



# ***CR 2013/39 - Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to water, sewerage and drainage supplies***

 This cover sheet is provided for information only. It does not form part of *CR 2013/39 - Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to water, sewerage and drainage supplies*

 This document has changed over time. This is a consolidated version of the ruling which was published on *5 June 2013*



## Class Ruling

### Goods and services tax: the GST treatment of fees and charges imposed by NSW councils in relation to water, sewerage and drainage supplies

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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);
- Subdivision 38-I of the 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.
4. Within this Ruling the class of entities is collectively referred to as the 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 19 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

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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).

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## Scheme

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10. The following description of the scheme is based on information provided by the applicant.
11. The scheme incorporates the supplies made by NSW Councils in relation to management and provision of water, sewerage and drainage services, access, information and rights.
12. Council is registered for goods and services tax (GST).
13. The supplies made by Council are connected with Australia and made in the course or furtherance of Council's enterprise.
14. 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.
15. 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.
16. Council levies charges for goods and services under various sections of the LG Act and the other NSW State statutes. In particular, subsection 608(1) of the LG Act, Council may charge and recover a fee for any service it provides.
17. Council sets out which activities including water, sewerage and drainage work which require approval under section 68 of the LG Act, and provides that failure to obtain approval is an offence under section 626. Council is registered for goods and services tax (GST).
18. The relevant provisions of the legislation mentioned above are set out in Appendix 2.

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## Ruling

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19. This Ruling addresses the GST treatment of supplies made by Council in relation to the provision of water, sewerage and drainage for which particular fees and charges are imposed. The table on page 4 of this Ruling sets out the GST treatment

## 20. In this Ruling:

- when we indicate a fee or charge relates to a taxable supply under section 9-5, we assume all 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
- 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'.

**Water, sewerage and drainage fees and charges schedule**

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
Application for plumber's licence	Fee to obtain a licence.	Exempt-Subsection 81-10(4) Licence
Recovery of costs incurred in tracing a person liable to pay fees or charge	Includes ordinary rates, special rates, fees and charges	Exempt – Paragraph 81-15.01(1)(d) of the GST
Climate Change Fund Contribution	Climate Change Fund Contribution	Exempt – Section 81-5 Australian tax
Annual charges for coastal protection services	Fee to protect coastal foreshores	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Sewer headworks charge	Charge set for development of residential subdivisions/strata units/flats-per lot/unit	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Developer Contribution under section 64 of LGA	Developer charges in relation to water sewerage or drainage works	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Water headworks charge	The water headworks charge is payable whenever a new lot is connected to the water supply or an existing lot increases its use of the water.	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Developer Contribution under section 306 of the Water Act	Councils require a Developer to contribute to the existing a future water infrastructure	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Detention, retention, flood or drainage related	Fee charged in relation to detention, retention, flood or drainage of water. May relate to	Exempt – Paragraph 81-15.01(1)(f) of the GST

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
fee	council-supplied drainage services or actual physical services provided by council. May include review fees charged by council to review or assess a situation/installation. May include assessment fee in relation to flood matters, such as gutter flows. May also be a fee charged for use of Council's drainage model or flood model. Flood advice service.	Regulations
Inspection fee for inspection and assessment of stormwater drainage	Includes the inspection required by Council when drainage is to be connected to Council's system, where the service DOES OCCUR up to and including the point of supply.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Inspection fee for inspection and assessment of stormwater drainage	Includes the inspection required by Council when drainage is to be connected to Council's system, where the service DOES NOT occur up to and including the point of supply	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Sewerage discharge Inspection Fee	Sewerage discharge Inspection Fee	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Trade waste premises inspection fee	Trade waste, additional inspection fee (under best practice guidelines) includes liquid trade waste inspection fee.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Application fee to install or operate an On site (septic) Sewerage System	Install, construct alter and operate sewerage management facility (Domestic/Commercial premises). Commercial or Industrial. Advisory/consultancy and written response detailing Septic System registration. Includes on-site septic systems & Domestic Grey water Treatment Systems); includes sustainable effluent application area; Includes amendments to plans with Council and additional toilets. Includes the	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	application fee for an on-site trade waste facility and fees for amendments to those applications. Also includes inspection fee. Also includes an amendment. Includes fee for On site (septic) sewerage system compliance certificate and a sewerage management device report.	
Fee for change of ownership of onsite sewerage system	Updates council records	Exempt – Subsection 81-10(5) Information
Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility	Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility	GST-free – Section 38-290 Items 4 and 5 of Appendix 2 of GSTR 2000/25
On site (septic) sewerage inspection fee	Domestic or commercial premises. Includes consultancy and/or advisory services. Including pre-purchase inspections. Reinspection fee. Requested inspection of a waste treatment device or human waste storage facility (includes on-site Septic (on site disposal) systems & Domestic Grey water Treatment Systems)	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Operate a system of sewerage management (within the meaning of section 68A)	Operate a system of sewerage management	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
On site(septic) Detention compliance fee	On site(septic) Detention where council charges for OSD compliance certificate/plate/other document or device indicating parameters or requirements have been met	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Recovery of costs incurred in performing a function or	Recovery of costs incurred by council in relation to drainage, sewerage or stormwater. Could include costs such as CCTV	Exempt – Paragraph 81-15.01(1) (d) of the GST Regulations

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
reaching a decision	fees paid by council to check on condition of pipe work. Includes where Council must utilise the services of an outside provider to, say, have water tested and analysed (eg collection and analysis of water samples by a NATA approved laboratory).	
Sanitary service charge – per annum	Sanitary service charge – per annum	GST-free – Section 38-290 paragraph 40 of GSTR 2000/25
Sanitary service charge – per service	Sanitary service	GST-free – Section 38-290 paragraph 40 of GSTR 2000/25
Septic (on site disposal) tank effluent disposal fee	Septic (on site disposal) tank effluent disposal fee	GST-free – Section 38-295 Paragraph 40 of GSTR 2000/25
Fee for Registration of Septic (on site disposal) System	Registration of a Septic (on site disposal) System, licence to operate, operational licence search	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Septic (on site disposal) tank applications or application amendment fee	Septic (on site disposal) installation, operation. Also alter or amend the construction application	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Septic (on site disposal) tank Inspection fee	Septic (on site disposal) tank Inspection fee. Includes reinspection after works	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Application fee to construct sewer or drainage over council land	Fee for permission to enter Council lands for the purpose of laying Sewer and drainage lines including fees for Granting of Easements	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Miscellaneous sewer service charges	High pressure sewer cleaning charge, camera (CCTV) inspection of sewer pipes, sewer vent relocation, raise boundary riser to surface, physically locate sewer main on ground, smoke testing, clearing sewer chokes, foaming of mains. Includes working time	Taxable – Section 9-5 Supply of services



<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	charged per hour or per klm	
Sewer and drainage inspection	Charge to inspect sewerage and drainage works, including entry to confined spaces; Includes fee for final inspection certificate. Includes inspection of concrete encasement and additional junction cut ins. Includes additional inspections. Includes inspection of sewerage drainage arrester.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee for connection to Council's sewer or water system	Connection to Council's sewer or water system under the Water Management Act. Also includes reconnection.	GST-free – Section 38-290 or 38-285 Paragraph 24 and item 4 Sewerage Appendix 2 of GSTR 2000/25
Fee for connection to Council's sewer system. Sewer connection charge	Connection to Council's sewer or water system other than under the Water Management Act. Also includes reconnection	GST-free – Section 38-290 Item 4 Sewerage Appendix 2 of GSTR 2000/25
Fee for connection to Council's sewer or water system – additional fee to lift pavers or do other work in order to make the connection or disconnection	Additional fee necessary to undertake a successful connection or disconnection	GST-free – Section 38-290 or 38-285 Paragraph 24 and item 4 Sewerage Appendix 2 of GSTR 2000/25
Liquid Trade Waste Access Charge	For Trade Waste discharge whether the Discharger has approval or not specified pre-treatment or not or entered into a Service Contract or not. Likely that the discharger enters into a service contract. Charge depends on category.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Liquid Trade Waste Application Fee	Includes application fee for approval of liquid trade waste access, initial inspection and any reinspections. Also includes withdrawal of or modifications / amendments to application for liquefied trade waste access. Also includes renewal of approval, application for trade waste discharge factor variation and application for	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	exception of installing standard pre-treatment equipment. Also includes fees for withdrawal or modifications of applications.	
Liquid Trade Waste Inspection or Re Inspection fee	Liquid Trade Waste Inspection or Re Inspection fee	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Sewer Non Rateable Property Access Charge	Schools are examples of non rateable property. Charge may be per water closet or per cistern serving a urinal	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Sewer Non Residential Access Charge	Annual Charge for Non residential property to the Sewer based on assessment of various factors	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Sewer Residential Access Charge	Annual Charge for Residential Property to access (or have proximity to the sewer that allows access). Include fee for additional WC's, also described as pedestals. Includes properties connected under agreement which were agreements for supply some rural customers in the 1980's. Includes charge for a second dwelling on each parcel of land.	GST-free – Section 38-290 Item 1 Sewerage Appendix 2 of GSTR 2000/25
Sewer Residential Access Charge – vacant land	Annual charge where access to sewer main is available. It is normal to bill for access charge in relation to land, the boundary of which is within 225 metres of a main.	GST-free – Section 38-290 Item 1 Sewerage Appendix 2 of GSTR 2000/25
Drainage Non Residential Usage Charge	Charge based upon stormwater drainage per KL	GST-free – Section 38-300 Item 2 Drainage – Stormwater Appendix 2 of GSTR 2000/25
Liquid Trade Waste Usage Charge	These are based on total mass of contaminant. The mass will be calculated from the volume of trade waste discharged and the concentration of contaminants in the trade waste flow. The trade waste volume will be calculated by measuring water consumption and	GST-free – Section 38-290 290 Item 2 Sewerage Appendix 2 of GSTR 2000/25

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	applying a Trade Waste Discharge Factor (TDF). The TDF will be determined for each property according to availability of information for the TDF calculation, otherwise industry default factors will apply. Charge may vary depending on whether user has appropriate pre treatment. Includes trade food waste disposal charge per bed/	
Sewer Non Residential Usage Charge	Charge for actual use based on Sewerage Discharge Factor (SDF) formulation	GST-free – Section 38-290 Item 2 Sewerage Appendix 2 of GSTR 2000/25
Effluent disposal fee	Trade Waste mass fee (per kg) – Large Discharger, includes fee for mobile home disposal unit; Includes disposing of waste water into sewer of council.	GST-free – Section 38-290 Item 2 Sewerage Appendix 2 of GSTR 2000/25
Fee for discharge approval (Commercial)	<p>Fee for discharge approval under section 144 of the Water Management Act (Note that residential waste does not require an approval)</p> <p>Discharge approval means an approval for the discharge of a substance into a water supply authority's sewerage system.</p>	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Sewer charge Non rateable properties	Sewer Charge Non-rateable properties (excluding schools)	GST-free – Section 38-290 Items 1 and 2 Sewerage Appendix 2 of GSTR 2000/25
Sewer design fee	Pressure Sewer Design, Preparation of line drawing (with auxiliary items and pipe sizes shown) suitable for experienced contractors (per lot). Additional details such as parts list etc (per hour). Includes fee to cover the cost of drafting, filing and retrieving plans	Taxable – Section 9-5 and the application of paragraph 81-10.01(1)(h) of the GST Regulations
Sewer extension charge	Charge to extend sewer main to a block/parcel of land	GST-free – Section 38-290 Item 4 Sewerage Appendix 2

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
		of GSTR 2000/25
Sewer Residential Usage Charge	Charge for actual use based on Sewerage Discharge Factor (SDF) formulation	GST-free – Section 38-290 Item 2 Sewerage Appendix 2 of GSTR 2000/25
Sewer Testing	Low pressure air testing (includes confined space equipment);	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Trade Waste Inspection Fee	Includes fee for re-inspection	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Carry out stormwater drainage work	Fee in connection with work. Stormwater drainage work means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, flushing, cleansing or clearing of any stormwater drain communicating or intended to communicate, directly or indirectly, with any stormwater channel of a council.	GST-free – Section 38-300 (Item 3 Drainage – Stormwater Appendix 2 of GSTR 2000/25)
Annual charge for stormwater management services	Fee to cover council's costs of providing stormwater services, levied on rateable land	GST-free – Section 38-300 Item 1 Drainage – Stormwater Appendix 2 of GSTR 2000/25
For fee or reward, transport waste over or under a public place	Includes Liquid waste/effluent removal licence fee. Fee to transport over public land	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Trade Waste Application Fee	Trade Waste Application Fee for costs associated with registrations of all new premises	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Urgent Application Fee	Council may charge a separate fee for the urgent processing of an application. Sometimes 2 fees quoted for a particular thing eg certificate, a fee for normal turnaround and another fee for a reduced time	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
Annual trade Waste Agreement Fee	Annual Trade Waste Agreement Fee	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee for Approval of Sewerage Drainage Arrester	Fee for Approval of Sewerage Drainage Arrester. Also known as grease arrestors, these devices are used to pre-treat certain liquid waste generally originating from food service establishments.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee for lack of trade waste pre treatment facility	Fee for lack of trade waste pre treatment facility	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee for supply of tertiary treated sewerage effluent	Fee for supply of tertiary treated sewerage effluent, charged per kilolitre. Tertiary Treatment includes secondary effluent pump station, filtration chlorination, de-chlorination. Treatment levels beyond secondary are called advanced or tertiary treatment. Tertiary treatment technologies can be extensions of conventional secondary biological treatment to further stabilize oxygen-demanding substances in the wastewater, or to remove nitrogen and phosphorus. Tertiary treatment may also involve physical-chemical separation techniques	GST-free – Section 38-290 Item 2 Drainage – Stormwater Appendix 2 of GSTR 2000/25
Septic (on site disposal)/Portaloo/Mobile Cleaning Charge	Septic (on site disposal)/Portaloo/Mobile Cleaning Charge	Taxable – Section 9-5 Supply of services
Application fee for approval to connect to council's water supply system	Applies to residential and non-residential new connections and alterations. Includes re connection fee.	GST-free – Section 38-285 Paragraph 24 of GSTR 2000/25
Carry out water supply work	Water supply work means the construction, alteration, extension, disconnection, removal, flushing, cleansing, maintenance, repair, renewal or clearing of any pipes or fittings	GST-free – Section 38-285 Paragraph 24 and Appendix 2 Water of GSTR 2000/25

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	of any water service communicating or intended to communicate, directly or indirectly, with any water main of a council, but does not include changing a washer.	
Carry out sewerage work	Sewerage work means the construction, alteration, extension, disconnection, removal, ventilation, flushing, cleansing, maintenance, repair, renewal or clearing of any sewerage service pipes or fittings or fixtures communicating or intended to communicate, directly or indirectly, with: (a) a septic tank, an effluent or a sullage disposal system, or (b) any sewer of a council.	GST-free – Section 38-290 Appendix 2 Sewerage of GSTR 2000/25
Fee to connect to water supply	May include an inspection fee where the service provided requires a physical inspection prior to the service or certification being performed, such as a on-site detention and positive covenant inspection certificate. Includes an On Site Detention assessment	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee paid to State Rail Authority as a condition of connection	Fee paid to State Rail Authority where the service requires a rail crossing and approval from the State Rail Authority, fee is passed on by council.	Exempt – Paragraph 81-15.01(1) (d) of the GST Regulations
Draw water from a council water supply or a standpipe or sell water so drawn	Includes call out per load. May include metered standpipe hire and access fee, rent of standpipe, service charge and consumption charges. Includes charge for key or key replacement	GST-free – Section 38-285 Item 10 Water Appendix 2 of GSTR 2000/25
Standpipe hire fee	Standpipes are pipes from which water can be obtained. Fee for Standpipe hire. May be charged annually, quarterly or monthly. Also includes fee for hire of bulk water tower key.	GST-free – Section 38-285 Item 10 Water Appendix 2 of GSTR 2000/25)
Fees associated with interruption of	Fees associated with	GST-free – Section 38-285 (Item 6

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
water supply	interruption of water supply	Water Appendix 2 of GSTR 2000/25
Fee for pressure flow test	Fee for pressure flow test	GST-free – Section 38-285 Item 12 Water Appendix 2 of GSTR 2000/25
Water main location service	Fee to locate water main	GST-free – Section 38-285 Item 4 Water Appendix 2 of GSTR 2000/25
Service call for damaged service	Service call for damaged service	Taxable – Section 9-5 Supply of services
Service call for damaged water meter	Service call for damaged water meter	GST-free – Section 38-285 Item 5 Water Appendix 2 of GSTR 2000/25
Install, alter disconnect or remove a meter connected to a service pipe	Install, alter disconnect or remove a meter connected to a service pipe	GST-free – Section 38-285 Item 5 Water Appendix 2 of GSTR 2000/25
Water carters license fee	Water carter's license – for operators of businesses that collect water from a municipal supply and deliver to premises generally dependant on rain water for water supply (or perhaps to say fill up a swimming pool quickly). Also includes bowsers. Includes fees for bacteriological samples.	Exempt – Subsection 81-10(4) Licence
Road underboring charge	Additional cost to ratepayer for connection to water service where council has to bore under a road to connect the ratepayer to council's supply	GST-free – Section 38-285 Item 4 Water Appendix 2 of GSTR 2000/25
Special Water Meter Reading fee	Fee to read meter, usually in connection with the sale of a property so the buyer knows the outstanding water usage charges. Exempt as information required to be given to applicant	GST-free – Section 38-285 Item 5 Water Appendix 2 of GSTR 2000/25
Water Usage	Water Usage Charge or Water	GST-free –

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
Charge	Usage Component (usage component) – Regulation 191 of Water Management (General Regulation) – section 314 of the Water Management Act. Also includes Recycled Water Usage Charge. May also include water usage from Council standpipe.	Section 38-285 Item 1 and item 10 Water Appendix 2 of GSTR 2000/25
Water Usage standpipe		GST-free – Section 38-285 Item 10 Water Appendix 2 of GSTR 2000/25
Water Access Charges – Annual	Annual access fee for water Service availability charge made annually and related to the size of the Meter. Even if a ratepayer is not connected to the water supply they will still be charged a service availability charge if the property boundary is within 225metres of the water supply. Includes fee for initial installation of water meter. May be billed or payable quarterly or otherwise but fee is set per annum.	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Stormwater drainage – Annual charge	Fee charged for stormwater drainage per rateable parcel	GST-free – Section 38-300 Item 5 Drainage – Stormwater Appendix 2 of GSTR 2000/25
Water Access Charges – Non rateable property	Access charge for non rateable property such as churches	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Water Access Charges – Government property	Access charge for non rateable property such as government property	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Water access charge – additional fee for separate fire service connected	Where property has fire service	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Water usage or consumption charges	Fee charged for water usage usually based upon quantity of water consumed. Includes application fee and fee for initial key card. Also includes fee for	GST-free – Section 38-285 Item 1 Water Appendix 2 of GSTR 2000/25



<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
	<p>additional key cards. Also includes fees charged for water delivery.</p> <p>There are different charges for different types of users which may initially be divided into urban and non urban eg general tariff; strata title units and flats; industrial; commercial; community facilities; bulk supply and primary producers</p>	
Fee to ease water restriction		Exempt – Subsection 81-10(4) Permission
Non compliance with water restrictions	In the nature of a fine for not complying with water restrictions	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Fee for hire of water truck	Fee to use truck or tanker	Taxable – Section 9-5 Supply of services
Water usage or consumption charges – non potable water	Charge for non potable water. Wikipedia defines potable water as: ‘Drinking water or potable water is water pure enough to be consumed or used with low risk of immediate or long term harm’. Non potable water is the opposite of this and is often used to water golf courses or in industrial situations	GST-free – Section 38-285 Item 1 Water Appendix 2 of GSTR 2000/25
Water Supply Special Rate or Charge	Applies to residential, commercial, and industrial	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Application fee for approval to disconnect from council’s water supply system Water Supply Special Rate or Charge		GST-free – Section 38-285 Paragraph 24 of GSTR 2000/25
Application for water meter	Application for water meter of various sizes, charged separately to water connection fee.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
Backflow Prevention Device Application and Registration Fee and test fee	Backflow Prevention Device Application and Registration Fee also includes administration fee	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
RPZ device	Registration Fee and test fee. Reduced Pressure Zone Device (RPZD, RPZ or RPZ valve) is a type of backflow prevention device used to protect water supplies from contamination. RPZDs may also be known as reduced pressure principle backflow prevention devices, or reduced pressure zone assemblies	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Effluent water standpipe licence		Exempt – Subsection 81-10(4) Licence
Effluent/ recycled water supply fee	Recycled water irrigation. Sales of treated effluent for golf courses etc.	GST-free – Section 38-285 Item 1 Water Appendix 2 of GSTR 2000/25
Leak detection	Fee to detect water leak	Taxable – Section 9-5 Supply of services
Environmental Laboratory Fees for Analysis relating to Water and/or Sewer	Where council conducts water analysis for quality, toxicity, Mouse Bio Assay, colour, turbidity, the presence of chemicals, metals, air-borne dusts, algae, bacteria, etc. Also includes hourly fee for sample collection and on-site analysis, chemical water testing packages, waste water treatment plant water analysis and digester analysis	Exempt – Paragraph 81-15.01(1)(f) of the GST Regulations
Application for plumbing permit	Application for plumbing permit	Exempt – Subsection 81-10(4) Permission
Fee for disconnection from Council's water or sewer system	Under section 150 of the Water Management Act (disconnection constitutes 'plumbing work' as it affects a connection. Includes application fee and cost of physical work and labour.	GST-free – Paragraph 24 and Item 4 of Sewerage Appendix 2 of GSTR 2000/25

<b>Fees and Charges</b>	<b>Description</b>	<b>GST Treatment</b>
Fee for test of water meter	Removal of the meter by an accredited organisation at the customer's request to determine the accuracy of the water meter. A separate charge relating to transportation costs and the full mechanical test which involves dismantling and inspection of meter components will also be payable. (This fee is for meters 20mm 80mm, and not applicable for 100mm 150mm)	GST-free – Section 38-285 Item 9 Water Appendix 2 of GSTR 2000/25
Fee for Water Pressure Certificate	Includes fee for water pressure testing. Water pressure certificates may be issued by council in regards to hose reel installation, fire hydrant installation and fire sprinkler and / or wall drencher installation	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Section 307 Certificate	Section 307 Certificate of Compliance provided under the Water Management Act for works carried out in a water supply authority's area.	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Section 360 Certificate	Section 360 Certificate as to outstanding rates and charges under the Water Management Act	Exempt – Paragraph 81-15.01(1) (f) of the GST Regulations
Water Hydrant Licence	Incl metered hydrant for domestic purposes	Exempt – Subsection 81-10(4) Licence
Water Meter Hire Charge	Hire Charge for water meter, may also be used in reference to discharges made by property. Water Management Act related	GST-free – Section 38-285 Item 3 Water Appendix 2 of GSTR 2000/25
Private works	EG Clearing of shrubs and trees and bushes	Taxable – Section 9-5 Supply of services

## Appendix 1 – Explanation

**❶** *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.*

### Taxable supplies

21. 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.

22. 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)

23. As Council is registered for GST and provides water, sewerage and drainage supplies in carrying on its enterprise in Australia, the issue that arises under section 9-5 is whether these supplies are for consideration, GST-free or input taxed.<sup>1</sup>

24. 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.

### **GST-free supplies**

25. Subdivision 38-I deals with the GST-free treatment of a supply of water (section 38-285), sewerage or sewerage like-services (section 38-290), services for emptying of a septic tank (section 38-295) and services for draining storm water (section 38-300). A supply of a right to receive a GST-free supply of any of the above mentioned things is also GST-free under paragraph 9-30(1)(b).

<sup>1</sup> There is no provision in the GST Act which would make a supply of water, sewerage and sewerage like services, emptying of septic tanks and drainage services an input taxed supply.

26. 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 explains what activities covered by the relevant supplies are GST-free.

## *Water*

27. Paragraph 24 of GSTR 2000/25 provides the following supplies related to water will be GST-free:

- initial connection, re-connection, disconnection, water meter installation, and tapping and tee insertion ;
- irrigation channel water scheduling and channel attendance (including channelling from natural water courses);
- irrigation channel maintenance up to and including the point of supply (where it is charged to the water supply recipient); and
- water meter reading and testing.

28. Some activities that are performed by Council may have some connection with a supply of water, but remain separate supplies. These separate supplies include, information, such as plans of water pipe locations, performing site inspections on request or as required, granting approvals for building or development as part of a supplier's statutory duties, and issuing permits. These supplies are not GST-free supplies of water. However, some fees and charges imposed by Council for these supplies may be exempt under Division 81: see paragraphs 36 to 48 below.

29. A supply that enables an end recipient to use, store or treat water, once it has been supplied, is also not a supply of water and therefore not GST-free.

## *Sewerage and sewerage-like services*

30. Paragraphs 34-35 of GSTR 200/25 states:

Subsection 38-290(1) provides that 'a supply of sewerage services is GST-free.'

Subsection 38-290(2) further provides that 'a supply that consists of removing waste matter from residential premises is GST-free if:

- (a) the premises are not serviced by sewers; and
- (b) the waste matter is of a kind that would normally be removed using sewers if the premises were serviced by sewers.'

31. GSTR 2000/25 also provides that charges for sewerage services are often calculated independently of actual use. A charge for the right to use a sewerage service, or a right to discharge waste water, is GST-free.

32. Council may also supply a range of other goods and services. It may be said that these supplies are connected with the business of the supply of sewerage services but they are not in themselves sewerage services. The sale of plans of sewer pipe locations, administrative services for photocopying and site inspection are examples of such supplies that are not GST-free. However, some fees and charges imposed by Council for these supplies may be exempt under Division 81: see paragraphs 43 to 55 below.

#### *Emptying of septic tanks*

33. Section 38-295 provides a supply that consists of the emptying of a septic tank is GST-free

#### *Drainage*

34. Section 38-300 provides that a service that consists of draining storm water is GST-free. Charges for draining storm water may be calculated independently of actual usage. Where such charges are in respect of a right to use a storm water draining service, the supply of the right is GST-free.

35. Some activities that are performed by Council may have a connection with draining storm water, but remain separate supplies. An example is the supply of information to the public as a client service. Such information includes the supply of plans, maps and other statistical information to licensed tradespeople. These supplies are not GST-free. Other supplies such as approvals given for building or development applications are also not GST-free. However, some fees and charges imposed by Council for these supplies may be exempt under Division 81: see paragraphs 43 to 55 below.

### **Division 81**

#### **Australian tax**

36. 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.

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

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

38. '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 (Vict)* (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 ...

39. 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.

*Ordinary rates*

40. As the ordinary rates levied by Council satisfy the usual description of a 'tax' as cited in the High Court case of *Roy Morgan*<sup>i</sup>, the Commissioner considers a payment of ordinary rates to be a payment of an Australian tax for the purposes of section 81-5. Therefore fees and charges for water, sewerage or drainage charges that are included in the general rate will be a tax.

*Special rates*

41. All special rates, where Council does not provide any good or service to the ratepayer, that satisfies the usual description of a tax is considered to be an Australian tax for purposes of subsection 81-5(1).

*Climate Change Fund Contribution*

42. As, the Climate Change Fund Contribution imposed by Council exhibits all of the attributes of a tax which is imposed by an Australian law, the payment of this to Council, is an 'Australian tax' for the purposes of subsection 81-5(1) of the GST Act.

**Australian fees and charges**

43. 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) 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.

44. 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**

45. 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**

46. 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.

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

## **GST Regulations**

48. Division 81 of the GST Act 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 of the Act are satisfied, the payment will be for a taxable supply. Some supplies are excluded and will be exempt. The 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 constitute consideration**

49. Regulation 81-10.01 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. A fee for the provision of information, if the provision of information is of a non-regulatory nature, is consideration for a supply. For example, a payment for a commercial sale of books by a government bookshop is treated as consideration for a supply, and if the other conditions of section 9-5 are met, it will be a taxable supply.

50. Regulation 81-10.01 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 of the Act are satisfied.

51. The Explanatory Statement to the A New Tax System (Goods and Services Tax) Amendment Regulation 2012 (No. 2) 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**

52. Regulation 81-15.01 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 of the Act and are not taxable supplies.

53. Those fees and charges that are 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.

54. 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.

55. 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**

56. 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.

## Appendix 2 – Legislative references

### New South Wales Acts

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

- *Local Government Act 1993 (NSW)*
- *Water Management Act 2000*
- Water Management (General) Regulation 2011

### Local Government Act 1993 (NSW)

58. Section 68 of the LG Act lists activities requiring approval of the council and states the following:

#### **68 What activities, generally, require the approval of the council?**

- (1) A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.
- (2) This section does not apply to the carrying out of an activity specified in Part B of the following Table:
  - (a) on land within the area of operations of the Sydney Water Board under the *Sydney Water Act 1994*, or
  - (b) on land within the area of operations of the Hunter Water Board under the *Hunter Water Act 1991*.
- (3) This section does not apply to the carrying out of an activity specified in item 1, 2, 3, 4 or 6 of Part B of the following Table on land within the area of operations of a water supply authority constituted under the *Water Management Act 2000*.

**Note:** A person who fails to obtain an approval or who carries out an activity otherwise than in accordance with an approval is guilty of offence-see sections 626 and 627.

### Table Approvals

#### **Part A Structures or places of public entertainment**

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

#### **Part 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.
- (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.

## **Part 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.
- (6) Operate a system of sewerage management (within the meaning of section 68A).

59. Section 20 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).

60. Council may make and levy special rates and annual levies under section 495 of the LG Act and section 501 list the services council can impose an annual charge and they state:

### **495 Making and levying of special rates**

- (1) A council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or activities.

**Note.** Under section 495, a council could, for example make and levy:

- different special rates for different kinds of works, services, facilities or activities;
- different special rates for the same kind of work, service, facility; or

- activity in different parts of its area;
- different special rates for the same work in different parts of its area.

The amount of special rate will be determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity.

#### **495A Strata lots and company titles taken to be separate parcels of land for annual charges**

For the purposes of making or levying an annual charge under section 496, 496A or 501:

- (a) each lot in a strata plan that is registered under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and
- (b) each dwelling or portion of the kind referred to in section 547(1), is taken to be a separate parcel of rateable land.

#### **496B Making and levying of annual charges for coastal protection services**

- (1) A council may, in accordance with this Act and the regulations, make and levy an annual charge for the provision by the council of coastal protection services for a parcel of rateable land that benefits from the services, being services that relate to coastal protection works constructed:
  - (a) by or on behalf of the owner or occupier (or a previous owner or occupier) of the parcel of land, or
  - (b) jointly by or on behalf of:
    - (i) the owner or occupier (or a previous owner or occupier) of the parcel of land, and
    - (ii) a public authority or a council.
- (2) An annual charge for the provision of coastal protection services must be calculated so as to not exceed the reasonable cost to the council of providing those services (including any legal, insurance, engineering, surveying, project management, financing and similar costs associated with providing those services).

**Note.** The coastal protection services for which an annual charge may be made and levied are services:

- (a) to maintain and repair coastal protection works, or
- (b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere).

See the definition of **coastal protection service** in the Dictionary.

- (3) If a person is aggrieved by the amount of the annual charge, the person may appeal to the Land and Environment Court and that Court may determine the amount.
- (4) The fact that an appeal is pending does not in the meantime affect the levying of the annual charge to which the appeal relates and the charge may be recovered as if no appeal were pending.
- (5) If a person's appeal is, in whole or in part, successful, the council must refund any amount paid in excess of a requirement for payment under this Act.
- (6) If the Land and Environment Court, in the course of determining an appeal under subsection (3), determines the reasonable cost to the council of providing coastal protection services in relation to particular coastal protection works, that determination is binding in relation to the calculation of the annual charge for all other parcels of land that benefit from those same services.
- (7) For the avoidance of doubt, a parcel of land benefits from the provision of coastal protection services even if:
  - (a) the services relate to private coastal protection works (such as a seawall) wholly on the parcel or on a neighbouring parcel of private land, or
  - (b) the services are carried out on land that is outside the council's area.
- (8) Subsection (1) does not authorise or permit a council to make or levy an annual charge for the provision of coastal protection services for rateable land that is held under a lease for private purposes granted under the *Aboriginal Housing Act 1998* or the *Housing Act 2001*.
- (9) The Minister administering the *Coastal Protection Act 1979* is to issue guidelines relating to the making and levying of charges under this section. A council is to have regard to any such guidelines when making and levying such charges.

## **501 For what services can a council impose an annual charge?**

- (1) A council may make an annual charge for any of the following services provided, or proposed to be provided, on an annual basis by the council:
  - water supply services
  - sewerage services
  - drainage services
  - waste management services (other than domestic waste management services)
  - any services prescribed by the regulations.
- (2) A council may make a single charge for two or more such services.

- (3) An annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

61. Section 502 and 608 of the LG Act Council can make charges for actual use and fees for services other than on an annual basis which state:

**502 Charges for actual use**

A council may make a charge for a service referred to in section 496 or 501 according to the actual use of the service.

**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; and
  - 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 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) (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) (Repealed)
- (6) 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.
- (7) An approved fee charged for inspecting premises must be repaid to the person who paid it if the inspection is not carried out.

## **626 Failure to obtain approval**

- (1) A person who carries out an activity specified in Part A of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence, subject to subsection (2).
  - (a) Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).
- (2) A person who carries out an activity specified in Parts B-F of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence.
  - (a) Maximum penalty: 20 penalty units.
- (3) A person:
  - (a) who carries out an activity without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity, and
  - (b) who so carries out the activity on the basis of an exemption granted by or under this Act, being an exemption that is subject to conditions, and
  - (c) who carries out the activity otherwise than in accordance with the conditions to which the exemption is subject, is guilty of an offence under subsection (1) or (3) as if the exemption did not apply.

## **627 Failure to comply with approval**

- (1) A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Part A of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence, subject to subsection (2).
  - (a) Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

- (2) A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Parts B-F of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence.

(a) Maximum penalty: 20 penalty units.

62. The terms 'water supply work', 'sewerage work' and 'stormwater drainage work' are defined in the Dictionary in the LG Act as:

Water supply work means the construction, alteration, extension, disconnection, removal, flushing, cleansing, maintenance, repair, renewal or clearing of any pipes or fittings of any water service communicating or intended to communicate, directly or indirectly, with any water main of a council, but does not include changing a washer.

Sewerage work means the construction, alteration, extension, disconnection, removal, ventilation, flushing, cleansing, maintenance, repair, renewal or clearing of any sewerage service pipes or fittings or fixtures communicating or intended to communicate, directly or indirectly, with:

- (a) a septic tank, an effluent or a sullage disposal system, or
- (b) any sewer of a council.

Stormwater drainage work means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, flushing, cleansing or clearing of any stormwater drain communicating or intended to communicate, directly or indirectly, with any stormwater channel of a council.

### ***Water Management Act 2000***

#### **114 Minister may impose fees and charges**

- (1) The Minister may impose fees and charges for the purposes of this Act.

**Note:** Under the *Independent Pricing and Regulatory Tribunal Act 1992*, any fees and charges imposed by the Minister under this section cannot exceed any relevant determination made by the Independent Pricing and Regulatory Tribunal.

- (2) The Minister may waive or reduce any such fee or charge in a particular case or class of cases if the Minister is of the opinion that the circumstances warrant it.

#### **310 Authority may levy service charges and impose fees and other charges**

- (1) A water supply authority may, in accordance with this Part, levy the following service charges on land within its area of operations:
- (a) water service charges,

- (b) sewerage service charges,
  - (c) drainage service charges,
  - (d) loan service charges,
  - (e) developmental works service charges,
  - (f) flood mitigation service charges,
  - (g) river management service charges,
  - (h) special industry service charges.
- (2) A water supply authority may, in accordance with the regulations, impose fees and charges for any service or thing supplied or provided by it in the exercise of its functions under this Part.
- (3) Without limiting subsection (2), a water supply authority may impose fees and charges with respect to discharges into its sewerage system.

### **314 Basis of levying service charges**

The regulations must specify the basis or bases according to which a water supply authority may levy service charges.

## **Water Management (General) Regulation 2011**

### **192 Basis of levying service charges**

- (1) For the purposes of section 314 of the Act, a water supply authority may levy service charges according to one or more of the following bases:
- (a) on the basis of the availability of the service (the 'access component'),
  - (b) on the basis of the usage of the service (the 'usage component').
- (2) The access component may vary according to any of the following:
- (a) the size of the water meter registering water supply to the land,
  - (b) the nominal size of the water supply service pipe supplying water to the land,
  - (c) the cost of providing the service, as assessed by the authority,
  - (d) the classification of the land, as determined by the authority under this Subdivision.
- (3) The usage component may vary:
- (a) in the case of a water service charge, according to the volume of water supplied to the land concerned, or

- (b) in the case of any other service charge, according to the degree of use of the service, as assessed by the authority.
- (4) For the purposes of subclause (2) (b), the nominal size of a water supply service pipe supplying water to land is:
  - (a) the nominal size of the pipe at the point where it joins the water meter registering water supply to the land, or
  - (b) if there is no such water meter the nominal size of the pipe at the point where it joins the water supply authority's water main.
- (5) In this clause, 'nominal size' has the same meaning as 'nominal size (DN)' has in the document entitled *AS/NZS 3500:2003 Plumbing and Drainage*, as in force from time to time, published by Standards Australia.

## Appendix 3 – Detailed contents list

63. 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 2000/25; TR 2006/10

#### *Subject references:*

- GST
- Government entities
- Division 38-I – Water, sewerage and Drainage
- Division 81 – Payment of taxes, fees and charges
- Government entities
- 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
- ANTS (GST)A99 Div 38-I
- ANTS (GST)A99 38-285
- ANTS (GST)A99 38-290
- ANTS (GST)A99 38-295
- ANTS (GST)A99 38-300
- ANTS (GST)A99 Div 81
- ANTS (GST)A99 81-5
- ANTS (GST)A99 81-10
- ANTS (GST)A99 81-10(1)
- ANTS (GST)A99 81-10(2)
- ANTS (GST)A99 81-10(3)
- ANTS (GST)A99 81-10(4)
- ANTS (GST)A99 81-10(5)
- ANTS (GST)A99 81-15
- ANTS(GST)A99 195-1
- ANTS(GST)R99 81-10.01

- ANTS(GST)R99 81-10.01(1)
- ANTS(GST)R99 81-10.01(1)(c)
- ANTS(GST)R99 81-10.01(1)(g)
- ANTS(GST)R99 81-10.01(1)(h)
- ANTS(GST)R99 81-10(2)
- ANTS(GST)R99 81-15.01
- ANTS(GST)R99 81-15.01(1)
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- ANTS(GST)R99 81-15.01(1)(d)
- ANTS(GST)R99 81-15.01(1)(e)
- ANTS(GST)R99 81-15.01(1)(f)
- ANTS(GST)R99 81-15.01(2)
- ANTS(GST)R99 81-15.02
- ANTS(GST)R99 81-15.02(2)
- ITAA 1997 995-1
- TAA 1953
- Copyright Act 1968
- Library Act 1939 (NSW)
- Local Government Act 1993 (NSW)
- Water Management Act 2000(NSW)

#### *Case references:*

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

#### *Other references:*

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

### ATO references

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