request;
 - (d) for providing information or materials, or copies of, or extracts from, council records;
 - (e) in respect of any application to the council;
 - (f) in respect of any authorisation, licence or permit granted by the council;
 - (g) in respect of any matter for which another Act provides that a fee fixed under this Act is to be payable;
 - (h) in relation to any other prescribed matter.
- (2) Fees or charges under subsection (1)(a), (b) or (c) need not be fixed by reference to the cost to the council.
- (2a) Fees or charges under subsection (1)(d) must not exceed a reasonable estimate of the direct cost to the council in providing the information, materials, copies or extracts.
- (3) A council may provide for—
- (a) specific fees and charges;
 - (b) maximum fees and charges and minimum fees and charges;
 - (c) annual fees and charges;
 - (d) the imposition of fees or charges according to specified conditions or circumstances;
 - (e) the variation of fees or charges according to specified factors;
 - (f) the reduction, waiver or refund, in whole or in part, of fees or charges
- (4) If—
- (a) a fee or charge is fixed or prescribed by or under this or another Act in respect of a particular matter; or
 - (b) this or another Act provides that no fee or charge is payable in respect of a particular matter,
- a council may not fix or impose a fee or charge in respect of that matter.
- (5) Fees and charges may be fixed, varied or revoked—
- (a) by by-law; or
 - (b) by decision of the council.
- (6) The council must keep a list of fees and charges imposed under this section on public display (during ordinary office hours) at the principal office of the council.
- (7) If a council—
- (a) fixes a fee or charge under this section; or
 - (b) varies a fee or charge under this section,

the council must up-date the list referred to in subsection (6) and take reasonable steps to bring the fee or charge, or the variation of the fee or charge, to the notice of persons who may be affected.

References*Previous draft:**Not previously issued as a draft**Related Rulings/Determinations:*

TR 2006/10; GSTR 2000/25; GSTR 2006/2

Legislative references:

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- ANTS(GST)A 1999 7-1(1)
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- TAA 1953
- A New Tax System (Family Assistance) (Administration) Act 1999
- Development Act 1993 (SA)
- Dog and Cat Management Act 1995 (SA)
- Freedom of Information Act 1991 (SA)
- Freedom of Information Act 1991 29
- Land and Business (Sale and Conveyancing) Act 1994 (SA)
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- Local Government Act 1999 (SA)
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- Local Government Act 1999 36
- Local Government Act 1999 132
- Local Government Act 1999 187
- Local Government Act 1999 188
- Local Government Act 1999 Schedule 5
- Local Government (Elections) Act 1999 (SA)
- Road Traffic Act 1961 (SA)

Other references:

- Intergovernmental Agreement on Federal Financial Relations

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