



POLICY NO	CP/FIN-3208	
POLICY	Rates Exemptions for Charitable Organisations (Non-Rateable Land)	
RESPONSIBLE DIRECTORATE	Corporate Services	
RESPONSIBLE OFFICER	Senior Rates Officer	
COUNCIL ADOPTION	Date: 18 March 2014	Resolution No: 10344
REVIEWED/MODIFIED	Date: 24 November 2015	Resolution No: 11170
	Date:	Resolution No:
REVIEW DUE	November 2017	
LEGISLATION	<ol style="list-style-type: none"> 1. <i>Local Government Act 1995 – Section 6.26(2)(g)</i> 2. <i>Charitable Uses Act 1601 (UK)</i> 	
RELATED POLICIES	<ol style="list-style-type: none"> 1. CP/FIN-3200 Strategic Rating Policy 2. CP/FIN-3209 Rates Concessions (Rateable Land) 3. CP/FIN-3212 Rates and Charges Debt Collection 	
RELATED ORGANISATIONAL DIRECTIVES	<ol style="list-style-type: none"> 1. Code of Conduct for Council Members, Committee Members and Employees 2. Audit (Finance and Risk) Committee Terms of Reference 	

PURPOSE:

The purpose of this policy is to identify a process to be followed by any organisation that wishes to claim that 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 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:

- a) All applications for exemption under s6.26(2)(g) of the *Local Government Act 1995* must be 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 for exemption is only applicable to rates, and not to service charges nor the Emergency Services Levy;
- c) An application will be required to be lodged every two years and is to be assessed in accordance with this policy;
- d) The Council may request information from an organisation on a yearly basis if the Council considers this appropriate;
- e) The Council may request additional information from an organisation making application if it considers it necessary to do so;
- f) Information requested under paragraph (d) above is not limited to, but typically included copies of the Constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land the subject to the application is used;
- g) 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 (b) or (c) 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.

Determination of whether land is 'used exclusively for charitable purposes' for the purpose of section 6.26(2)(g) of the *Local Government Act 1995* is made by reference to the common law on charitable purposes. The Council is only able to grant an exemption from rates under section 6.26(2)(g) if an applicant demonstrates that the land in question is being used exclusively for charitable purposes according to criteria that has been developed by case law on this subject.

The essential elements for an exemption under section 6.26(2)(g) 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 in question must be for charitable purposes as that is defined by common law; and
- c) The land must be used exclusively for a charitable purpose.

Charitable purpose is defined at common law by reference to the *Charitable Uses Act 1601 (UK)*. It is generally considered that to be a charitable purpose by reference to the Act the purpose must fall within one of the following four headings:

- a) Relief of poverty;
- b) Advancement of education;
- c) Advancement of religion; and
- d) Other purposes beneficial to the community not falling under any of the preceding headings.

For the last heading in (d) above to apply the use must be both:

- i. Beneficial to the community, and
- ii. Fall within the 'spirit and intendment' of the preamble to the *Charitable Uses Act 1601 (UK)*.

Scope & Limitations

In accordance with the Local Government Act 1995 - Part 6, Division 6 - Rates and service charges

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.*

[Section 6.26 amended by No. 36 of 1999 s. 247; No. 77 of 2006 Sch. 1 cl. 102; No. 24 of 2009 s. 506 (correction to reprint in Gazette 7 Sep 2012 p. 4329).]

RISK:

Risk: Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

Control: Review policies and procedures in accordance with review schedule.



Attachment 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 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. The provision of this exemption will result in a decision by Council, and 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.

1. PROPERTY OWNER DETAILS	
Rates Assessment Number:	
Organisation:	
Property Owner:	
Property Address:	
Telephone:	Postcode:
Mobile:	Facsimile:
Email:	

2. APPLICANT DETAILS	
Contact Person:	
Position Title:	
Postal Address:	
Telephone:	Postcode:
Mobile:	Facsimile:
Email:	

3. PLEASE ANSWER THE FOLLOWING QUESTIONS BY TICKING THE APPROPRIATE BOX

YES	NO	
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- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Are you the owner or lessee and occupier of the land with the rate notice being issued in the organisation's name? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is your organisation an Incorporated body as per the <i>Association Incorporated Act 1987</i> ? If so, please provide the Certificate of Incorporation. |



**Attachment A to Council Policy CP/FIN-3208
Application for Rates Exemption
Local Government Act 1995, Section 6.26**

Is your organisation considered not for profit? If yes, please state the purpose of the organisation.
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Is the organisation considered a Public Benevolent Institution for taxation purposes, or receive a tax exemption from the Australian Taxation Office? If so, please provide the relevant taxation information or certificates.

Does the organisation own or lease the rateable land? (If leased, is the lessee responsible for rates under the lease agreement)?
If so, please provide a certificate of the lease.

Are commercial activities being conducted at the property address?

Does the organisation make a profit which is not used for charitable purposes from its operations? If Yes, please state how the profit is utilised or distributed by the organisation.
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Is the organisation exempt from the payment of rates under legislation other than the *Local Government Act 1995*? If so, please provide details of the specific legislation.
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4. DOCUMENT REQUIREMENTS
Please provide a copy of the following (in addition to those documents specified in Section 3 above):

- Organisation's Constitution.
- Written statement, outlining the nature of the organisation's operations. It should include the following details:
 - Use and occupancy of the property
 - 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.
- Floor plan of the leased property area, if only part of the property is to be exempt.
- Copies of the current and prior years audited financial or other statements for the organisation to the satisfaction of Council.



**Attachment A to Council Policy CP/FIN-3208
Application for Rates Exemption
Local Government Act 1995, Section 6.26**

5. 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:

6. 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 Council at the _____ meeting of Council on ____/____/____.

Signature: _____

Name: _____

Position: _____

Date: _____



Application for Rates Exemption

Local Government Act 1995, Section 6.26

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



Attachment A to Council Policy CP/FIN-3208
Application for Rates Exemption
Local Government Act 1995, Section 6.26

- (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.

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