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## F 1.8 Rates Exemptions for Charitable Purposes

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### **Policy Objective**

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* (the Act), where it is claimed the land is used exclusively for charitable purposes.

This Policy provides an equitable basis and administrative framework to assess applications for rates exemptions that is compliant with legislation and guided by best practice.

### **Policy Scope**

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

### **Policy Statement**

#### **Introduction**

Section 6.26(2) of the Act 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 Act is to be applied by Council.

Council is committed to adhering to the Act 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.

The Act does not define what a charitable purpose is therefore, the definition under Commonwealth Law must be applied. Under 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*.

The key considerations when assessing an application for exemption pursuant to Section 6.26(2)(g) of the Act are:

- The use of the land, not the purpose of the applicant.
- The use must come under the provisions of the *Charities Act 2013*.
- The land must be used exclusively for a charitable purpose.
- The land use must be for a public benefit, where the benefit is available to members of the public generally or a particular section of the public.

When considering Australian case law, the proper test for determining whether land is used exclusively for charitable purposes is:

- (a) if land is used for a dual purpose, then it is not used exclusively for charitable purposes although one of the purposes is charitable; and
- (b) if the use of the land for a charitable purpose produces a profitable by-product as a mere incident of that use, the exclusiveness of the charitable purpose is not thereby destroyed.

## Principles

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.

## Provisions

### 1. Application for a rates exemption under Section 6.26(2)(g) of the Act

- 1.1. All applications must be made in writing by completing an Application for Rates Exemption Form (Appendix A) and provide any supporting documentation according to the checklist on the application form.
- 1.2. If any information has not been provided or is unclear, the applicant may be required to provide the additional information before the application will be assessed.
- 1.3. If the property is leased, a copy of the lease is required with the application to ascertain if the lessee is liable for payment of the rates in the terms of the lease.
- 1.4. Rates and charges must be paid on time until a determination is made. A refund may be made if the application is successful.
- 1.5. Applicants need to provide clear and concise information regarding the nature of their activities to illustrate eligibility for the exemption to facilitate Council's decision making.

### 2. Making a Determination

- 2.1. An application will be assessed by the Finance Officer and if it meets the criteria to be considered for an exemption, a report will be presented to Council with an officer recommendation to either approve or decline the request.
- 2.2. The applicant must be a registered charity with Australian Charities and Not-for-profits Commission (ACNC) or an incorporated Not-for-Profit organisation.
- 2.3. The applicant must own the property on which rates are levied or be a tenant liable for payment of the rates under a lease.
- 2.4. The land must be used exclusively for charitable purposes, as defined in the *Charities Act 2013*.

- 2.5. The applicant must not conduct any commercial operation from the property.
- 2.6. The applicant must not hold a liquor licence for the provision of alcohol for sale to the public for profit.
- 2.7. Council may request additional information from an organisation making application if it considers it necessary to do so.
- 2.8. Information requested under clause 2.6 may include but, is not limited to copies of the Constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land that is subject of the application is used.

### **3. Grant of a Rates Exemption**

- 3.1. An exemption shall only be granted if the applicant has demonstrated they are eligible under the relevant legislation, by completing the appropriate application form and providing supporting documentation.
- 3.2. The Council decision will be actioned by the officers and a note will be made against the property assessment.
- 3.3. Applicants will be notified in writing of Council's determination, with correspondence to include details of:
  - the date the exemption applies from,
  - the relevant section of the Act,
  - the review period (i.e. 2 years); and,
  - the amount of general rates reversed.
- 3.4. An exemption is only applicable to the rates component of the annual rates and charges. Where exemption from rates is approved, the property will still be subject to the Emergency Services Levy and any other charges.
- 3.5. If the property has been used for the stated purpose as at 1 July 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.
- 3.6. Where the land use has changed during a financial year, any exemption granted is only applicable from the date of the change.
- 3.7. A partial exemption can be applied where only part of a defined lot is used for a charitable purpose.
- 3.8. The granting of an exemption in any year does not guarantee an ongoing exemption.
- 3.9. All exemptions are to be reviewed at least every two years as part of the annual budgeting process. Where the application is based on a lease that is due to expire, it may need to be reviewed annually.

### **4. Rejected Applications**

- 4.1. Where an application is declined, the applicant has options to challenge the determination.
  - 4.1.1. The applicant may object under Section 6.76 of the Act, on the basis that the land or part of the land was not rateable land.
  - 4.1.2. The applicant has the right to appeal a decision made under Section 6.76 to the State Administrative Tribunal (SAT).

4.1.3. Apply for a concession under Section 6.47 of the Act. Such applications would be considered on a case by case basis and determined by Council.

4.2. Where all appeals are not successful, the final option available to the applicant is to apply to the Minister for Local Government, to make a final determination, under Section 6.26(4) of the Act.

## **Roles and Responsibilities**

The Executive Manager of Corporate and Community Services shall be responsible for referring matters to Council in regards to this policy.

The Finance Manager shall be responsible for ensuring compliance with this policy.

The Finance Officer (Rates and Sundry Debts) shall be responsible for the day to day operations of the policy.

## **Key Terms/Definitions**

**Charitable Purpose** – As defined in the *Charities Act 2013*

## **Policy Administration**

Responsible Directorate/Division:	Finance Department
Author/Contact Officer Position:	Finance Officer
Relevant Delegation:	Not Applicable
Relevant Legislation:	<i>Local Government Act 1995</i> <i>Charities Act 2013 (Commonwealth)</i>
Relevant Documents:	Application for Rate Exemption Form Strategic Community Plan 2018-2028 Rates and Charitable Land Use Exemption Applications – Best Practise Guidelines – WALGA and WA Rates Association Rating Policy – Rateable Land (s.6.26) - DLGC
Date Adopted:	TBC
Reviews/Amendments	TBC