

## Rate Exemption – Charitable Use

### Policy Objective

The objective of this policy is to ensure that the assessment of applications for rate exemptions, for land used exclusively for charitable purposes (**Charitable Use Exemption**), is conducted with administrative efficiency in a fair, consistent and equitable manner.

This policy outlines the guiding principles for the assessment process, and the factors to be taken into account in determining whether a Charitable Use Exemption applies, under section 6.26(2)(g) of the *Local Government Act 1995 (LGA)*.

### Operation of Policy

An application for, and the applicability of the, Charitable Use Exemption will be determined in accordance with the LGA. This policy cannot override or supersede the LGA. This policy seeks to provide assistance with the application and interpretation of the LGA.

### Legislation

Extracted below are the relevant provisions of the LGA which govern the Charitable Use Exemption and its assessment process.

#### 6.26. Rateable land

- (1) Except as provided in this section all land within a district is rateable land.
- (2) The following land is not rateable land —
  - (a) land which is the property of the Crown and —
    - (i) is being used or held for a public purpose; or
    - (ii) is unoccupied, except —
      - (i) where any person is, under paragraph (e) of the definition of **owner** in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the Mining Act 1978 in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or

- (II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of **owner** in section 1.4 occupies or makes use of the land;

and

- (b) land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the local government; and
  - (c) land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the regional local government; and
  - (d) land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood; and
  - (e) land used exclusively by a religious body as a school for the religious instruction of children; and
  - (f) land used exclusively as a non-government school within the meaning of the School Education Act 1999; and
  - (g) land used exclusively for charitable purposes; and
  - (h) land vested in trustees for agricultural or horticultural show purposes; and
  - (i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the Financial Management Act 2006) by that co-operative and used
    - solely for the storage of grain where that co-operative has agreed in writing to make a contribution to the local government; and
  - (j) land which is exempt from rates under any other written law; and
  - (k) land which is declared by the Minister to be exempt from rates.
- (3) If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that co-operative or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.
- (4) The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.
- (5) Notice of any declaration made under subsection (4) is to be published in the Gazette.
- (6) Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.

### **6.53. Land becoming or ceasing to be rateable land**

Where during a financial year —

- (a) land that was not rateable becomes rateable land; or
- (b) rateable land becomes land that is not liable to rates, the owner of that land —

- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land, as the case requires.

#### **6.76. Grounds of objection**

- (1) A person may, in accordance with this section, object to the rate record of a local government on the ground —
  - (a) that there is an error in the rate record —
    - (i) with respect to the identity of the owner or occupier of any land; or
    - (ii) on the basis that the land or part of the land is not rateable land;
  - or
  - (b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.
- (2) An objection under subsection (1) is to —
  - (a) be made to the local government in writing within 42 days of the service of a rate notice under section 6.41; and
  - (b) identify the relevant land; and
  - (c) set out fully and in detail the grounds of objection.
- (3) An objection under subsection (1) may be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.
- (4) The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.
- (5) The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.
- (6) After making a decision on the objection the local government is to promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a statement of its reason for that decision.

## **Roles and Responsibilities**

This policy and associated procedures set out criteria for Council to apply to applications for the Charitable Use Exemption to ensure they are assessed in a fair and equitable manner. Simple applications will be determined by the Chief Executive Officer and Director Corporate Services on recommendation from the Manager Financial Services.

The applicant for a Charitable Use Exemption is required to disclose all relevant details of the organisation and the activities conducted on the land the subject of the application. This will include the following:

- evidence of property ownership or control;
- charitable status of the applicant organisation;
- declaration of the land use and activities on the land;
- frequency of access to the land; and
- audited financial information of the applicant organisation.

The Shire is bound by confidentiality provisions under Section 5.23 of the LGA which means that any information specific to an applicant provided in accordance with these provisions cannot be disclosed to the public. The applicant is required to comply with all reasonable requests for further information if deemed necessary to assist the assessment of the application.

Should the application be of a complex nature, the application may be presented to Council for determination and external legal advice may be sought. If an officer believes an application is complex, this must be communicated to the Manager Financial Services, Director of Corporate Services and Chief Executive Officer. Nothing in this policy prevents the assessment of any or all applications by Council, at its discretion.

## Charitable Use Exemption: Overview of Application Process

1. Applications for Charitable Use Exemptions constitute an objection to the rate record under Section 6.76 of the LGA that the land subject to the application is not rateable under Section 6.26(2)(g). Applications must be submitted in writing within 42 days of the service of the rate notice. If the application is made out of time, the applicant will be required to apply for an extension of time within which to make the application and this application will be determined separately to the Charitable Use Exemption application.
2. If the application is submitted outside of the 42-day objection period from the date of the service of the rate notice, the applicant is required to include in their application a request for an extension of time providing reasons for the delay in submitting their application.
3. In accordance with Section 6.81 of the LGA, an objection to the rate record and application for rate exemption does not affect the applicant's liability to pay rates and services charges by the due date/s set out in the rate notice. Any outstanding amounts will accrue penalty interest and debt recovery processes will proceed as per Policy 2.1.3 Rates Debt Recovery. Should the application be granted, the rates will be refunded, however all other fees, levies and service charges remain payable.
4. The application must contain all relevant facts and information for assessment and if found deficient, the applicant will be required to provide further information.

5. Should an application be of a complex nature requiring presentation to Council, the officer is required to present to Council a detailed assessment of the application against the assessment framework contained in relevant procedures, legal advice and any other industry or common law information sources.
6. The Charitable Use Exemption application will be determined based on the legislative and common law principles that apply to land used exclusively for a charitable purpose. An applicant will be entitled to an exemption if the property is currently in use for a charitable purpose(s), and the charitable use is the exclusive use of the property (i.e. the property is solely used for charitable and non- commercial purposes).
7. When considering whether an applicant is entitled to the Charitable Use Exemption, the officer will consider whether:
  - a. more information is required from the applicant to allow a proper assessment to be made; or
  - b. the application requires more detailed assessment due to its complexity or politically sensitive nature and should be subject to more detailed assessment.
8. Once the application has been assessed (and any detailed assessment has been completed), recommendations must be provided based on that assessment and a determination made to allow or disallow the exemption accordingly).
9. The applicant is to be informed of the decision with reasons provided, ideally within 60 working days of receipt of application.

## Policy

A glossary of terms is set out in Appendix C.

The Shire of Broome is committed to a fair and equitable rating process where all land is rated in accordance with the relevant provisions in the LGA.

### Assessment Criteria for applicability of the Charitable Use Exemption

The following process is provided to facilitate the assessment of applications for the Charitable Use Exemption.

### Introduction

Each application for the Charitable Use Exemption must be considered on its individual merits, and on its individual facts.

The applicant must demonstrate that its land satisfies each of the **3 elements of the test in the LGA below**.

- (a) the land must be currently used (or being currently developed for use) (**Use**);
- (b) the land must be used for a charitable purpose(s) (**Charitable Purpose**); and
- (c) the land must be used exclusively for that charitable purpose(s) (**Exclusivity**).

In other words, what must be assessed is:

- (a) how the land is being used;
- (b) what the purpose(s) of that use is and whether that purpose(s) is charitable, and
- (c) whether the land is only used for charitable purposes.

These elements are considered further in detail within the associated business operating procedure BoP XXX in the section titled "Assessment Framework".

Other categories of rates exemption are identified in section 6.26(2) of the LGA. Those exemptions are not dealt with in this policy. For further guidance on these matters, please consult section 6.26(2) of the LGA, or seek further advice (including legal advice, if necessary).

## Periodic Exemption Review

Reviews of land subject to a Charitable Use Exemption will be conducted annually, biannually or triennially. No more than 3 years should pass without a review being conducted, to ensure that any changing circumstances of land use are identified, and that rates are being levied against all rateable land.

Consideration needs to be given to setting the relevant review period if a Charitable Use Exemption is granted. For example, if it is likely that circumstances may change within a year (i.e. a lease expiry), the review should be conducted annually.

## Enquiries

Where ratepayers contact the Shire about the status of their Charitable Use Exemption Application, Shire officers should answer all questions about the process for making an application. However, officers will decline to provide advice as to the merits of an individual application and will recommend that an applicant seek legal advice in this regard.

## Appendix A:

### SHIRE OF BROOME - APPLICATION FOR RATE EXEMPTION

<b>Name</b>			
<b>Business Address</b>			
<b>Telephone</b>		<b>ABN</b>	
<b>Date Commenced Operation</b>			
<b>Email Address</b>			
<b>Organisation Website Address</b>			
		<b>YES</b>	<b>NO</b>
1.	Is the organisation an incorporated body?  If yes, please provide certificate of incorporation.		
2.	Is the organisation considered not-for-profit?  If yes, please provide relevant Taxation information.		
3.	Is the organisation membership-based?		
4.	Is the organisation considered a Public Benevolent Institution for taxation purposes?		
5.	Does the organisation own or lease the rateable land?  If leased, is the lessee responsible for rates under a lease agreement?  If yes, please provide certificate of lease.		
6.	Is the organisation exempt from payment of rates under Legislation <i>other than</i> the Local Government Act?  If yes, please provide details of the other Legislation.		
7.	Does the organisation run any commercial activities within its business structure?  If yes, please provide further information as outlined on the following page.		

Rates Assessment number: A \_\_\_\_\_

Rates Property address:

Please attach, in a covering letter, details of EXACTLY how the particular property, for which rates exemption is being sought, is used.

If there is more than one building on the property, please provide details of the use of each building.



**LAND USE AND ACTIVITY DECLARATION  
DOCUMENTATION REQUIREMENTS**

**Please provide a:**

Written statement outlining the nature of the Organisation's operations, activities and use of the land.

It should include the following details:

- Use and occupancy of the land, inclusive of date of commencement
- Type of service provided (e.g. food, accommodation etc)
- Frequency of service provision (e.g. full-time, daily, weekly etc)
- Whether payment is received for the service
- If there is commercial activity conducted on the land, provide details of the activity and if revenue is raised, where it is disbursed

A plan of the property, showing all buildings and outbuildings

OR

A floor plan of the leased property area, if only part of the property is the subject of this application

A Copy of the current year's audited financial statements for the Organisation

*(If this exemption applies to only a portion of land owned by this Organisation, provide the relevant statements for the land this application applies to.)*

Please attach copies of the organisation constitution and evidence of any other rate exemptions currently received by the organisation.

Please provide details of any affiliated charities:

Organisations are required to provide financial information, including:

- Profit & Loss Statement (2 years)
- Balance Sheet (2 years)
- Income and Expenditure Statement (2 years)
- Sources of income, ie donations, business income, grants etc.
- Rents received if housing organisation
- Budget plan or 5-10 Budget projection.
- Business Plan
- A copy of the organisation's Constitution

Such information should be accompanied by the attached Statutory Declaration signed by two authorised persons or office bearers of the organisation verifying the accuracy of the information.

Organisations are required to outline the nature of their operation, providing such information as:

- Client group for service provision
- Type of service provided, eg food, accommodation, shelter etc
- Frequency of service provision, ie on a full time basis or daily, weekly, monthly etc
- Whether payment is received for service

Organisations are also required to provide details on the proportion of operation that would be considered non-charitable, if relevant (eg, operation of any retail, commercial or business activity), including:

- A full description of the nature and extent of commercial or non-core activities and the location to which such activities are undertaken
- Profit distribution
- Detailed breakdown of the use of any income received – eg this could mean construction of new dwellings provided through rental income
- Details of what would happen to the assets of the organisation in the unlikely event of the organisation going out of business

Such information should be accompanied by the attached Statutory Declaration signed by two authorised persons or office bearers of the organisation verifying the accuracy of the information.

Organisations are required to provide a full list of land or lease holdings that are owned or occupied and attach a description of the purpose applied to each holding.

Such information should be accompanied by the attached Statutory Declaration signed by two authorised persons or office bearers of the organisation verifying the accuracy of the information.

Applicants are advised that in order to demonstrate eligibility to claim a rate exemption and to facilitate Local Government decision making, as much information as possible about the nature of their operation, and the use of the property, should be provided.

**Appendix B**

**OFFICE USE ONLY**

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**1. CONSIDERATIONS**

Approval granted under Local Planning Scheme?	Yes	No
Has the property been inspected by officers?	Yes	No
Recommend for non-rateable status?	Yes	No

Applicant/Owner Name: \_\_\_\_\_

Section of the Local Government Act 1995      6.26(2) \_\_\_\_\_

Exemption Description: \_\_\_\_\_

Reason for non-rateable status:

New Application            Review of Exemption     

Amount of rates to be exempted and dates to be applicable from (application date). The approval will be for a period of \_\_\_\_ years, unless circumstances change.

Amount: \_\_\_\_\_      Date (from): \_\_\_\_\_

Rubbish bin changes to be levied and dates to be applicable from:

Amount: \_\_\_\_\_      Date (from): \_\_\_\_\_

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**2. DECISION UNDER DELEGATED AUTHORITY**

This application has been:

DECLINED for  
non-rateable status

APPROVED for partial  
non-rateable status

APPROVED for  
non-rateable status

**Name:**

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**Signature:**

	<b>Date:</b>	
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**OR**

**Council Resolution Reference:** \_\_\_\_\_

**Date of Council Meeting:** \_\_\_\_\_

**WESTERN AUSTRALIA**

*Oaths, Affidavits and Statutory Declarations Act 2005*

I, .....

.....

{name, address and occupation of person making the declaration}

Sincerely declare as follows:-

.....

.....

.....

.....

.....

.....

.....

.....

{insert content of the statutory declaration; use numbered paragraphs if content is long}

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

at .....

{place}

.....

{date}

In the presence of –

by .....

{Signature of person making the declaration}

.....

{Signature of authorised witness}

.....

.....

{Name of authorised witness and qualification as such a witness\*\*}

**\*\*Important** This Declaration must be made before any of the following persons:-

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank Manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer (Judge, magistrate, registrar or clerk), Defence Force officer (Commissioned, Warrant or NCO with 5 years continuous service), Dentist, Doctor, Electorate Officer (State), Engineer, Industrial organisation secretary, Insurance broker, Justice of the Peace, Lawyer, Local government CEO or deputy CEO, Local government councillor, Loss adjuster, Marriage Celebrant, Member of Parliament (State or Commonwealth), Minister of religion, Nurse, Optometrist, Patent Attorney, Physiotherapist, Podiatrist, Police officer, Post Officer manager, Psychologist, Public Notary, Public Servant (State or Commonwealth), Real Estate agent, Settlement agent, Sheriff or deputy Sheriff, Surveyor, Teacher, Tribunal officer, Veterinary surgeon

Or,

Any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

**NOTE:** From 1 January 2006 there is no provision for Commissioners for Declarations in the State Of Western Australia.

## Appendix C: Glossary

Charitable Purpose -

A purpose that is a not-for-profit purpose to promote:

- the relief of poverty, financial hardship, disadvantage, marginalisation, infirmity (for example: providing subsidised aged care, providing low income services, providing housing at substantially below market rates);
- education (for example: providing adult education services);
- the elderly;
- religion (for example: churches, other places of worship); or
- any other activity or cause which is beneficial to the public.

Charitable Organisation -

A not-for-profit organisation with objects stated for the promotion of a Charitable Purpose. Factors which may indicate whether an organisation is charitable include:

- Registered with the Australian Charities and Not- for-profits Commission (ACNC),
- Tax concession status;
- Deductible Gift Recipient status; and
- Public benevolent institution status.

**[Guidance Note: A Charitable Organisation may be entitled to an exemption for one property, but not on another – so a charitable organisation may conduct commercial activities but still be entitled to an exemption on some properties. E.g. The Salvation Army is entitled to an exemption for land used for homeless services, but is not entitled to an exemption for land use for its commercial op-shops.]**

Owner -

For the purposes of section 1.4 of the LGA, the Owner of land is taken to be:

- (a) The freehold titleholder of the land;
- (b) A person under a contract or arrangement with the Crown to possess the land with a right to purchase the land;
- (c) A Crown lessee;
- (d) A lessee or tenant where the land is not rateable in the hands of the landlord, but would be rateable land in the tenant's hand; or
- (e) A mortgagee.

Poverty/Financial Hardship -

A set of circumstances in which a standard of living is below baseline community standards.



## Document Control Box

### Document Responsibilities:

<b>Owner:</b>	Director Corporate Services	<b>Owner Business Unit:</b>	Financial Services
<b>Reviewer:</b>	Manager Financial Services	<b>Decision Maker:</b>	Council

### Compliance Requirements:

**Legislation:** [Local Government Act 1996 Section 6.26\(g\) - Rateable land](#)

**Industry:**

**Organisational:**

### Document Management:

<b>Risk Rating:</b>	Low	<b>Review Frequency:</b>	Triennial	<b>Next Due:</b>	12/2022	<b>Records Ref:</b>	
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1.	28 July 2016	Initial Adoption OMC
2.	12 December 2019	Review and converted to new Policy Template