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| DOCUMENT TYPE | Policy   |
| TITLE         | RATES EXEMPTIONS FOR CHARITABLE ORGANISATIONS<br>(NON-RATEABLE LAND) |
| NUMBER:       | POL-2005   |

## 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

**DOCUMENT AND VERSION CONTROL**

|   |   |               |  |
|---|---|---------------|--|
| <b>Responsible Directorate</b>                            | Corporate Services  |               |  |
| <b>Responsible Officer</b>                                | Senior Rates Officer  |               |  |
| <b>Statutory References</b>                               | Local Government Act 1995 – Section 6.26(2)(g)<br>Charitable Uses Act 1601 (UK)<br>Charities Act 2013   |               |  |
| <b>Related Documents</b>                                  | POL-2002 Strategic Rating Policy<br>POL-3002 Community Grant Program<br>POL-2007 Rates and Charges Debt Collection<br>POL-1005 Code of Conduct for Council Members Committee<br>Members and Candidates for Local Government Elections<br>DIR-1022 Code of Conduct for Employees<br>MOR-2000 Audit (Finance and Risk) Committee Terms of Reference |               |  |
| <b>Amendment History (Adoption and last 3 amendments)</b> |   |               |  |
| <b>Version</b>  | <b>Date Issued - Resolution Number</b>  | <b>Item #</b> | <b>Description of Change</b>   |
| 1.0   | 18/03/2014 – 10344  | 11.2          | Council Adoption at Special Council Meeting                                  |
| 3.1   | 28/01/2020 – CEO001   | --            | Reference Updates as per POL-1014 Policy Management                          |
| 3.2   | 06/05/2020 – CEO002   | --            | Reference Updates as per POL-1014 Policy Management                          |
| 3.3   | 08/11/2023 – CEO032   | --            | Reference Updates as per POL-1014 Policy Management (previously CP-FIN-3208) |
| <b>Date of Next Review</b>                                | January 2022  |               |  |