



<b>POLICY NO</b>	<b>CP/FIN-3208</b>	
<b>POLICY</b>	<b>Rates Exemptions for Charitable Organisations (Non-Rateable Land)</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Senior Rates Officer	
<b>COUNCIL ADOPTION</b>	Date: 18 March 2014	Resolution No: 10344
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015	Resolution No: 11170
	Date: 28 November 2017	Resolution No: 117843
	Date: 29 January 2020	EMT 29/01/2020
	Date: 06 May 2020	EMT 06/05/2020
<b>REVIEW DUE</b>	January 2022	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. Local Government Act 1995 – Section 6.26(2)(g)</li> <li>2. Charitable Uses Act 1601 (UK)</li> <li>3. Charities Act 2013</li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3200 Strategic Rating Policy</li> <li>2. CP/COM-3582 Community Grant Scheme</li> <li>3. CP/FIN-3212 Rates and Charges Debt Collection</li> </ol>	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	<ol style="list-style-type: none"> <li>1. Code of Conduct for Council Members, Committee Members and Employees</li> <li>2. Audit (Finance and Risk) Committee Terms of Reference</li> </ol>	

### **PURPOSE:**

The purpose of this policy is to identify a process to be followed by any organisation that wishes to claim that the land it uses is not rateable land by virtue of the application of section 6.26(2)(g) of the *Local Government Act 1995* and to provide guidance when land is not rateable under section 6.26(2)(g).

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.

### **DEFINITIONS:**

**Council** means the Council of the Shire of Wyndham East Kimberley.

**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*.

**Financial year** means the period commencing on 1 July and ending on the next following 30 June.

**Local government** is the Shire of Wyndham East Kimberley.

**Rateable land** is land that is rateable in accordance with section 6.26 of the *Local Government Act 1995*.

**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.

## **POLICY STATEMENTS:**

This Policy seeks to define under what basis, section 6.26(g) of the *Local Government Act 1995* is to be applied.

### s.6.26(2)(g). Rateable land

(2) *The following land is not rateable land*

(g) **land used exclusively for charitable purposes; and ...**

The *Local Government Act 1995* does not define what a charitable purpose is, therefore it has been determined that the definition under the *Charities Act 2013* in conjunction with the *Charitable Uses Act 1601*, will be applied.

Section 12(1) of the *Charities Act 2013*, defines a charitable purpose as 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.*

The essential elements for an exemption under section 6.26(2)(g) of the *Local Government Act 1995* are:-

- (a) It is the use of the land that is in question, not whether the body in question has a charitable purpose;
- (b) The use of the land must be for a public benefit, where the benefit is available to members of the public generally or a particular section of the public;
- (c) The use of the land must be for charitable purposes as defined by Section 12(1) of the *Charities Act 2013*; and
- (d) The land must be used exclusively for a charitable purpose.

For option (d) above, if Australian case law is considered, 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.

**Applications made under Section 6.26(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;
- (l) For land to be treated as newly recognised not rateable land under section 6.26(2)(g) of the *Local Government Act 1995*, or if a new application for exemption is required under paragraphs (c) or (d) above, an application must be made by 31 May (or the date as outlined in the correspondence that is sent by the Shire) for the rating year that precedes 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;
- (f) The granting of an exemption in any year does not guarantee an ongoing exemption;

An applicant has options to challenge a 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.*

### **RISK:**

**Risk:** Failure to adequately resource and manage funding requirements which meet the needs of the Shire's service delivery requirements and strategic objectives

**Control:** Policies updated in accordance with schedule and operational requirements



PO Box 614 Kununurra 6743  
20 Coolibah Drive KUNUNURRA

Koolama Street WYNDHAM

T | 9168 4100

F | 9168 1798

E | [mail@swek.wa.gov.au](mailto:mail@swek.wa.gov.au)

W | [www.swek.wa.gov.au](http://www.swek.wa.gov.au)

8.00am - 4.00pm MON - FRI

# Annexure A to Council Policy CP/FIN-3208

## Application for Rates Exemption

### Local Government Act 1995, Section 6.26

#### Privacy

The personal information collected on this form will only be used by the Shire of Wyndham East Kimberley (the Shire) for the sole purpose of providing requested and related services. Information will be stored securely by the Shire and will not be disclosed to any third parties without your express written consent.

#### Instructions

Please print clearly in the spaces provided and fill out the attached checklist. 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 / RATEPAYER 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
<p>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></p>		
<p>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></p>		
<p>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></p>		
<p>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></p>		
<p>Does the organisation receive a tax exemption from the Australian Taxation Office?  <i>If yes, please provide taxation exemption certificate from ATO</i></p>		
<p>Are commercial activities being conducted at the property address?  <i>If yes, please provide details outlining the activities</i></p>		

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			

## AUTHORISATION

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 two financial years. Applications lodged after this date may be considered for the second financial year 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 CP/FIN-3208 Rates Exemption for Charitable Organisations (Non Rateable Land).

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## OFFICE USE ONLY

Rates Exemption Application Approved: Yes  No

Effective Financial Years for Exemption: \_\_\_\_/\_\_\_\_ 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: \_\_\_\_\_