

Rate Exemption – Charitable Use

Policy Purpose

The purpose of this policy is to identify a process to be followed when an organisation wishes to apply for an exemption of rates pursuant to Section 6.26(2)(g) of the *Local Government Act 1995* (LGA), where it is claimed the land is used exclusively for charitable purposes.

This Policy also provides an equitable basis to assess applications for rates exemptions that is compliant with legislation and provides an administrative framework for assessing any application for properties to be classified as not rateable land on the grounds of it being used for charitable purposes.

This policy applies to charitable and not-for-profit organisations that own land within the Shire of Broome and are liable for payment of rates.

Policy Statement

Section 6.26(2) of the LGA identifies a number of situations where land is not rateable. Most are clearly defined and straightforward to apply. However, Section 6.26(2)(g) is open to some interpretation and therefore, this policy seeks to clearly define under what basis, this section of the LGA is to be applied by Council.

Council is committed to adhering to the LGA and providing support and guidance to applicants who provide assistance to members of the public and as such, a benefit to the community. Claimants are required to evidence their right to an exemption, and demonstrate the land is used exclusively for charitable purposes.

6.26.(2)(g) 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.*

The LGA does not define what a charitable purpose is therefore, the definition under Commonwealth Law may be applied.

Section 12(1) of the Charities Act 2013, a charitable purpose means any of the following:

- (a) *the purpose of advancing health;*
- (b) *the purpose of advancing education;*
- (c) *the purpose of advancing social or public welfare;*
- (d) *the purpose of advancing religion;*

- (e) *the purpose of advancing culture;*
- (f) *the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;*
- (g) *the purpose of promoting or protecting human rights;*
- (h) *the purpose of advancing the security or safety of Australia or the Australian public;*
- (i) *the purpose of preventing or relieving the suffering of animals;*
- (j) *the purpose of advancing the natural environment;*
- (k) *any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);*
- (l) *the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:*
 - (i) *in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or*
 - (ii) *in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.*

It must not be a disqualifying purpose under Section 11 of the *Charities Act 2013*.

In this Act:

disqualifying purpose means:

- (a) *the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or*
- (b) *the purpose of promoting or opposing a political party or a candidate for political office.*

Each application for the Rates Exemption – Charitable Use 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 the section titled “Assessment Framework” in the Rates Exemption – Charitable Use procedure.

Rates exemptions are applied in a clear, transparent and equitable way to all eligible claimants, with relevant consideration given to the impact on other ratepayers and the sustainability of the Shire’s public finances.

Applications made under Section 6.26(2)(g) of the *Local Government Act 1995*:

- (a) All applications must be made in writing on the prescribed form (Attachment A to this Policy) and contain a declaration as to the accuracy of the information contained therein;
- (b) An application must be from the owner of the property on which rates are levied or a tenant liable for rates payment under a lease (if the property is leased, a copy of the lease is required with the application to establish if the lessee is liable for payment of the rates in the terms of the lease)
- (c) An application for exemption is only applicable to rates, and not to service charges nor the Emergency Services Levy;
- (d) An application will be required to be lodged every three years and will be assessed in accordance with this policy;
- (e) The Shire may request information from an organisation on a yearly basis if the Shire considers this appropriate;
- (f) The Shire may request additional information from an organisation making application if it considers it necessary to do so;
- (g) Information requested under paragraphs (e) or (f) above is not limited to, but typically includes copies of the Constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land subject to the application is used;
- (h) The Applicant must be a registered charity with Australian Charities and Not-for-Profits Commission (ACNC) or an incorporated Not-for-Profit organisation;
- (i) Rates and charges are still payable until a determination has been made. A refund will be made if the application is successful;
- (j) The applicant must not conduct any commercial operation from the property;
- (k) The applicant must not hold a liquor licence for the provision of alcohol for sale to the public for profit; and
- (l) For land to be treated as newly recognised not rateable land under section 6.26(2)(g) of the LGA, or if a new application for exemption is required under paragraphs (c) or (d) above, an application must be made 42 days after the service of the rates notice (or the date as outlined in the correspondence that is sent by the Shire) for the rating year to which the application relates.

Grant of a Rates Exemption:

- (a) An application will only be granted if the applicant has demonstrated they are eligible under the relevant legislation by completing the appropriate form and providing applicable supporting documentation.
- (b) Applicants will be notified in writing of the determination. Correspondence will include details of:
 - The date the exemption applies from,
 - The relevant section of the Act,
 - The review period; and,
 - The value of rates to which the exemption applies.
- (c) If the property has been used for the stated purpose as at July 1 of the relevant financial year, the exemption can be applied from that date and a refund given if rates have been paid prior to the determination;
- (d) Where the land use has changed during a financial year, any exemption granted is only applicable from the date of the change;
- (e) A partial exemption may be applied where only part of a defined lot is used for a charitable purpose; and

- (f) The granting of an exemption in any year does not guarantee an ongoing exemption.

Rejected Applications

Where an application is declined, the applicant has options to challenge the determination.

1. Under Section 6.76 of the *Local Government Act 1995*;

s.6.76(1)(a)(ii) 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 —
 - (ii) on the basis that the land or part of the land is not rateable land;

or;

2. Under Section 6.77 of the *Local Government Act 1995*;

s.6.77. Review of decision of local government on objection

Any person who is dissatisfied with the decision of a local government on an objection by that person under section 6.76 may, within 42 days (or such further period as the State Administrative Tribunal, for reasonable cause shown by the person, allows) after service of notice of the decision, apply to the State Administrative Tribunal for a review of the decision.

s. 6.47 Concessions

Apply for a concession in accordance with this section. Such applications would be considered on a case by case basis and determined by Council.

Roles and Responsibilities

The Director Corporate Services and Manager Financial Services as per Delegation 1.2.29 Rate Record – Objections shall be responsible for reporting new exemptions to Council via the Councillor Information Bulletin in regard to this policy. Delegations exercised are to be recorded in the Attain Compliance System and any supporting information should be recorded in the Shire's document management system.

The Coordinator Financial Operations shall be responsible for ensuring compliance with this policy and the Finance Officer - Rates shall be responsible for the day to day operations of the policy.

Definitions

Charitable Organisation is a not-for-profit organisation with objects stated for the promotion of a Charitable Purpose. Indicia of 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.

Charitable Purpose is a purpose that is a not-for-profit purpose to promote as defined in the *Charities Act 2013*:

- 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 because which is beneficial to the public.

Council means the Council of the Shire of Broome.

Exemption is whereby it is determined that an exemption from rates is determined to be applicable in accordance with section 6.26(2)(g) of the *Local Government Act 1995*.

Not-for-profit organisations are organisations that provide services to the community and do not operate to make a profit.

Owner of land may be, as set out in, section 1.4 of the *Local Government Act 1995*:

- The freehold titleholder of the land;
- A person under a contract or arrangement with the Crown to possess the land with a right to purchase the land;
- A Crown lessee;
- 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
- A mortgagee.

Shire means the Shire of Broome

Waive means to provide a special concession to a person or organisation that extinguishes a debt that would have been owed to the Shire. A waiver may be provided prior to, or subsequent to the date that the debt is incurred.

Write Off occurs following the realisation that the asset can no longer be converted into cash (e.g. a bad debt), can provide no further use to the Shire, or has no market value.

Document Control Box							
Document Responsibilities:							
Owner:	Director Corporate Services			Owner Business Unit:	Financial Services		
Reviewer:	Coordinator Financial Operations			Decision Maker:	Council		
Compliance Requirements:							
Legislation:	Local Government Act 1996 Section 6.26(g) - Rateable land						
Industry:							
Organisational:							
Document Management:							
Risk Rating:	Low	Review Frequency:	Quarterly	Next Due:	12/2027	Records Ref:	
Version #	Decision Reference:		Synopsis:				
1.	28 July 2016		Initial Adoption OMC				
2.	12 December 2019		Review and converted to new Policy Template				
3.	15 January 2021		Updated Policy & Application Template				
4.	18 November 2021		Updated logo				
5.	30 November 2022		Desktop Review - Minor amends				
6.	31 August 2023		Council Review Minor Amends - Min: C/0823/028				

Appendix A:

SHIRE OF BROOME - APPLICATION FOR RATE EXEMPTION LOCAL GOVERNMENT ACT 1995, SECTION 6.26

Privacy

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. The Shire is bound by confidentiality provisions under Section 5.23 of the Act which means that any information specific to an applicant provided in accordance with these provisions cannot be disclosed to the public.

Instructions

Please print clearly in the spaces provided and fill out the attached checklist and declaration. This application form is to be used by organisations seeking a rates exemption, pursuant to Section 6.26 of the *Local Government Act 1995*. You will be advised of the outcome in due course. Please attach any additional documents requested, as failure to do so may result in the application being refused.

Property Details	
Assessment Number	
Address of Rated Property	
Property Owner Details	
Organisation Name	
Surname/Family Name	
Given Names	
Postal Address	
Town/Suburb	
State	
Postcode	
Contact Person	
Contact Number	
Email	
Applicant / Ratepayers Details (if different from above)	
Organisation Name	
Postal Address	
Town/Suburb	
State	
Postcode	
Contact Person	
Contact Number	
Email	

PLEASE ANSWER THE FOLLOWING QUESTIONS BY SELECTING		YES	or	NO
Is the applicant the owner or lessee/occupier of the land? <i>If lessee, please provide a copy of the lease agreement showing that the lessee is responsible for the payment of rates.</i>				
Is the organisation an incorporated body as per the Association Incorporated Act 1987? <i>If yes, please provide a copy of the Certificate of Incorporation</i>				
Is the organisation considered not for profit?				
<i>If yes, please state the purpose of the organisation's operations including but not limited to; the use and occupancy of the property, the type of service provided, frequency of the service, is payment received for service.</i>				
Is the organisation registered under the Australian Charities and Not for Profit Commission (ACNC) or a Public Benevolent Institution? <i>If yes, please provide evidence</i>				
Does the organisation receive a tax exemption from the Australian Taxation Office? <i>If yes, please provide taxation exemption certificate from ATO</i>				
Are commercial activities being conducted at the property address? <i>If yes, please provide details outlining the activities</i>				

	YES	NO
Does the organisation make a profit, which is not used for a charitable purpose from the operations?		
<i>If yes, please state how the profit is utilised or distributed by the organisation</i>		
Is the organisation exempt from the payment of the rates under legislation other than the Local Government Act 1995?		
<i>If yes, please provide evidence and details of the specific legislation</i>		
Does the organisation occupy the whole property?		
If you answered yes to the previous question, is the exemption claimed over the whole property? <i>If no, please provide copy of floor plans showing areas leased and/or areas claiming exemption.</i>		
Does the organisation have development (planning) approval for the land use of the property? <i>A site inspection maybe required before the application is processed</i>		
Does the Property hold a Liquor Licence?		
<i>If yes, please provide details on type currently held</i>		

SUPPORTING DOCUMENTATION CHECKLIST			
Lease Agreement		Tax Exemption Certificate	
Certificate of Incorporation		Organisation's constitution	
Floor plan of the area, if only part of the property is to be exempt			
Evidence that organisation is registered under the Australian Charities and Not for Profit Commission (ACNC) or a Public Benevolent Institution			
Evidence the organisation is exempt from the payment of the rates under legislation other than the Local Government Act 1995			
Current and prior years audited financial or other financial statements			

AUTHROISATION

By signing this application, I hereby certify that the information provided is true and correct to the best of my knowledge.

I understand that Applications must be submitted in accordance with the timeframes determined by Council to be considered for the next three financial years. Applications lodged after this date may be considered for the second and third financial years only.

Organisations that are granted rates exemption by Council will be asked to reapply every financial year, if Council considers this appropriate.

I have read and understand the Council's Policy Rates Exemption for Charitable Organisations (Non-Rateable Land).

Name: _____

Position: _____

Organisation: _____

Signed: _____

Date: _____

OFFICE USE ONLY

Rates Exemption Application Approved: Yes ☐ No ☐

Effective Financial Year for Exemption ____/____ and ____/____ and ____/____

The decision to approve/ deny a Rates Exemption under section 6.26 of the *Local Government Act 1995* was approved / denied by the Shire on ____/____/____

Signature: _____

Name: _____

Position: _____

Date: _____

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 councilor, 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.