

I hereby certify that the Minutes of the Audit (Finance and Risk) Committee Meeting are a true and accurate record of the proceedings contained therein.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Date



SHIRE OF WYNDHAM | EAST KIMBERLEY

# MINUTES AUDIT (FINANCE AND RISK) COMMITTEE

10 November 2015

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**SHIRE OF WYNDHAM EAST KIMBERLEY  
MINUTES OF THE AUDIT (FINANCE AND RISK)  
COMMITTEE  
KUNUNURRA COUNCIL CHAMBERS  
HELD ON TUESDAY, 10 NOVEMBER 2015 AT 3:00 PM**

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**1. DECLARATIONS OF OPENING**

In the absence of a Chairperson and a Deputy Chairperson, the CEO declares the meeting open at 3:00pm and calls for nominations to fill the position of Chairperson.

A nomination is received and accepted by Cr B Robinson.

A nomination is received and accepted by Cr S Rushby.

A ballot is conducted with the CEO declaring a tied vote of 2/2.

The CEO adjourns the meeting at 3.06pm

The CEO reconvenes the meeting at 3.08pm

No nominations are withdrawn and no new nominations are received.

A second ballot is conducted with the CEO declaring a tied vote of 2/2.

A draw is conducted with the CEO declaring that Cr S Rushby is to be the Chairperson of the Audit (Finance and Risk) Committee.

Cr S Rushby takes the Chair.

The CEO calls for nominations to fill the position of Deputy Chairperson.

A nomination is received and accepted by Cr N Perry.

A nomination is received and accepted by Cr A Petherick.

Cr N Perry withdraws her nomination and nominates Cr B Robinson who accepts the nomination.

A ballot is conducted with the CEO declaring a tied vote of 2/2.

The CEO adjourns the meeting at 3.14pm

The CEO reconvenes the meeting at 3.15pm

No nominations are withdrawn and no new nominations are received.

A second ballot is conducted with the CEO declaring a tied vote of 2/2.

A draw is conducted with the CEO declaring that Cr B Robinson is to be the Deputy Chairperson of the Audit (Finance and Risk) Committee.

## 2. RECORD OF ATTENDANCE / APOLOGIES

Cr S Rushby	Councillor - Chairperson
Cr B Robinson	Councillor – Deputy Chairperson
Cr N Perry	Councillor
Cr A Petherick	Councillor
C Askew	Chief Executive Officer
N Octoman	Director Corporate Services
W Richards	Acting Director Community Development
M Tonkin	Executive Assistant (Minute Taker)

### APOLOGIES

Nil

### LEAVE OF ABSENCE PREVIOUSLY APPROVED

Nil

### GALLERY

Cr D Spackman                      Councillor

## 3. PUBLIC QUESTION TIME/ PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

## 4. DECLARATION OF INTEREST

- Financial Interest

Councillor/ Officer	Item	Title	Description of interest
Cr S Rushby	8.1	Confidential – Minor Case Claim Update	Financial interest

- Impartiality Interest

Nil

- Proximity Interest

Nil

**5. ACCEPTANCE OF MINUTES OF PREVIOUS MEETING**

**OFFICER'S RECOMMENDATION**

That the Minutes of the Audit (Finance and Risk) Committee meeting of 11 August 2015 be accepted as a true and accurate record of proceedings.

**COMMITTEE RESOLUTION**

**Minute No. AC373**

**Moved: Cr B Robinson**

**Seconded: Cr S Rushby**

**That the Minutes of the Audit (Finance and Risk) Committee meeting of 11 August 2015 be accepted as a true and accurate record of proceedings.**

**Carried Unanimously 4/0**

Note: The Minutes of the Audit (Finance and Risk) Committee meeting of 11 August 2015 are provided under separate cover via [www.swek.gov.au](http://www.swek.gov.au)

**6. DEPUTATIONS / PRESENTATIONS / SUBMISSIONS / NOTICES OF MOTIONS**

Nil

## 7. REPORTS

### 7.1 STANDING ITEM - SUNDRY DEBTORS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Amanda Collins, Debtors Officer
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.07.2
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee reports to the Council that the actions being undertaken by the administration in regard to sundry debtors including sundry debts in legal process are sufficient and appropriate.

#### **PURPOSE**

To review the status of sundry debtors, including airport debtors, and sundry debts in legal process.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices.

#### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

The listing of 90+ day sundry debtors was provided at the Ordinary Council Meeting on a monthly basis until March 2009 when Council resolved that the 90+ days debtor list be removed from the Council Agenda as a standing item and be presented to the then Audit Committee for consideration and to make recommended actions to Council as this falls within the scope of the Committee's purpose.

In line with the more strategic focus of the new Committee the report in April 2012 only included debtor balances at 90+days and over \$500.

To further progress this strategic focus this item has been amended to include summary information regarding all sundry debts including airport landing fees administered by Avdata on the Shire's behalf. Sundry debtors in legal process have also been incorporated into this item to provide a complete picture of sundry debtors.

Further changes were recommended to the Committee at the February 2014 meeting to modify the report by remove the categories previously reported and to report sundry debtors as a whole, with airport debtors still being identified separately and that only debtors in excess of \$20,000 be provided with more detail. These changes were supported by the Committee and Officers have implemented them accordingly.

### **STATUTORY IMPLICATIONS**

This item in a Council Meeting needs to be discussed behind closed doors under Section 5.23(2)(e) (iii) of the *Local Government Act 1995* because the item may disclose information about the business, professional, commercial or financial affairs of a person and because the item also contained legal advice to the Council.

### **POLICY IMPLICATIONS**

CP/FIN-3214 Sundry Debt Collection Policy is relevant to this item.

### **FINANCIAL IMPLICATIONS**

Legal fees may be incurred to recover debts or revenue written off if debt recovery is considered not economically viable.

It should be noted however, that as outlined in section 9.1 of the *CP/FIN-3214 Sundry Debt Collection Policy*, when possible 'legal fees associated with the recovery of outstanding debts will be recovered from the sundry debtor to the extent allowable under legislation and will be assessed on a case by case basis'.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.3: Maintain Council's long term financial viability

The costs associated with legal fees to recover debt need to be weighed up against the debt to ensure an economically viable action is being taken.

### **RISK IMPLICATIONS**

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

Operational Risk: Non-collection of rates and debts resulting in financial and/or reputation loss.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

**Table A: Sundry Debtors (General) Summary as at 27 October 2015**

Categories	90 Days		60 Days	30 Days	Current	Total
	<u>No</u>	\$	\$	\$	\$	\$
<b>Sundry Debtors</b>	<b>48</b>	<b>170,370</b>	<b>56,250</b>	<b>322,486</b>	<b>410,672</b>	<b>959,778</b>

Note: The information in Table A is sourced from the Shire's Debtors System whereby the revenue is recognised when the debt is raised.

**Table B: Sundry Debtors (Airport Landing Fees) Summary as at 27 October 2015**

Categories	90 Days		60 Days	30 Days	Current	Total
	<u>No</u>	\$	\$	\$	\$	\$
<b>Kununurra Airport</b>	<b>37</b>	<b>43,682</b>	<b>23,624</b>	<b>148,746</b>	<b>130,356</b>	<b>346,408</b>
<b>Wyndham Airport</b>	<b>3</b>	<b>2,030</b>	<b>2,204</b>	<b>6,730</b>	<b>5,196</b>	<b>16,160</b>
<b>Total</b>	<b>40</b>	<b>45,712</b>	<b>25,828</b>	<b>155,476</b>	<b>135,552</b>	<b>362,568</b>

Note: The information in the Table B above is provided by Avdata, and is additional to the amounts identified in Table A.

## **ATTACHMENTS**

Attachment 1 - Sundry Debtors detailed report as at 27 October 2015 (Confidential attachment provided under separate cover).

**COMMITTEE RESOLUTION**

**Minute No. AC374**

**Moved: Cr B Robinson**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee reports to the Council that the actions being undertaken by the administration in regard to sundry debtors including sundry debts in legal process are sufficient and appropriate.**

**Carried Unanimously 4/0**

## 7.2 STANDING ITEM - RATES DEBTORS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Veronica Gulland, Senior Rates Officer
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.11.1
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee reports to the Council that the actions being undertaken by the administration in regard to rates debtors, including rates debts in legal process are sufficient and appropriate.

### **PURPOSE**

To review the status of rates debtors and those rates debts that are in the legal process.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

At the Ordinary Council Meeting, 16 October 2007, Council resolved the following:

#### ***Minute No. 7936***

***That Council direct the CEO to provide a written report to Council under confidential cover each month in regard to all debts currently in legal process.***

***Carried Unanimously 5/0***

At the Ordinary Council Meeting on 18 March 2008, Council resolved the following:

**Minute No: 8148**

**Moved: Cr J Parker Seconded: Cr F Mills**

**That Council:**

- 1. note the confidential report provided to it in relation to debts owed to Council and under legal action.**
- 2. direct the Executive Manager Corporate Services to provide a written report to the Audit Committee under confidential cover at each Audit Committee meeting in regard to all debts currently in legal process.**
- 3. request the Audit Committee to make recommendations to Council as required and appropriate in relation to the report provided under confidential cover regarding debts currently in legal process.**
- 4. resolve that this requirement replaces the previous requirement on the CEO to report information to Council.**

**Carried Unanimously 8/0**

This requirement is now fulfilled by a combination of this report and item 5.1 Standing Item – Sundry Debtors.

The Outstanding Rates Debtors over three years report has also been incorporated into the confidential attachment to this item to give a complete picture of rates debtors.

### **STATUTORY IMPLICATIONS**

This item in a Council Meeting needs to be discussed behind closed doors under section 5.23(2)(e)(iii) of the *Local Government Act 1995* because the item may disclose information about the business, professional, commercial or financial affairs of a person.

### **POLICY IMPLICATIONS**

Council's Policy *CP/FIN-3212 Rates and Charges Debt Collection* is relevant.

### **FINANCIAL IMPLICATIONS**

Legal fees may be incurred to recover debts or revenue written off if debt recovery is considered not economically viable.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.3: Maintain Council's long term financial viability

**RISK IMPLICATIONS**

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

Operational Risk: Non-collection of rates and debts resulting in financial and/or reputation loss.

**COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

**COMMENTS**

**Rates and Services Debtors Summary**

<b>Rates &amp; Services Levied 2015/2016 (including arrears)</b>	<b>Rates &amp; Services Debt at 21 October 2015</b>	<b>Overdue at 21 October 2015</b>
\$ 12,415,841.12	\$4,664,182.72*	\$2,515,310.03

\*Includes properties in credit with refunds to be processed.

Rates for the financial year of 2015/16 were raised and issued on 11 September 2015. Interim rating occurs periodically throughout the year.

## Comparison of rates received 2014/15 and 2015/16

Days from Billing		2014/15			2015/16		
		Total Outstanding	Received	% of Billing	Total Outstanding	Received	% of Billing
		\$	\$		\$	\$	
0	Notices Issued	11,031,944			11,876,722		
7		10,535,586	496,358	4.50%	11,530,415	346,307	2.92%
14*		8,370,659	2,164,927	19.62%	10,722,863	807,552	6.80%
21		7,539,027	831,632	7.54%	10,119,902	602,961	5.08%
28		6,786,900	752,127	6.82%	9,275,340	844,562	7.11%
35	Rates Due date	4,017,509	2,769,391	25.10%	4,704,076	4,571,264	38.49%
<b>Total</b>			<b>7,014,435</b>	<b>63.58%</b>		<b>7,172,646</b>	<b>60.40%</b>

\*Difference at 14 days due to timing of receipt of rates from large ratepayer.

## Instalment Status Report at 21 October 2015

Instalment Option	Number of Properties	% Total Properties*	Properties up to date	Properties Behind***	Instalments Overdue \$	% of Properties Overdue**
2 instalments	194	7.13%	194	0	0.00	0.00%
4 Instalments	554	20.38%	554	0	0.00	0.00%
All instalment payers	748	27.51%	748	0	0.00	0.00%

\*2719 excluding non-rateable properties

\*\*Percentage of all instalment payers for each option

\*\*\*No instalments are currently overdue as all ratepayers who have elected an instalment option have paid the first instalment by the due date of 16 October 2015.

## Comparison of rates debtors referred for debt collection 2013/14 and 2014/15 as at 21 October 2015

	2013/14		2014/15	
	Number of debtors	Total value of Debt \$	Number of debtors	Total value of Debt \$
Debts referred for NOI*	274	683,868	65	444,014
Debts proceeding to GPC**	82	109,489	17	36,948

\*NOI – letter sent to debtor by debt collection agency advising of intention to take legal action.

\*\*GPC – General Procedure Claim lodged at court to be served on debtor.

Debt Collection for the 2015/16 rates year has not commenced yet.

## **ATTACHMENTS**

Attachment 1 - Confidential Attachment - Rates Debtors Detailed Report

### **COMMITTEE RESOLUTION**

**Minute No. AC375**

**Moved: Cr B Robinson**

**Seconded: Cr N Perry**

**That the Audit (Finance and Risk) Committee reports to the Council that the actions being undertaken by the administration in regard to rates debtors, including rates debts in legal process are sufficient and appropriate.**

**Carried Unanimously 4/0**

### 7.3 STANDING ITEM - INSURANCE CLAIMS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Niroshini Nandasiri, Asset Management Accountant
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	RM.01.2
<b>DISCLOSURE OF INTERESTS:</b>	Nil

#### **VOTING REQUIREMENT**

Simple Majority

#### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it notes the Insurance Claims Register attached.

#### **PURPOSE**

To report to the Audit (Finance and Risk) Committee the insurance claims that are either current, or have been finalised.

#### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

#### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

In February 2015, the "Report on a review of risk management, legislative compliance and internal controls" by UHY Haines Norton was presented to Council (via Audit (Finance and Risk) Committee). It has been recognised that risk management is an area where there is minimal communication between Shire officers and the Committee members, particularly in relation to insurance-related matters.

As part of monitoring internal controls and risk management, the insurance claims report will be presented on a regular basis to the Audit (Finance and Risk) Committee. This report identifies the risks/incidents that been reported as an insurance claim, and assists to assess the status and effectiveness of risk management systems, to ensure that identified risks are monitored and new risks are identified and mitigated.

## **STATUTORY IMPLICATIONS**

Not applicable

## **POLICY IMPLICATIONS**

There is a clear requirement for the Shire to develop a Risk Management Framework and associated policies which will be undertaken in the near future.

## **FINANCIAL IMPLICATIONS**

The insurance premiums are contained within the 2015/16 Annual Budget. There are no further implications from this report.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.4: Deliver cost effective and efficient corporate services

## **RISK IMPLICATIONS**

Death or injury of an employee(s) resulting in substantial claim(s) from unsafe work practices.

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

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

Risk management is embedded in the processes, systems, procedures that officers work within on a daily basis. While this is the case, there has not been any formal reporting to the Committee or the Council on either strategic or operational risks since around November 2013, until the Committee Meeting held in May 2015.

Part of the Local Government Operational Guidelines Number 09 “Audit in Local Government” identifies that “good audit committee practices in monitoring internal control and risk management programs typically include: assessing the adequacy of local government processes to manage insurable risks and ensure the adequacy of insurance cover, and if applicable, the level of self-insurance.” This report is considered to be the first step in involving the Committee directly in insurance-related matters.

The Insurance Register contains a list of current claims (all those lodged in 2015/16 along with claims from previous years) in relation to motor vehicle, property, public liability, marine hull and bushfire policies.

The table below show a summary of 2015/16 year to date, 2014/15 and 2013/14 full year claims made.

Type of Policy	Current/Open		2015/16 No. of Claims	2014/15 No. of Claims	2013/14 No. of Claims
	No.	\$ (Claim/Est.)			
Motor Vehicle	2	4,128.00	2	12	6
Property	1	468,071.24		8	3
Public Liability	2			3	8
Marine Hull				1	
Bushfire				1	

Under the Motor Vehicle Policy in 2014/15, the Shire received a settlement of \$74,006 for twelve (12) claims in comparison to \$44,466 for six (6) claims in 2013/14. In 2015/16, only two claims have been lodged to date.

There are two (2) claims pending under the Property Insurance Policy with an estimated settlement of \$ \$398,071 related to the Wyndham depot for 2014/15 and \$70,000 for 2015/16.

Two (2) Public Liability claims lodged in 2013/14 and 2014/15 are yet to be resolved with an estimated liability of \$61,000.

It should be noted that the settlement amounts are non-impacting on the Shire’s budget as the Shire’s insurance company (LGIS) covers them.

## **ATTACHMENTS**

Attachment 1 - Confidential - Insurance Claims Register

**COMMITTEE RESOLUTION**

**Minute No. AC376**

**Moved: Cr N Perry**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee moves behind closed doors to discuss the Confidential – Insurance Claims Register attachment with the officer's and gallery remaining in Chambers.**

**Carried Unanimously 4/0**

The Committee moves behind closed doors at 3.27pm.

**COMMITTEE RESOLUTION**

**Minute No. AC377**

**Moved: Cr N Perry**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee comes out from behind closed doors.**

**Carried Unanimously 4/0**

The Committee comes out from behind closed doors at 3.36pm.

**COMMITTEE RESOLUTION**

**Minute No. AC378**

**Moved: Cr N Perry**

**Seconded: Cr A Petherick**

**That the Audit (Finance and Risk) Committee recommends to the Council that it notes the Insurance Claims Register attached.**

**Carried Unanimously 4/0**

## 7.4 STANDING ITEM - LEASES

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Niroshini Nandasiri, Asset Management Accountant
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	CP.07 and CP.16
<b>DISCLOSURE OF INTERESTS:</b>	Click here to enter text.

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Committee recommends to the Council that it notes the Confidential Lease Schedule and New and Renewal Lease Schedule attached.

### **PURPOSE**

To consider the attached Confidential Lease Report as at 28 October 2015.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Provider - provide physical infrastructure and essential services

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

The Shire of Wyndham East Kimberley administers over thirty-five leases ranging from airport leases, community and commercial leases.

In December 2007 the Audit (Risk and Finance) Committee resolved:

***Minute No. A066***

***Moved: Cr Keith Wright  
Seconded Cr Frederic Mills***

- 1. that the Audit Committee note that the responsibility for the management of leases and periodical contracts is that of the Executive Manager Corporate Services.***

2. ***that the Audit Committee note that the Executive Manager Corporate Services monitors the leases and coordinates the lease data base and reporting to Executive Managers, the Audit Committee and Council.***
3. ***that the Audit Committee request staff to present an updated Lease Spreadsheet certified by Executive Manager Corporate Services to each Audit Committee meeting as a standing item.***

**Carried Unanimously 4/0**

## **STATUTORY IMPLICATIONS**

### **Local Government Act 1995**

#### **Part 5, Division 2**

#### **5.23. Meetings generally open to public**

*(1) Subject to subsection (2), the following are to be open to members of the public*

—

*(a) all council meetings; and*

*(b) all meetings of any committee to which a local government power or duty has been delegated.*

*(2) If a meeting is being held by a council or by a committee referred to in subsection (1)(b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following -*

*(a) a matter affecting an employee or employees; and*

*(b) the personal affairs of any person; and*

*(c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting; and*

*(d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting; and*

*(e) a matter that if disclosed, would reveal -*

*(i) a trade secret; or*

*(ii) information that has a commercial value to a person; or*

*(iii) information about the business, professional, commercial or financial affairs of a person,*

*where the trade secret or information is held by, or is about, a person other than the local government; and*

*(f) a matter that if disclosed, could be reasonably expected to —*

*(i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; or*

- (ii) endanger the security of the local government's property; or*
  - (iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety;*
  - and*
  - (g) information which is the subject of a direction given under section 23(1a) of the Parliamentary Commissioner Act 1971; and*
  - (h) such other matters as may be prescribed.*
- (3) A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.*

### **POLICY IMPLICATIONS**

*CP/PMG-3780 Leasing of Council Managed Reserve Land – Community is relevant.*  
*CP/PMG-3781 Leasing of Council Managed/Owned Land – Commercial is relevant.*

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

Strategy 1.4.2: Improve the efficiency and productivity of Shire services

Strategy 1.4.3: Maintain Council's long term financial viability

### **RISK IMPLICATIONS**

Loss of corporate knowledge with staff turnover

### **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

The Shire has finalised many outstanding leasing issues over the past 12 months. While there are clearly some leases that are outstanding, it demonstrates a positive move forward in relation to overall lease management.

## **ATTACHMENTS**

Attachment 1 - Confidential - Lease Schedule

Attachment 2 - Confidential - New and Renewal Lease Schedule

## **COMMITTEE RESOLUTION**

**Minute No. AC379**

**Moved: Cr B Robinson**

**Seconded: Cr S Rushby**

**That the Committee recommends to the Council that it notes the Confidential Lease Schedule and New and Renewal Lease Schedule attached.**

**Carried Unanimously 4/0**

## 7.5 REVIEW OF COUNCIL POLICY CP/FIN-3212 RATES AND CHARGES DEBT COLLECTION

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Felicity Heading, Coordinator Financial Operations
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.11.83
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended Policy *CP/FIN-3212 Rates and Charges Debt Collection*.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and consider recommending to the Council that it adopt the amendments made to Council Policy *CP/FIN-3212 – Rates and Charges Debt Collection* in relation to the collection of rates and service charges debts.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

On the 26 of May 2014 the Council reviewed and adopted the current Council Policy *CP/FIN-3212 – Rates and Charges Debt Collection*.

On 23 June 2015 the Council adopted the 2014 Probity Compliance Audit Report. The report included the following recommendation:

#### ***RECOMMENDATION 16***

***That Council arranges for the completion of a comprehensive review of its policies and adopts those reviewed policies by 31 December 2015.***

### **STATUTORY IMPLICATIONS**

*Local Government Act 1995 - Part 6, Division 4, Sections 6.12, 6.13, 6.16, 6.45, 6.49, 6.50, 6.51, 6.56, 6.60, 6.64, 6.68.*

*Local Government (Financial Management) Regulations 1996 - Part 2, Regulations 19A, 19B, and Regulations 58 to 66.*

*Magistrates Court (Civil Proceedings) Act 2004 - Part 2, Section 12.*

*Civil Judgements Enforcement Act 2004 - Part 2, Section 8.*

*Civil Judgements Enforcement Regulations 2005 - Part 2, Regulation 4.*

## **POLICY IMPLICATIONS**

Policy *CP/FIN-3212 - Rates and Charges Debt Collection* is intended to be a Council Policy and as such would only be amended by resolution of the Council. Recommending policy amendments or new policies to ensure appropriate internal controls could however be considered within the scope of the Audit (Finance and Risk) Committee's Terms of Reference.

## **FINANCIAL IMPLICATIONS**

There are no direct financial implications associated with this matter.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.3: Maintain Council's long term financial viability

## **RISK IMPLICATIONS**

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

Operational Risk: Non-collection of rates and debts resulting in financial and/or reputation loss.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's *CP/GOV-3100 Community Engagement Policy* has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

Particular amendments have been incorporated into the amended policy to reflect current debt collection procedures and legislative requirements.

## **ATTACHMENTS**

Attachment 1 - Current Council Policy *CP/FIN-3212 Rates and Charges Debt Collection*

Attachment 2 – Amended Council Policy *CP/FIN-3212 Rates and Charges Debt Collection*

## **COMMITTEE RESOLUTION**

**Minute No. AC380**

**Moved: Cr B Robinson**

**Seconded: Cr N Perry**

**That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended Policy *CP/FIN-3212 Rates and Charges Debt Collection*.**

**Carried Unanimously 4/0**



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

### OBJECTIVE

This policy will establish clear guidelines for the efficient, effective and economical collection of rates debts; and also enable flexibility and choice in the payment of rates and charges established by the Council.

### POLICY

#### Scope & Limitations

*In accordance with the Local Government Act 1995 –*

#### 6.49 Agreement as to payment of rates and service charges

*A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.*

#### 6.50. Rates or service charges due and payable

*(1) Subject to —*

- (a) subsections (2) and (3); and*
- (b) any concession granted under section 6.47; and*
- (c) the Rates and Charges (Rebates and Deferments) Act 1992, a rate or service charge becomes due and payable on such date as is determined by the local government.*

*(2) The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.*

*(3) Where a person elects to pay a rate or service charge by instalments the second and each subsequent instalment does not become due and payable at intervals of less than 2 months.*

#### 6.51. Accrual of interest on overdue rates or service charges

*(1) A local government may at the time of imposing a rate or service charge resolve\* to impose interest (at the rate set in its annual budget) on —*

- (a) a rate or service charge (or any instalment of a rate or service charge); and*
- (b) any costs of proceedings to recover any such charge,*

*that remains unpaid after becoming due and payable.*

*\* Absolute majority required.*



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

### 6.56 Rates or service charges recoverable in court

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction;*
- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

### 6.60 Local government may require lessee to pay rent

- (1) *In this section —*

**lease** *includes an agreement whether made orally or in writing for the leasing or subleasing of land and includes a licence or arrangement for the use of land;*

**lessor and lessee** *mean the parties to a lease and their respective successors in title.*

- (2) *If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.*

### 6.64 Actions to be taken

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*
  - (a) *from time to time lease the land or*
  - (b) *sell the land or*
  - (c) *cause the land to be transferred to the Crown or*
  - (d) *cause the land to be transferred to itself.*

### 6.68 Exercise of power to sell land

- (1) *Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b)(in this Subdivision and Schedule 6.3 referred to as the power of sale) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due.*

## BACKGROUND

The collection of rates and charges is an important component of the Shire's management of adequate cash-flows as well as the overall management of the Shire's financial performance and position.



## **Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy**

### **GUIDING STATEMENTS**

The Council will exercise its debt recovery powers in order to reduce the overall debt burden on ratepayers. It will be guided by the principles of:

1. Equity  
Ensuring that the debt collection procedures are undertaken in a fair and equitable manner and therefore providing the same treatment for ratepayers with similar circumstances.
2. Administrative Efficiency  
Providing the Shire of Wyndham East Kimberley with a more effective method over the collection of outstanding debtors and ensuring that the processes used to recover outstanding debts are clear, simple to administer and cost effective.
3. Transparent  
Ensuring the obligations of the Shire's ratepayers and sundry debtors are clear and assisting them to meet their financial obligations where possible.
4. Compliant  
Ensuring that the Shire of Wyndham East Kimberley is compliant with the Local Government Act 1995 and all associated regulations.

### **POLICY**

Upon the Council adopting the annual budget for the following financial year, the Rates Notice will be issued.

#### **1. Options for Payment of Rates and Charges**

The options for payment of a rate or service charge may be:-

- a. In full by the specified due date; or
- b. By two (2) instalments by the specified due date (or as adopted by the Council in the Annual Budget); or
- c. By four (4) instalments by the specified due date; or
- d. By a special payment arrangement with payments made by the agreed due dates.



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

### 1.1. Instalment Options (Either Two (2) or Four (4) Instalments)

#### Scope & Limitations

In accordance with the *Local Government (Financial Management) Regulations 1996* –

#### 58. Instalments not available if land in arrears (Act s. 6.45)

*Payment of a rate or service charge on any land may not be made by instalments if, at the date for payment of the first instalment, any part of a rate or service charge imposed on that land in a previous financial year (or interest accrued thereon at the date of issue of the rate notice) remains unpaid.*

#### 59. Instalments not available if total less than \$200 (Act s. 6.45)

*Payment may not be made by instalments if the total amount shown in the rate notice as being payable to the local government for rates, service charges or minimum payments, other than amounts remaining unpaid from a previous financial year, is less than \$200.*

#### 60. Instalments, manner of electing to pay by (Act s. 6.45)

*For the purposes of section 6.45 an election to pay by instalments is made (whether a person indicates to the local government that payment will be made by instalments, or not) if, before the close of business on the due date of the first instalment under an option specified in the rate notice, the local government receives payment of the amount set forth in the rate notice as being payable for that instalment.*

#### 61. Instalments, additional circumstance when rates may be paid by

*Where a local government imposes rates after amending the rate record under section 6.39(2)(b) payment of the total amount of the rates may be made by the method of payment by instalments set forth in the local government's annual budget for the financial year in which the rates are imposed.*

#### 66. Instalments, when right to pay ceases

- (1) *Subject to subregulation (2), where an election has been made to pay a rate or service charge by instalments, payment may continue to be made by instalments notwithstanding that an instalment (other than the first instalment) remains unpaid after it is due and payable*
- (2) *If an instalment remains unpaid after the day on which the next instalment becomes due and payable, the local government may revoke the ratepayer's right to pay by instalments*



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

- (3) Where the right to pay by instalments is revoked under subregulation (2) –
- (a) the unpaid rate becomes due and payable on the day after the day of the revocation, or such day as the local government decides and
  - (b) the local government must, in writing, immediately notify the ratepayer of the revocation and give details.

### Policy

1. The charges for paying by instalments will be those adopted by the Council in the Annual Budget each year.
2. Ratepayers will not be placed on an instalment option after 14 days past the due date of the Annual Rates Notice.
3. If the Four (4) Instalments Option is selected and on the third instalment due date, the second and third instalment remain unpaid the ratepayer will be removed from instalments and a final notice will be issued for the full amount of rates and service charges.

### 1.2. Special Payment Arrangements

Before authorising any special payment arrangement in accordance with sub-delegation provided by the CEO, the Director Corporate Services will consider the following:

- a) That the terms of the agreement require that all outstanding rates will be recovered by the Shire of Wyndham East Kimberley by 30 June of the financial year in which the agreement is entered into.
- b) That the ratepayer is aware of the costs and charges associated with entering into a payment arrangement, of which the charges will be those adopted by the Council in the Annual Budget each year.
- c) At the discretion of Chief Executive Officer, a payment arrangement term may be extended beyond the 30 June, but not exceed 2 successive financial years.
- d) Where a ratepayer fails to meet their full obligation under the agreement, the agreement will be terminated and legal action shall commence for outstanding rates and service charges.



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

- e) If the ratepayer defaults on the special payment arrangement agreement twice in any 12 month period, no further special payment arrangements can be made and rates are required to be paid in full.

### 2. Recovery of Rates and Charges in Arrears

Rates and Charges are due and payable within 35 days from the date of issue of the annual rate (or interim rate) notice, as shown on that notice in accordance with section 6.50(2) of the Local Government Act 1995.

These procedures also apply to those ratepayers who decide to pay by one of the instalment options.

- a) Should any amount of rates or service charges remain outstanding after the due date stated on the Annual Rates Notice penalty interest shall applied at the interest rate adopted by Council in its annual budget in accordance with section 6.13(1) of the Local Government Act 1995.
- b) The interest rate set by the Council is not to exceed the maximum rate of interest as prescribed within regulation 19A of the Local Government (Financial Management) Regulations 1996.
- c) Interest is calculated on the number of days from the due date of payment until the day the payment is received by the Shire of Wyndham East Kimberley. This includes overdue amounts where the debtor has elected the instalment option.

#### 2.1. Accounts 35 Days in Arrears After the Initial Rates Notice

- a. 7 days after the due date of the Annual Rates Notice a Final Notice will be issued allowing 14 days for payment unless the debtor has agreed to enter into a special payment arrangement.
- b. Final Notices are **not** to be issued to eligible pensioners or seniors under the Rates and Charges (Rebates and Deferments) Act 1992 as such persons have until 30 June in the year of rating to make payment, without incurring any late payment penalties.
- c. 14 days past the Annual Rate Notice due date, Instalment Options are no longer available. Rates must be paid in full or a special payment arrangement entered into.



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

### 2.2. Accounts 57 Days or more in Arrears After the Initial Rates Notice

Any costs incurred by the Shire of Wyndham East Kimberley to recover rates and charges in arrears will be on-charged to the ratepayer.

- a) Any assessments with outstanding rates and charges after 14 days from the date of issue of the Final Notice will be issued with a Notice of Intention to Summons (Demand) by the Shire's debt collection agency allowing 7 days for payment or for the ratepayer to contact the Shire.
- b) If no response is received after the 7 days period a General Procedure Claim will be issued.
- c) General Procedure Claims will not be issued on claims under \$200.00.
- d) It should be noted that when a General Procedure Claim is issued, this will impact upon the ratepayer's credit rating – refer to the Council's Notice of Discontinuance (Rates and Debtors) Policy.
- e) Ratepayers are required to either pay the full amount including debt collection costs or enter into an alternative payment arrangement that has been authorised by the Director Corporate Services. A payment arrangement must be requested in writing on the payment arrangement form.
- f) If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, a Property Seizure and Sale Order on goods will be issued.

OR

- g) If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, and the assessment is a leased or rented property, a notice will be served to the tenant / lessee under section 6.60 of the Local Government Act 1995 requiring the lessee or tenant to pay to the Shire the rent due that they would otherwise pay under the lease/tenancy agreement as it becomes due, until the amount in arrears has been paid. The approval of the Council is required to be obtained before this course of action is undertaken.



## **Council Policy Number: CP FIN-3212**

### **Rates and Charges Debt Collection Policy**

#### 2.3. Options to Recover Rates and Service Charges Where Rates Are In Arrears In Excess of Three (3) Years

- a) If rates and service charges in respect of any rateable land are outstanding for three (3) or more years, Council may take possession of the land under the provisions of section 6.64 of the Local Government Act 1995, and may:-
- i. From time to time lease the land; or
  - ii. Sell the land; or
  - iii. Cause the transfer of the land to the Crown; or
  - iv. Cause the transfer of the land to itself.

The approval of the Council is required to be obtained before any of these courses of action may be undertaken.

#### 2.4. Payments Received or Contact Made After Legal Action Commenced

- a) If any payments or contact has been made by the ratepayer of whom legal action has been started, the Shire's debt collection agency will be notified that legal action must be placed on hold immediately.
- b) When payment has been received in full, the Shire's debt collection agency will be notified to close the account.
- c) If the ratepayer defaults a payment or no further contact is received from the ratepayer, legal action will resume and the payment arrangement will be terminated.

### **3. Pensioners / Seniors**

1. Pensioners / Seniors have until the 30 June to pay rates and service charges.
2. The Shire will send a letter on 1 May (or thereabouts) reminding the Pensioner / Senior that payment is require by 30 June for them to be eligible for the Pensioner Rebate.
3. Service charges must be paid in full.



## Council Policy Number: CP FIN-3212 Rates and Charges Debt Collection Policy

### 4. Responsibility of Ratepayers

It is the responsibility of the ratepayer to ensure that rates and charges payments made electronically use the correct reference number. If the incorrect reference number is used, and the Shire is not advised by the ratepayer that this error has occurred, then the ratepayer will be responsible for the payment of any debt collection charges that may have been incurred in the meantime.

### Outcomes

This Policy will ensure that there is manageable and efficient control over overdue accounts by closely monitoring aged accounts in an attempt to reduce the likely occurrence of unrecoverable debts and to ensure consistency for all debt collection activities.

The Policy represents the expected standards of the Shire of Wyndham East Kimberley. All required approvals must be sought without deviation.

This Policy takes effect from the date of adoption by the Council and shall remain valid until it is amended or deleted.

### GOVERNANCE REFERENCES

<b>Statutory Compliance</b>	Local Government Act 1995 Local Government (Financial Management) Regulations 1996
<b>Industry Compliance</b>	Not Applicable
<b>Organisational Compliance</b>	Shire of Wyndham East Kimberley Delegations Register – Part B
<b>Process Links</b>	<ul style="list-style-type: none"> <li>Annual Budget Process</li> <li>Annual Delegations Review</li> <li>Notice of Discontinuance (Rates and Debtors) Policy</li> </ul>

### POLICY ADMINISTRATION

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Corporate Services		Director Corporate Services		Ext: 121	
<b>Date Effective</b>	27/05/2014	<b>CEO Approved</b> <i>Gay Bell</i>			
<b>Date Adopted</b>	27/05/2014	<b>Last Reviewed</b>		27/05/2014	
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	27/05/2015
<b>Organisational Compliance</b>	Eg: Delegations Manual				
<b>Process Links</b>	Eg: Administrative Policy, Council Policy				



<b>POLICY NO</b>	<b>CP/FIN-3212</b>	
<b>POLICY</b>	<b>Rates and Charges Debt Collection</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Senior Rates Officer	
<b>COUNCIL ADOPTION</b>	Date: 26 May 2014	Resolution No: 10938
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015	Resolution No:
	Date:	Resolution No:
<b>REVIEW DUE</b>	November 2017	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. <i>Local Government Act 1995 – Sections 6.12, 6.13, 6.16, 6.45, 6.56, 6.60, 6.64, 6.68</i></li> <li>2. <i>Local Government (Financial Management) Regulations - Regulations 19A, 19B, Regulations 58 to 66.</i></li> <li>3. <i>Magistrates Court (Civil Proceedings) Act 2004 – Section 12</i></li> <li>4. <i>Civil Judgments Enforcement Act 2004 – Section 8</i></li> <li>5. <i>Civil Judgments Enforcement Regulations 2005 – Regulation 4</i></li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3211 Fees and Charges Pricing</li> <li>2. CP/FIN-3210 Notice of Discontinuance (Rates and Debtors)</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> <li>3. Organisational Directive – Rates and Charges Debt Collection (under development)</li> </ol>	

#### **PURPOSE:**

This policy will establish clear guidelines for the efficient, effective and economical collection of rates and charges debts to reduce the likely occurrence of unrecoverable debts and to ensure consistency for all debt collection activities; and also enable the flexibility and choice in the payment of rates and charges imposed by the Council.

#### **DEFINITIONS:**

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

**Court** means the Magistrates Court.

**Default** means that the customer has failed to meet their obligations in accordance with the special payment arrangement that they have entered into with the Shire of Wyndham East Kimberley.

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

**General procedure claim** means a claim where the value of the claim or the relief claimed does not exceed \$75,000.

**Judgment** means —

- (a) a monetary judgment; or
- (b) a judgment or an order of a court that requires or has the effect of requiring a person —
  - (i) to give possession of any property to another person; or
  - (ii) to do an act, to not do an act, or to cease doing an act.

**Judgment creditor** means a person who is entitled to the benefit of a monetary judgment, including a person to whom the benefit of a monetary judgment has passed (by assignment or any other way).

**Judgment sum** means the amount of money ordered to be paid under a monetary judgment, whether or not the money is or includes costs or pre judgment interest.

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

**Magistrate** means a magistrate of the Court.

**Property seizure and sale order** authorises a bailiff to seize and sell as much of the judgment debtor's real or personal property as necessary to satisfy the judgment debt wholly or partially, and is effective for 12 months from the date the order is made.

**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:**

The Shire of Wyndham East Kimberley will exercise its debt recovery powers in order to reduce the overall sundry debt. It will be guided by the principles of:

### **1. Equity**

Ensuring that the debt collection procedures are undertaken in a fair and equitable manner and therefore providing the same treatment for all ratepayers with similar circumstances.

### **2. Administrative Efficiency**

Providing the Shire of Wyndham East Kimberley with a more effective method over the collection of outstanding debtors and ensuring that the processes used to recover outstanding debts are clear, simple to administer and cost effective.

### **3. Transparency**

Ensuring the obligations of the Shire's ratepayers are clear and assisting them to meet their financial obligations where possible.

### **4. Compliance**

Ensuring that the Shire of Wyndham East Kimberley is compliant with the *Local Government Act 1995* and all associated regulations.

Upon the Council adopting the annual budget for the following financial year, the Rates Notices will be issued.

## 1. Options for Payment of Rates and Charges

The options for payment of a rate or service charge may be:-

- a. In full by the specified due date; or
- b. By two (2) instalments by the specified due date (or as adopted by the Council in the Annual Budget); or
- c. By four (4) instalments by the specified due date; or
- d. By a special payment arrangement with payments made by the agreed due dates.

### 1.1. Instalment Options (Either Two (2) or Four (4) Instalments)

- 1.1.1. The charges for paying by instalments will be those adopted by the Council in the Annual Budget each year.
- 1.1.2. Ratepayers will not be placed on an instalment option after 14 days past the due date of the Annual Rates Notice.
- 1.1.3. If the Four (4) Instalments Option is selected and on the third instalment due date, the second and third instalment remain unpaid the ratepayer will be removed from instalments and a final notice will be issued for the full amount of rates and service charges.

### 1.2. Scope & Limitations of Instalment Options

In accordance with the *Local Government (Financial Management) Regulations 1996* –

#### 58. *Instalments not available if land in arrears (Act s. 6.45)*

*Payment of a rate or service charge on any land may not be made by instalments if, at the date for payment of the first instalment, any part of a rate or service charge imposed on that land in a previous financial year (or interest accrued thereon at the date of issue of the rate notice) remains unpaid.*

#### 59. *Instalments not available if total less than \$200 (Act s. 6.45)*

*Payment may not be made by instalments if the total amount shown in the rate notice as being payable to the local government for rates, service charges or minimum payments, other than amounts remaining unpaid from a previous financial year, is less than \$200.*

60. *Instalments, manner of electing to pay by (Act s. 6.45)*

*For the purposes of section 6.45 an election to pay by instalments is made (whether a person indicates to the local government that payment will be made by instalments, or not) if, before the close of business on the due date of the first instalment under an option specified in the rate notice, the local government receives payment of the amount set forth in the rate notice as being payable for that instalment.*

61. *Instalments, additional circumstance when rates may be paid by*

*Where a local government imposes rates after amending the rate record under section 6.39(2)(b) payment of the total amount of the rates may be made by the method of payment by instalments set forth in the local government's annual budget for the financial year in which the rates are imposed.*

62. *Rates re-assessed under Act s. 6.40, when rates due etc.*

(1) *Section 6.50(1) and (2) are to be applied to a rate notice given after a re-assessment of rates under section 6.40 (interim notice).*

(2) *If —*

- (a) *the person to whom an interim notice is given elects to make payment by instalments pursuant to section 6.45(2)(b); and*
- (b) *the period between the payment of the initial instalment and the due date of the next instalment is less than 2 months,*

*the initial instalment is deemed to have been paid on the due date of the previous instalment as set forth in the local government's annual budget.*

63. *Instalments, effect on if land sold*

*If, after the date for making an election to pay by instalments in a financial year, land is sold or otherwise disposed of, the rates and service charges due on the land for that financial year are payable to the local government by a single payment.*

64. *Instalments, when to be paid*

(1) *The due date for payment of the first instalment is to be the date a rate or service charge is due and payable if the payment is to be by a single payment.*

(2) *When adopting its annual budget the local government is to determine, in accordance with the Act, the due date for payment of instalments after the first instalment.*

(3) *In respect of the 4 instalment option referred to in section 6.45(1)(a), if the local government does not determine the due date for payment of instalments after the first instalment in accordance with subregulation (2) the due date of each of those instalments is at intervals of 3 months from the due date of the first instalment.*

65. *Instalment due on public holiday, payment of*

*When the due date for payment of an instalment falls on a weekend or public holiday, payment of that instalment is to be received by the local government before the close of business on the first working day after the due date.*

66. *Instalments, when right to pay ceases*

- (1) Subject to subregulation (2), where an election has been made to pay a rate or service charge by instalments, payment may continue to be made by instalments notwithstanding that an instalment (other than the first instalment) remains unpaid after it is due and payable*
- (2) If an instalment remains unpaid after the day on which the next instalment becomes due and payable, the local government may revoke the ratepayer's right to pay by instalments*
- (3) Where the right to pay by instalments is revoked under subregulation (2) –*
  - (a) the unpaid rate becomes due and payable on the day after the day of the revocation, or such day as the local government decides and*
  - (b) the local government must, in writing, immediately notify the ratepayer of the revocation and give details.*

1.3. Special Payment Arrangements

Before authorising any special payment arrangement in accordance with sub-delegation provided by the CEO, the Director Corporate Services will consider the following:

- a) That the terms of the agreement require that all outstanding rates will be recovered by the Shire of Wyndham East Kimberley by 30 June of the financial year in which the agreement is entered into.
- b) That the ratepayer is aware of the costs and charges associated with entering into a payment arrangement, of which the charges will be those adopted by the Council in the Annual Budget each year.
- c) At the discretion of Chief Executive Officer, a payment arrangement term may be extended beyond the 30 June, but not exceed 2 successive financial years.
- d) Where a ratepayer fails to meet their full obligation under the agreement, the agreement will be terminated and legal action shall commence for outstanding rates and service charges.
- e) If the ratepayer defaults on the special payment arrangement agreement twice in any 12 month period, no further special payment arrangements can be made and rates are required to be paid in full.

## 2. Recovery of Rates and Charges in Arrears

Rates and Charges are due and payable within 35 days from the date of issue of the annual rate (or interim rate) notice, as shown on that notice in accordance with section 6.50(2) of the *Local Government Act 1995*.

These procedures also apply to those ratepayers who decide to pay by one of the instalment options.

- a) Should any amount of rates or service charges remain outstanding after the due date stated on the Annual Rates Notice penalty interest shall applied at the interest rate adopted by Council in its annual budget in accordance with section 6.13(1) of the *Local Government Act 1995*.
- b) The interest rate set by the Council is not to exceed the maximum rate of interest as prescribed within regulation 19A of the *Local Government (Financial Management) Regulations 1996*.
- c) Interest is calculated on the number of days from the due date of payment until the day the payment is received by the Shire of Wyndham East Kimberley. This includes overdue amounts where the debtor has elected the instalment option.

### 2.1. Accounts 35 Days in Arrears After the Initial Rates Notice

- a) 7 days after the due date of the Annual Rates Notice a Final Notice will be issued allowing 14 days for payment unless the debtor has agreed to enter into a special payment arrangement.
- b) Final Notices are **not** to be issued to eligible pensioners or seniors under the Rates and Charges (Rebates and Deferments) Act 1992 as such persons have until 30 June in the year of rating to make payment, without incurring any late payment penalties.
- c) 14 days past the Annual Rate Notice due date, Instalment Options are no longer available. Rates must be paid in full or a special payment arrangement entered into.

### 2.2. Accounts 57 Days or more in Arrears After the Initial Rates Notice

Any costs incurred by the Shire of Wyndham East Kimberley to recover rates and charges in arrears will be on-charged to the ratepayer.

- a) Any assessments with outstanding rates and charges after 14 days from the date of issue of the Final Notice will be issued with a Notice of Intention to Summons (Demand) by the Shire's debt collection agency allowing 7 days for payment or for the ratepayer to contact the Shire.
- b) If no response is received after the 7 days period a General Procedure Claim will be issued.

- c) General Procedure Claims will not be issued on claims under \$400.00.
- d) It should be noted that when a General Procedure Claim is issued, this will impact upon the ratepayer's credit rating – refer to Council Policy *CP/FIN-3210 Notice of Discontinuance (Rates and Debtors)* for further information.
- e) Ratepayers are required to either pay the full amount including debt collection costs or enter into an alternative payment arrangement that has been authorised by the Director Corporate Services. A payment arrangement must be requested in writing on the payment arrangement form.
- f) If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, a Property Seizure and Sale Order on goods will be issued.

OR

- g) If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, and the assessment is a leased or rented property, a notice will be served to the lessee/tenant under section 6.60 of the *Local Government Act 1995* requiring the lessee or tenant to pay to the Shire the rent due that they would otherwise pay under the lease/tenancy agreement as it becomes due, until the amount in arrears has been paid. The approval of the Council is required to be obtained before this course of action is undertaken.

### 2.3. Options to Recover Rates and Service Charges Where Rates Are In Arrears In Excess of Three (3) Years

- a) If rates and service charges in respect of any rateable land are outstanding for three (3) or more years, Council may take possession of the land under the provisions of section 6.64 of the *Local Government Act 1995*, and may:-
  - i. From time to time lease the land; or
  - ii. Sell the land; or
  - iii. Cause the transfer of the land to the Crown; or
  - iv. Cause the transfer of the land to itself.

The approval of the Council is required to be obtained before any of these courses of action may be undertaken.

### 2.4. Payments Received or Contact Made After Legal Action Commenced

- a) If any payments or contact has been made by the ratepayer of whom legal action has been started, the Shire's debt collection agency will be notified that legal action must be placed on hold immediately.
- b) When payment has been received in full, the Shire's debt collection agency will be notified to close the account.
- c) If the ratepayer defaults a payment or no further contact is received from the ratepayer, legal action will resume and the payment arrangement will be terminated.

### **3. Pensioners/Seniors**

1. Pensioners/Seniors have until 30 June to pay rates and service charges.
2. The Shire will send a letter on 1 May (or thereabouts) reminding the Pensioner/Senior that payment is required by 30 June for them to be eligible for the Pensioner Rebate.
3. Service charges must be paid in full.

### **4. Responsibility of Ratepayers**

It is the responsibility of the ratepayer to ensure that rates and charges payments made electronically use the correct reference number. If the incorrect reference number is used, and the Shire is not advised by the ratepayer that this error has occurred, then the ratepayer will be responsible for the payment of any debt collection charges that may have been incurred in the meantime.

### **5. Write off of Rates and Charges**

1. Write off of rates and service charges debts will only be considered when all recovery processes available under this policy and allowable under legislation have been followed and there is no prospect of recovery of the debt.
2. Write off of rates and service charges can occur under Council delegation 11 for amounts up to \$200 or by resolution of the Council for amounts over \$200.

## **EXPLANATORY NOTES:**

The collection of rates and charges is an important component of the Shire's management of adequate cash-flows as well as the overall management of the Shire's financial performance and position.

### **Scope & Limitations**

In accordance with the *Local Government Act 1995*:-

#### **6.12. Power to defer, grant discounts, waive or write off debts**

- (1) *Subject to subsection (2) and any other written law, a local government may —*
  - (a) *when adopting the annual budget, grant\* a discount or other incentive for the early payment of any amount of money; or*
  - (b) *waive or grant concessions in relation to any amount of money; or*
  - (c) *write off any amount of money,*

*which is owed to the local government.*

*\* Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*

- (4) Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.

#### 6.13. Interest on money owing to local governments

- (1) Subject to any other written law, a local government may resolve\* to require a person to pay interest at the rate set in its annual budget on any amount of money (other than rates and service charges) which —
- (a) that person owes to the local government; and
  - (b) has been owed for the period of time referred to in subsection (6).

\* Absolute majority required.

- (2) A resolution under subsection (1) is to be included in the annual budget.
- (3) The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.
- (4) Where a local government imposes interest under subsection (1) on any outstanding amount of money the local government is not to also impose an additional charge in relation to that amount.
- (5) Accrued interest is, for the purpose of its recovery, taken to form part of the money owed to the local government on which it is charged.
- (6) A local government is not to impose interest on any amount of money under subsection (1) until the money has been owed to the local government for the period of time set by the local government in its annual budget (not being less than 35 days) after the date which is stated on the relevant account for payment as being the date the account was issued.
- (7) Regulations may provide for the method of calculation of interest.

#### 6.16. Imposition of fees and charges

- (1) A local government may impose\* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.

\* Absolute majority required.

- (2) A fee or charge may be imposed for the following —
- (a) providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;
  - (b) supplying a service or carrying out work at the request of a person;
  - (c) subject to section 5.94, providing information from local government records;
  - (d) receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;
  - (e) supplying goods;
  - (f) such other service as may be prescribed.
- (3) Fees and charges are to be imposed when adopting the annual budget but may be —
- (a) imposed\* during a financial year; and

(b) *amended\* from time to time during a financial year.*

*\* Absolute majority required.*

**6.45. Options for payment of rates or service charges**

- (1) *A rate or service charge is ordinarily payable to a local government by a single payment but the person liable for the payment of a rate or service charge may elect to make that payment to a local government, subject to subsection (3), by —*
  - (a) *4 equal or nearly equal instalments; or*
  - (b) *such other method of payment by instalments as is set forth in the local government's annual budget.*
- (2) *Where, during a financial year, a rate notice is given after a reassessment of rates under section 6.40 the person to whom the notice is given may pay the rate or service charge —*
  - (a) *by a single payment; or*
  - (b) *by such instalments as are remaining under subsection (1)(a) or (b) for the remainder of that financial year.*
- (3) *A local government may impose an additional charge (including an amount by way of interest) where payment of a rate or service charge is made by instalments and that additional charge is, for the purpose of its recovery, taken to be a rate or service charge, as the case requires, that is due and payable.*
- (4) *Regulations may —*
  - (a) *provide for the manner of making an election to pay by instalments under subsection (1) or (2); and*
  - (b) *prescribe circumstances in which payments may or may not be made by instalments; and*
  - (c) *prohibit or regulate any matters relating to payments by instalments; and*
  - (d) *provide for the time when, and manner in which, instalments are to be paid; and*
  - (e) *prescribe the maximum amount (including the maximum interest component) which may be imposed under subsection (3) by way of an additional charge; and*
  - (f) *provide for any other matter relating to the payment of rates or service charges.*

**6.49. Agreement as to payment of rates and service charges**

*A local government may accept payment of a rate or service charge due and payable by a person in accordance with an agreement made with the person.*

**6.50. Rates or service charges due and payable**

- (1) *Subject to —*
  - (a) *subsections (2) and (3); and*
  - (b) *any concession granted under section 6.47; and*
  - (c) *the Rates and Charges (Rebates and Deferments) Act 1992, a rate or service charge becomes due and payable on such date as is determined by the local government.*
- (2) *The date determined by a local government under subsection (1) is not to be earlier than 35 days after the date noted on the rate notice as the date the rate notice was issued.*

- (3) *Where a person elects to pay a rate or service charge by instalments the second and each subsequent instalment does not become due and payable at intervals of less than 2 months.*

**6.51. Accrual of interest on overdue rates or service charges**

- (1) *A local government may at the time of imposing a rate or service charge resolve\* to impose interest (at the rate set in its annual budget) on —*
- (a) a rate or service charge (or any instalment of a rate or service charge); and*
  - (b) any costs of proceedings to recover any such charge,*

*that remains unpaid after becoming due and payable.*

*\* Absolute majority required.*

**6.56. Rates or service charges recoverable in court**

- (1) *If a rate or service charge remains unpaid after it becomes due and payable, the local government may recover it, as well as the costs of proceedings, if any, for that recovery, in a court of competent jurisdiction;*

- (2) *Rates or service charges due by the same person to the local government may be included in one writ, summons, or other process.*

**6.60. Local government may require lessee to pay rent**

- (1) *In this section —*

**lease** *includes an agreement whether made orally or in writing for the leasing or subleasing of land and includes a licence or arrangement for the use of land;*

**lessor and lessee** *mean the parties to a lease and their respective successors in title.*

- (2) *If payment of a rate or service charge imposed in respect of any land is due and payable, notice may be given to the lessee of the land requiring the lessee to pay to the local government any rent as it falls due in satisfaction of the rate or service charge.*

**6.64. Actions to be taken**

- (1) *If any rates or service charges which are due to a local government in respect of any rateable land have been unpaid for at least 3 years the local government may, in accordance with the appropriate provisions of this Subdivision take possession of the land and hold the land as against a person having an estate or interest in the land and —*

- (a) from time to time lease the land or*
- (b) sell the land or*
- (c) cause the land to be transferred to the Crown or*
- (d) cause the land to be transferred to itself.*

**6.68. Exercise of power to sell land**

- (1) *Subject to subsection (2), a local government is not to exercise its power under section 6.64(1)(b)(in this Subdivision and Schedule 6.3 referred to as the power of sale) in relation to any land unless, within the period of 3 years prior to the exercise of the power of sale, the local government has at least once attempted under section 6.56 to recover money due.*

In accordance with the *Local Government (Financial Management) Regulations 1996:-*

19A. Maximum rate of interest prescribed (Act s. 6.13(3))

*The maximum rate of interest to be imposed under section 6.13(1) is prescribed as 11%.*

19B. Interest on money owing, calculating (Act s. 6.13)

- (1) *Interest on money that remains owing after the date determined in accordance with section 6.13(6) (the **due date**) is to be calculated on a simple interest basis for the number of days from the due date until the day before the day on which a payment is received by the local government.*
- (2) *The principal sum on which interest is calculated for a financial year may include interest accrued but not paid in a previous financial year but is not to include interest accrued in the current financial year.*
- (3) *If payment is received by the local government during the period from 1 July in a financial year until the annual budget for that financial year is adopted, interest referred to in sub regulation (1) for that period is to be at the rate of interest imposed under section 6.13(1) for the previous financial year.*
- (4) *If under section 6.13 interest is to be imposed on money owing, a request for payment of that money is to include or be accompanied by a statement that interest is to accrue on money that remains owing after the due date and stating —*
  - (a) *the date from which interest will be imposed; and*
  - (b) *the rate of interest.*

In accordance with the *Magistrates Court (Civil Proceedings) Act 2004*:-

12. Pre judgement interest may be awarded

- (1) *If the Court gives judgment in favour of a claim for money, including a debt, damages or the value of goods, it may include in the judgment sum either —*
  - (a) *interest, at a rate decided by the Court, on the whole or a part of the money for the whole or a part of the period that —*
    - (i) *begins on the date when the cause of action arose; and*
    - (ii) *ends on the date when the judgment is given;*
  - or
  - (b) *a lump sum of money in lieu of such interest.*

In accordance with the *Civil Judgments Enforcement Act 2004*:-

8. Interest on judgment sums

- (1) *Interest is to be paid on the unpaid amount of a judgment sum from the date of the judgment until the date on which the judgment sum is paid —*
  - (a) *at the rate prescribed by the regulations; or*
  - (b) *at the rate set by the court in the judgment or by an order made after the judgment is given.*
- (2) *Subsection (1) applies whether or not —*
  - (a) *a suspension order has been made; or*
  - (b) *a time for payment order or an instalment order has been made, unless the court that made such an order orders otherwise.*

- (3) *The judgment creditor may waive the payment of the whole or a part of the interest referred to in subsection (1).*
- (4) *A judgment creditor who waives interest under subsection (3) must advise the court of the fact when applying for an enforcement order under Part 4.*
- (5) *Subsection (1) does not apply to —*
  - (a) *a judgment that is registered under section 105(1) of the Service and Execution of Process Act 1992 of the Commonwealth; or*
  - (b) *a judgment sum on which interest is payable under another written law.*

In accordance with the *Civil Judgments Enforcement Regulations 2005:-*

4. Interest on unpaid amount of judgment sum

- (1) *The rate of interest for the purposes of the Act section 8(1)(a) is 6.00% per annum.*
- (2) *The waiver of the payment of the whole or a part of the interest by a judgment creditor under the Act section 8(3) must be in writing.*

In accordance with Council Delegation 11. - Waive, grant concessions or write off debts

*Legislative power Local Government Act 1995, Section 6.12(1)(b) and (c)*

*Delegate: Chief Executive Officer*

*Function to be performed*

*The Council delegates its authority and power to the Chief Executive Officer in exceptional circumstances to:*

1. *Waive or grant concessions in relation to sundry debts owed to the Shire (other than rates and services charges)*
2. *Write off money owed to the Shire*
3. *Determine the conditions to be applied to waive, grant a concession or write off money owed to the Shire*

*Conditions:-*

- a) *Limited to individual debts not exceeding \$500*
- b) *Write-off rates and service charges not exceeding \$200*
- c) *Report to the Audit (Finance and Risk) Committee on the exercise of this delegation*

*In this delegation:-*

**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.

**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.

## 7.6 REVIEW OF COUNCIL POLICY CP/FIN-3208 RATES EXEMPTIONS FOR CHARITABLE ORGANISATIONS (NON-RATEABLE LAND)

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Veronica Gulland, Senior Rates Officer
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.11.79
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended policy *CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)*.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and consider recommending to the Council that it adopt the amendments made to Council Policy *CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)*.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

On the 18 March 2014 the Council reviewed and adopted the current Council Policy *CP/FIN-3208 – Rates Exemptions for Charitable Organisations Policy (Non-Rateable Land)* - (Council Minute No.10344).

On 23 June 2015 the Council adopted the 2014 Probity Compliance Audit Report – (Council Minute No. 11017). The report included the following recommendation:

#### ***RECOMMENDATION 16***

***That Council arranges for the completion of a comprehensive review of its policies and adopts those reviewed policies by 31 December 2015.***

## **STATUTORY IMPLICATIONS**

### **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 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 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 Cōd*

*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.*

### **POLICY IMPLICATIONS**

Policy CP/FIN-3208 - Rates Exemptions for Charitable Organisations (Non-Rateable Land) is intended to be a Council Policy and as such would only be amended by resolution of the Council. Recommending policy amendments or new policies to ensure appropriate internal controls could however be considered within the scope of the Audit (Finance and Risk) Committee's Terms of Reference.

### **FINANCIAL IMPLICATIONS**

Nil

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

Strategy 1.4.2: Improve the efficiency and productivity of Shire services.

Strategy 1.4.3: Maintain Council's long term financial viability.

### **RISK IMPLICATIONS**

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

Operational Risk: Non-collection of rates and debts resulting in financial and/or reputation loss.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required at this stage in the process.

## **COMMENTS**

Rate exemptions are defined by legislation, specifically section 6.26 of the *Local Government Act 1995*. Rates exemptions are not to be confused with concessions, or waivers of rates, which are quite different. In the case of concessions or waivers of rates, the rates are essentially raised in the first instance and then reduced. In the case of rates exemptions, rates are not raised on the properties. Essentially, the Council does not have a choice but to provide exemptions in accordance with legislation, whereas it does have a choice in relation to concessions and waivers.

While most of the sections within the *Local Government Act 1995* are relatively easy to interpret in relation to whether land may be non-rateable and therefore exempt from paying rates, section 6.26(2)(g) is a little more difficult given there is some interpretation required.

This Policy provides an important framework for officers and the Council to ensure that an accurate interpretation is made, and correct decisions are made.

The Policy has been reviewed and amended in line with the recommendations of the 2014 Probity Compliance Audit Report and has been updated to the current policy format. There are no other fundamental changes to the existing policy.

## **ATTACHMENTS**

Attachment 1 - Current Policy *CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)*.

Attachment 2 - Amended Policy *CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)*.

Attachment 3 - Application Form - Rates Exemptions (Non-Rateable Land).

Attachment 4 - WALGA Rates and Charitable Land Use Exemption Applications Best Practice Guideline.

## **COMMITTEE RESOLUTION**

**Minute No. AC381**

**Moved: Cr N Perry**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended policy *CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)*.**

**Carried Unanimously 4/0**



## Council Policy Number: CP FIN – 3208

### Rates Exemptions for Charitable Organisations Policy (Non-Rateable Land)

#### OBJECTIVE:

*This policy will provide an administrative framework for assessing any application for properties to be classified as not rateable land on the ground of being used for charitable purposes.*

#### POLICY:

##### Scope & Limitations

*In accordance with s6.26 (2)(g) of the Local Government Act 1995 section 6.26(2)(g), the following land is not rateable –*

*(g) Land used exclusively for charitable purposes.*

##### Background

*There are often questions about what constitutes “charitable purposes”, and its application to land and its rateability.*

*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 on when land is rateable under section 6.26(2)(g).*

##### Guiding 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 and contain a declaration as to the accuracy of the information contained therein;*
- b) An application for a concession 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) Council may request information from an organisation on a yearly basis if Council considers this appropriate;*
- e) 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 include copies of the Constitution of the organisation, recent financial*

statements of the organisation and information demonstrating precisely how any land the subject of the application is used;

- g) For land to be treated as newly recognised not rateable land under section 6.26(2)(g), or if a new application for exemption is required under paragraphs b. or c. above, an application must be made by the date determined by Council for the rating year that precedes the rating year to which the applications 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. 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 that 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) falls within the 'spirit and intendment' of the preamble to the Charitable Uses Act 1601 (UK).

#### Outcomes

The policy provides an equitable basis to assess applications for Rate Exemptions that is compliant with legislation.

#### **GOVERNANCE REFERENCES**

<b>Statutory Compliance</b>	Local Government Act 1995
<b>Industry Compliance</b>	Not Applicable
<b>Organisational Compliance</b>	Not Applicable
<b>Process Links</b>	Annual Budget Process

**POLICY ADMINISTRATION**

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
<i>Corporate Services</i>		<i>Director Corporate Services</i>		Ext: 121	
<b>Date Effective</b>	18/03/2014	<b>CEO Approved</b> <i>Bony Ball</i>			
<b>Date Adopted</b>	18/03/2014	<b>Last Reviewed</b>	18/03/2014		
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	18/03/2015



## 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

- Are you the owner or lessee and occupier of the land with the rate notice being issued in the organisation's name?
- Is your organisation an Incorporated body as per the *Association Incorporated Act 1987*? If so, please provide the Certificate of Incorporation.



**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.  
 .....  
 .....
- 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.  
 .....  
 .....
- 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.  
 .....  
 .....

**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.



## 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 Shire's *Rates Exemption Policy (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



## 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.

*[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).]*



<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:
	Date:	Resolution No:
<b>REVIEW DUE</b>	November 2017	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. <i>Local Government Act 1995 – Section 6.26(2)(g)</i></li> <li>2. <i>Charitable Uses Act 1601 (UK)</i></li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3200 Strategic Rating Policy</li> <li>2. CP/FIN-3209 Rates Concessions (Rateable Land)</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 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**

- Are you the owner or lessee and occupier of the land with the rate notice being issued in the organisation's name?



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

- Is your organisation an Incorporated body as per the *Association Incorporated Act 1987*? If so, please provide the Certificate of Incorporation.
- Is your organisation considered not for profit? If yes, please state the purpose of the organisation.  
.....  
.....
- 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.  
.....  
.....  
.....
- 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.  
.....  
.....

**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



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

the organisation to the satisfaction of Council.

**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.

*[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).]*



# **Rates and Charitable Land Use Exemption Applications**

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## **Best Practice Guideline**

**WALGA**

**and**



**WA Rates Officers Association**

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1. What is a 'Charitable Purpose'?
2. Rate Exemption Application Process
3. State Administrative Tribunal Determinations
4. Exemption Registers and Periodical Review Process
5. Partial Rate Exemptions
6. Alternatives to Determining Non Rateable Status

## **Appendices**

1. Extract of Section 6.26 of the Local Government Act 1995
2. Extract of Section 6.76
3. Extract of Section 6.53
4. Template for Rates Exemption Application Form
5. Sample Rate Exemption Register
6. Approval letter template
7. Refusal letter template
8. Review letter template

## AIM

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The WA Rates Officer's Association and WALGA has partnered to provide advice and guidance on a template application process for use by WA Local Governments to ensure a consistent and objective approach to rate exemptions under Section 6.26 of the Local Government Act 1995, with particular reference to applications to determine rateability of land under Section 6.26(2)(g) of the Act.

## LEGISLATION

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- Section 6.26, Local Government Act 1995
  - see Appendix 1
- Judicial Decisions in relation to Section 6.26(2)(g)
  - see Chapter 3 'State Administrative Tribunal Determinations'

# 1. WHAT IS A 'CHARITABLE PURPOSE'?

---

Section 6.26(2)(g) of the Local Government Act provides a rates exemption for 'land used exclusively for charitable purposes'. 'Charitable purposes' is not currently defined in the Local Government Act 1995 or other statutes; rather charity is defined at common law.

The definition is largely based on the preamble to the Statute of Elizabeth enacted by the English Parliament in 1601 and the judgment of Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel*. Lord Macnaghten classified the categories of charitable as follows –

- *trusts for the relief of poverty;*
- *trusts for the advancement of education;*
- *trusts for the advancement of religion; and*
- *trusts for other purposes beneficial to the community;*

The High Court of Australia incorporated the Statute of Elizabeth I's into Australian law, finding that in order for an institution to be charitable, it must be –

- (a) within the spirit and intendment of the Preamble to the Statute of Elizabeth I; and
- (b) for the public benefit.

The Western Australian case law (arising from both the Courts and the State Administrative Tribunal) summarise that for a purpose to be charitable –

- (a) it must fall within the purposes set out in the Statute of Elizabeth I, or by Lord Macnaghten (above); and
- (b) there must be a public benefit, being a benefit directed to the general community, or to a sufficient section of the community to amount to the public.

Australian case law further establishes that poverty need not be destitution and may extend to the promotion of culture. Further, indigenous people have been judicially and statutorily recognised as being severely disadvantaged in Australian society and are a "class which, generally speaking, is in need of protection and assistance."

Australian case law has found that some incidental uses of the land does not destroy the exclusiveness of the use of the land for charitable purposes and so fall within sub-section 6.26(2)(g). 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.

## 2. RATE EXEMPTION APPLICATION PROCESS

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### **Background**

A claimant is required to evidence their right to an exemption under Section 6.26 of the Local Government Act by providing information upon which the Local Government can make an objective assessment as to their eligibility.

In the case of a charitable land use application, Section 6.26(2)(g) of the Act does not establish an *'as of right'* entitlement to a rate exemption on the basis of a claimant organisation's structure, purpose, objectives or the apparent land use.

### **Application Process**

A rate exemption claimant ('the applicant') must apply in writing in a form approved by Council, and provide any supporting documentation according to the checklist on the form. A template is provided at Appendix 2. General rules for application may include the following considerations:

1. An objection should be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.
2. If the applicant is applying for more than one property, a separate application must be completed for each property. This supports the principle that it is 'land use', not the claimant that is being assessed.
3. Check Section 6.26 (Appendix 1) of the Local Government Act to see what subsection applies to the application received.
4. If any information has not been provided or is unclear, the applicant is required to provide the additional information before the application can be assessed.
5. If the applicant is recorded as the owner of the property on the rate record, confirm the ownership details on the title via Landgate's website.
6. If the property is leased, ensure a copy of the lease has been provided with the application and check whether the lessee is responsible for payment of the rates in the terms of the lease. If necessary, a site check may be conducted to confirm the use of the property.
7. It is advisable to check with your Development/Approvals Department of Council to ensure property use aligns and complies with any relevant approval.
8. A part of a lot can be considered for an exemption. See Chapter 5 - 'Partial Rate Exemptions'.

9. Care should be taken not to focus too greatly on the fact that commercial activity is associated with the land use. The basis for an exemption is in regard to the activity that is taking place on the land not the status of the applicant. The fact that a not for profit is conducting an activity on the land is not the singular determining factor in the non-rateable status. The legislation states that it is the 'land use' that qualifies eligibility on a property and as such an application must be considered on that basis.

### **Making a Determination**

Once the application is returned and regarded as complete, consideration is then given to determining whether non-rateable status applies, or is to be declined. Councils may do this in different ways:

- Councils may delegate authority for a rate exemption application to be determined by the CEO; or
- Councils may require an application to be referred to Council together with an Officer Recommendation to either approve or decline the request.

If the property has been used for the exemption purpose as of 1 July of a financial year, the non-rateable status may be applied from that date regardless of when the application for exemption was made. In the instance where there has been a change of use of the land during a financial year an exemption can only be approved to take effect from the date of the change of use.

If the application is refused, the applicant will need to be notified in writing of the decision. It is also recommended to note this action on your rate record. Where the application is refused, the applicant may object under s. 6.76 of the *Local Government Act 1995* to the rate record of the local government in question, on the basis that the land or part of the land was not rateable land. Further, the applicant has the right to appeal a decision made under s. 6.76 to the State Administrative Tribunal (SAT).

If the application is approved, the applicant is to be notified in writing, with the correspondence including details of the date the exemption is to apply from, the section of the Act applicable to the exemption, the review period (i.e. 3 years) and the amount of rates reversed. With regards to the review period that is set by the Council, consideration must be given to the likelihood of the land use circumstances changing within a year, two years or three years.

Your rate record will also need to be updated to reflect the new non-rateable status of the subject land, with a notation of the amount of rates foregone. Also update any separate external rates register, if applicable.

Properties exempt from Local Government rates are not exempt from ESL (Emergency Services Levy). Regulation 5 of the Fire and Emergency Services Regulations 1998 specifies land that is exempt for the ESL.

Process the rates adjustment to reflect the non-rateable status. In some cases where payment of rates has already been made for the year, a refund to the claimant will be required. Ensure all documentation is properly recorded in your Local Government record keeping system.

Landgate Valuation Services need to be notified of any rates exemptions that are approved or no longer applicable. Landgate will remove the property from Roll 1 and place them onto Roll 2 when an exemption is approved and vice versa when an exemption is no longer applicable. This is required so Landgate's records are accurate and Council will not be charged for valuations that are not required. Send the notification to your local valuer at Landgate.

### 3. STATE ADMINISTRATIVE TRIBUNAL DETERMINATIONS

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Part 6, Division 6 of the Local Government Act provides for objections and review of a Local Government decision to rate land, and may result in application to the State Administrative Tribunal (SAT).

Council will be advised of the action taken to challenge a decision and a mediation meeting between the two parties is normally the first phase. If the matter cannot be settled via mediation, it will proceed to a hearing with the SAT. Councils usually engage legal representation for advice and to act on their behalf for the SAT proceedings.

The following summaries of SAT determinations is provided to give context to decisions that may have a bearing in your Local Government's future consideration of a 'charitable land use' rate exemption application:

#### 1. **Uniting Church Homes (Inc) and City of Stirling [2005] WASAT 191**

##### ***Facts***

Application was made by Uniting Church Homes to the City of Stirling for a rate exemption under s. 6.26(2)(g) on the basis that the land was used exclusively for a charitable purpose for relief of the aged. The land comprised aged housing, independent living units, and lease-for-life. The minimum age for entry was 55 years. The average age of residents was significantly older than 55 years. There was an entry and on-going payments required by residents. Entry payment was determined by market value.

##### ***Findings***

The SAT determined that the application for review of the decisions of the City of Stirling by Uniting Church Homes be upheld.

Rate notices given by the City of Stirling to Uniting Church Homes (Inc) and to Churches of Christ Homes and Community Services (Inc) were set aside insofar as they require the payment of "residential and other rates" specified in the notices.

##### ***Matters of note***

The fact that residents were required to purchase the right to occupy their unit, at market value, and pay maintenance did not alter the charitable characterisation of the use as a matter of law.

#### 2. **Retirees WA (Inc) and City of Belmont [2010] WASAT 56**

##### ***Facts***

Retirees WA is an incorporated, not-for-profit association that manages and administers a retirement village in Rivervale. The retirement village was established and managed pursuant to a joint venture agreement between Retirees WA and the Housing Authority (formerly the State Housing Commission).

The City of Belmont assessed the land, deemed it liable for council rates and issued rates notices. Retirees WA objected to the assessment on the basis that the land was not rateable land under s 6.26(2)(g) of the Act because it was used for a charitable purpose. The City of Belmont disallowed the objection. Retirees WA sought a review of that decision by the Tribunal.

### ***Findings***

The Tribunal concluded that use, for the purposes of s 6.26 of the *Local Government Act 1995 (WA)*, should be determined by looking objectively at the actual use of the land.

The Tribunal formed an overall judgment that the land was used for a scheme for the relief of the needs of the aged. However, in order to fall within the category of land used exclusively for charitable purposes it was also necessary for Retirees WA to demonstrate that the use of the land was for a public benefit.

The Tribunal determined that the land was not used exclusively for charitable purposes because accommodation at the retirement village was provided only to members of Retirees WA (Inc), and members of Retirees WA (Inc) are not a sufficient segment of the community to amount to the public for the use of the land to be for a public benefit and hence, relevantly, charitable.

### ***Matters of note***

It is not enough that land is used for the relief of the aged, it must also satisfy the requirement that it is used for a public benefit.

## **3. *Retirees WA (Inc) and City of Belmont [2012] WASAT 190***

### ***Facts***

Retirees WA (Inc) sought review by the Tribunal of the decision of the City of Belmont to disallow its objection to the rate record for the 2011/2012 financial year. Retirees WA (Inc) argued the land was not rateable land, under s 6.26 of the *Local Government Act 1995 (WA)*, because it was used exclusively for charitable purposes, namely, the relief of the aged.

In the interceding years from the original SAT decision, Retirees WA (Inc) had amended its Constitution and the terms of residents' contracts to enable any 'Eligible Person', to lease units in retirement villages owned and/or managed by it and to enable tenants who cease to be members of Retirees WA (Inc) to remain in occupation of their unit.

### ***Findings***

As accommodation of units was open to any Eligible Person, irrespective of whether he or she was a member of Retirees WA (Inc), and because a tenant could cease to be a member of Retirees WA (Inc) and still remain in occupation of their unit, the residents were deemed a sufficient section of the community to amount to the public. As the provision of accommodation at the retirement village met the element of the public benefit, the Tribunal determined that the land was used exclusively for charitable purposes and was therefore not rateable land under s 6.26.

#### **4. Shire of Derby-West Kimberley v Yungngora Association [2007] WASCA 233**

##### ***Facts***

The Shire successfully appealed an SAT determination to the WA Supreme Court.

##### ***Finding***

###### **- What constitutes a charitable purpose?**

The case provided the sector with the requirements for a charitable purpose. In order for land to be used exclusively for charitable purposes it must be found that the purpose in question is:

1. within the spirit and intent of the preamble to the Charitable Uses Act 1601; and
2. is a purpose beneficial to the public.

###### **- A benefit to the public?**

The condition that to be charitable a purpose must tend to benefit the public is satisfied if the purpose tends to the benefit of the public at large or a class or section of the public. The fact that only a limited number of people can benefit does not mean that the purpose is not a public one. A purpose does not lose its public character simply because it is limited by reference to locality, to conditions of people, to their disabilities, defects or misfortunes and by reference to many other attributes of men and thing.

But a purpose will not be a public one if it is merely for the benefit of particular private individuals. The Court stated that land used for the purpose of improving the economic position, social condition and traditional ties of an Aboriginal community will generally be a charitable use of the land.

###### **- The Land Use**

The focus of the exemption under the Act is upon the use of the land in question. In determining the purpose for which land is used, the focus must be on what is done on the land.

It is not enough that the primary or main object of the use of the land is for charitable purposes, unless the land is used exclusively for those purposes. If the use of the land for a charitable purpose produces a profitable by-product incidental to that use, the exclusiveness of the charitable purpose is not destroyed.

In this case, the Court found that it was not enough that the pastoral enterprise provided funds or other resources which the Association used for charitable purposes or that any profits which were ultimately derived from the business would be used by the Association for charitable purposes.

The Court found that any charitable purposes for which the Land was used was not the main purpose of the activities conducted on the Land which was for the distinct purpose of carrying on a pastoral business.

**5. Curtin University of Technology and Town of Victoria Park [2010] WASAT 175**

***Facts***

Curtin University granted a total of five leases to telecommunications companies to erect mobile phone towers on the University's campus. Three of those leases related to small portions of land and two others to parts of the University's buildings.

The Town of Victoria Park issued rate notices to the University in respect of the property the subject of the lease. The University lodged an objection with the Town on the basis that the Campus was exempt from rates and taxes. The Town dismissed the objection and the University appealed to the SAT for a review.

***Finding***

The Tribunal upheld the application on the basis that the University was not the owner of the property for the purposes of the Local Government Act 1995 (WA). The rate notice needed to be issued to the owner of the property pursuant to the Local Government Act 1995. The local government, it is assumed, served the rate notice to the owner and therefore remedied the issue.

**6. Technology Assisting Disability WA Inc and Town of Bassendean [2011] WASAT 154**

***Facts***

The applicant was an association established to improve quality of life of people with disabilities, the frail, and those caring for them through the application of technology and the skills of volunteers.

The Town of Bassendean issued rate notices. The association objected to the assessment on the basis that the land was used exclusively for charitable purposes. The Town rejected the objection and the association sought a review.

***Finding***

The Tribunal found that the land was used exclusively for charitable purposes. Incidental uses of the land for the disposal of surplus items did not destroy the exclusiveness of the use of the land for charitable purposes. The fact that items or services are charged for does not of itself mean that the use of the land is not charitable.

**7. Motor Industry Training Association of Western Australia (Inc) and City of Joondalup [2013] WASAT 14**

***Facts***

The Motor Industry Training Association of Western Australia sought review of a decision of the City of Joondalup to refuse an exemption for rating purposes in relation to land on which MITA carried out its training program for apprentices. MITA argued that its use of the land was for a recognised charitable purpose, namely the advancement of education.

The City argued that although vocational training may amount to a charitable purpose, the educational services offered by MITA were too limited in their scope and offered to too narrow a group of the public to satisfy the requirement of public benefit necessary to make the use of the land charitable.

### ***Finding***

The Tribunal found that the use of the land satisfied the requirements of public benefit and amounted to a use for the advancement of education. The decision to refuse exemption was overturned and a declaration made that the land was exempt from local government rates.

### ***Matter of note***

It is not necessary that in order to be considered a charitable purpose by way of providing for the advancement of education that the education be offered to persons in need or that those who benefit from the availability of the person educated are in need.

## **8. *Australian Flying Corps and Royal Australian Air Force Association (WA Division) Inc and City of Mandurah [2013] WASAT 89***

### ***Facts***

The applicant owned and operated a retirement village within the City of Mandurah. The applicant sought an exemption from rates on the ground that the property was used exclusively for charitable purposes. The exemption was refused on the basis that the residents of the village occupied their units at full cost.

### ***Finding***

The Tribunal concluded that the charging of occupancy costs at or around commercial rates did not affect the charitable status of the village. No profits were retained by a private owner. The Tribunal noted that the outcome might have been different if the rates charged were so high that only a small group of the community could afford to take up a place at the village.

### ***Matter of note***

It is not a requirement that the relief of the aged be given at no cost or at a cost less than the value of the relief being provided. If the residents were required to pay the costs of the accommodation and other services for the relief of the aged, and if the amount paid resulted in a surplus of income over expense, it would not preclude a conclusion that the land was used exclusively for a charitable purpose. Subject to proviso – any such surplus should not be for the private profit of the provider; and the costs of the accommodation and services should not be so great as to exclude the element of public benefit.

9. **Shire of Ashburton v Bindibindi Community Aboriginal Corporation [1999] WASC 108**

**Facts**

The Shire of Ashburton sought to recover rates levied on land vested in the defendant. The defendant was an incorporated Aboriginal association pursuant to the *Aboriginal Councils and Associations Act 1976 (Cth)*.

The defendant argued that it was not liable to pay rates in respect of the Land because:

1. it was not the "owner" of the Land for the purposes of s 1.4; or
2. the Land was not rateable since it was used exclusively for charitable purposes; or
3. the Land was not rateable as it was the property of the Crown and was used or held for a public purpose.

**Finding**

The case explored the issue of whether the advancement of Aboriginal people was deemed a charitable purpose. The case found in favour of the defendant.

## 4. EXEMPTION REGISTERS AND PERIODIC REVIEW PROCESS

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### Exemption Register

Council's software systems must indicate on its rate records if a property has non rateable status and a register should be maintained. A sample of the information and format of a register is provided on page 23.

The rate record should indicate which section of 6.26 that it applies to and the date it was applied.

The register should explain what the land use is and how it applies to the particular section of 6.26, the date it was applied by Council, the next scheduled review date that is required and the amount of rates revenue loss. The revenue loss will provide Council with an accurate figure of the loss it is incurring due to non-rateable properties.

This information should be known by Councils and be included in Long Term Financial Plans. Depending on your software capabilities, a register could be maintained with your software system with the ability to produce a report for non-rateable properties or if it does not cater for this functionality, it is recommended that a separate register, such as an Excel spreadsheet, be developed.

### Periodic Exemption Review

It is recommended that reviews are conducted annually, biannually or triennially. No more than 3 years should pass without a review being conducted as the circumstances of the land use may change and Council may be providing a non rateable status incorrectly in that circumstance.

Consideration needs to be given to the review period when assessing an application. If it is likely that circumstances may change within a year (i.e. a lease expiry), the review should be conducted annually.

## 5. PARTIAL RATE EXEMPTIONS

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There may be instances where only a portion of the land used would be classified as non-rateable.

Example:

A land parcel contains a church with a separate hall. The hall is leased by the church to a private organisation to run a dance school. The church would be classified as non rateable under S6.26(2)(d), however the dance school is a commercial business. In this scenario, only the portion of land that occupies the dance school is rateable.

Separate valuations (sub values) can be obtained from Landgate Valuation Services upon request. This will enable partial rating of the land on a rating system. This will result in having two separate valuations for one property, one that will be rateable and one that will be non rateable.

## 6. ALTERNATIVES TO DETERMINING NON RATEABLE STATUS

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In the instance where a local government may refuse a rates exemption application, the applicant can make an application to the Minister for Local Government for consideration that the property be rates exempt. If Ministerial approval is subsequently granted, the Council must apply a non rateable status for that property, to the extent of the decision.

Under Section 6.47 of the Local Government Act 1995 a Council may apply a Concession. This is generally applied when a property does not fall into any category of Section 6.26 but the Council may wish to offer a concession because of the nature of the undertaking of the organisation. This would be a case by case decision and for each individual Council to determine.

# APPENDIX 1

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*Extract of Section 6.26 of the Local Government Act 1995*

## **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.

## APPENDIX 2

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### *Extract of Section 6.76 of the Local Government Act 1995*

#### **6.76. 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 —

(i) with respect to the identity of the owner or occupier of any land; or

(ii) on the basis that the land or part of the land is not rateable land; or

(b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.

(2) An objection under subsection (1) is to —

(a) be made to the local government in writing within 42 days of the service of a rate notice under section 6.41; and

(b) identify the relevant land; and

(c) set out fully and in detail the grounds of objection.

(3) An objection under subsection (1) may be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.

(4) The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.

(5) The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

(6) After making a decision on the objection the local government is to promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a statement of its reason for that decision.

## APPENDIX 3

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*Extract of Section 6.53 of the Local Government Act 1995*

### **6.53. Land becoming or ceasing to be rateable land**

Where during a financial year —

- (a) land that was not rateable becomes rateable land; or
- (b) rateable land becomes land that is not liable to rates, the owner of that land —
- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land, as the case requires.

# APPENDIX 4

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*Template for Rates Exemption Application Form*

## 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 << Local Government >> for the sole purpose of providing requested and related services. Information will be stored securely by us will not be disclosed to any third parties without your express written consent.

<< Local Government >>

<< Address >>

**ABN**

**Phone:**

**Fax:**

**Email :**

**Website :**

This application form is to be used by organisations seeking exemption from rates, pursuant to the provisions of Section 6.26 of the Local Government Act 1995. In doing so you are objecting to the rate book under Section 6.76 of the Local Government Act 1995. The application for exemption will be checked based on the information you have provided, 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.

**Please note that where exemption from rates is approved, the property will still be subject to the Emergency Services Levy and any other service fees or charges, if applicable, such as rubbish collection charges. All properties granted exemption from rates are subject to periodic reviews to ensure continued approval.**

**Instructions:** Please print clearly in the spaces provided.

### 1. PROPERTY ADDRESS DETAILS

Street address

Suburb

Rates Assessment Number (if known)

### 2. WHAT IS THE CURRENT USE OF THE PROPERTY? Please provide full details:

### 3. PROPERTY OWNER DETAILS

<b>Organisation:</b>			
<b>Property Owner:</b> if different to above			
<b>Postal Address:</b>			
<b>Telephone:</b>		<b>Postcode:</b>	
<b>Mobile:</b>		<b>Facsimile:</b>	
<b>E-mail:</b>			

### 4. APPLICANT DETAILS

<b>Contact Person:</b>			
<b>Position Title:</b>			
<b>Postal Address:</b>			
<b>Telephone:</b>		<b>Postcode:</b>	
<b>Mobile:</b>		<b>Facsimile:</b>	
<b>E-mail:</b>			

### 5. ORGANISATION INFORMATION

**Is/does the organisation:**

An incorporated body as per the Associations Incorporations Act 1987 (WA)? Yes  No

*If yes, provide a Certificate of Incorporation*

Provide an extract of the relevant certificate from the ACNC. Yes  No

Have a tax exemption from the Australian Tax Office (ATO)? Yes  No

*If yes, provide a certificate of tax exemption from the ATO*

Leasing the property? Yes  No

*If yes, provide a copy of the lease and confirm if the lessee is responsible for payment of the rates*

Have planning approval for the land use of the property? Yes  No

*A site inspection may be required before the application is processed*

## 6. DOCUMENTATION REQUIREMENTS

Please provide a copy of (in addition to those specified in Section 4):

- Organisation's Constitution
- Written statement outlining the nature of the Organisation's operations.

It should include the following details:

- Confirm the grounds upon which an objection is being made to the rate record under Section 6.76 of the Local Government Act 1995
- Confirm the grounds upon which the exemption application applies under Section 6.26 of the Local Government Act 1995
- Use and occupancy of the land, inclusive of date of commencement
- 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
- If there is commercial activity conducted on the land, provide details of the activity and if revenue is raised, where it is disbursed

A plan of the property, showing all buildings and outbuildings

**OR**

A floor plan of the leased property area, if only part of the property is the subject of this application

A Copy of the current years audited financial statements for the Organisation  
*(If this exemption applies to only a portion of land owned by this Organisation, provide the relevant statements for the land this application applies to.)*

---

## 7. AUTHORISATION

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

**Name:**

--

**Position:**

--

**Organisation:**

--

**Signature of Applicant:**

--

**Date:**

--

# OFFICE USE ONLY

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## 1. CONSIDERATIONS

Approval with Town Planning Scheme?

YES

NO

Has the property been inspected?

YES

NO

Recommend for non-rateable status?

YES

NO

Applicant/Owner Name: \_\_\_\_\_

Section of the Local Government Act 1995 6.26(2) \_\_\_\_\_

Exemption Description: \_\_\_\_\_

Reason for non-rateable status:

New Application

Review of Exemption

Amount of rates to be exempted and dates to be applicable from (application date). The approval will be for a period of \_\_\_\_\_ years, unless circumstances change.

Amount: \_\_\_\_\_

Date (from): \_\_\_\_\_

Rubbish bin changes to be levied and dates to be applicable from:

Amount: \_\_\_\_\_

Date (from): \_\_\_\_\_

---

## 2. DECISION UNDER DELEGATED AUTHORITY

This application has been:

DECLINED for  
non-rateable status

APPROVED for partial  
non-rateable status

APPROVED for  
non-rateable status

**Name:**

**Signature:**

	<b>Date:</b>	

**OR**

**Council Resolution Reference:** \_\_\_\_\_

**Date of Council Meeting:** \_\_\_\_\_

**WESTERN AUSTRALIA**

**OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005**

**STATUTORY DECLARATION**

**APPLICATION FOR RATES EXEMPTION UNDER  
SECTION 6.26 OF THE LOCAL GOVERNMENT ACT 1995.**

**STATEMENT OF PROPERTY USE FOR THE YEAR ENDING 30 JUNE 20**

(1) Christian name or names and surname of declarant in full (1)  
**I**

(2) Address (2)  
**of**

3) Occupation (3)  
**In the State of Western Australia**

Sincerely declare as follows:-

<b>The property located at</b>
is used by
for the purposes of
Description of the activities the property is used for
for the period << ___ to ___ >> or from _____ to _____ .

The applicant agrees to advise the Local Government's Rating Services Section as soon as there is **ANY** change to the purpose/s as stated above.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

Declared at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

In the presence of \_\_\_\_\_  
(Signature of authorised witness)

\_\_\_\_\_  
(Name of authorised witness and qualification as such a witness)

(4) Signature of person making the declaration

(4)

**\*Important** This Declaration must be made before any of the following persons:-

Academic {post-secondary institution}  
Accountant  
Architect  
Australian Consular Officer  
Australian Diplomatic Officer  
Bailliff  
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 – WA only}  
Engineer  
Industrial organisation secretary  
Insurance broker  
Justice of the Peace {any State}  
Lawyer  
Local government CEO or deputy CEO  
Local government councillor  
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.

---

**FOR INFORMATION:** Any authorised witness for the State of Western Australia may also witness a Commonwealth Statutory Declaration, as long as they are in Western Australia at the time of witnessing {Schedule 2, item 231 of the Commonwealth Statutory Declarations Regulations 1993}.

### **IMPORTANT INFORMATION:**

AS OF 1 JANUARY 2006 THERE IS NO PROVISION FOR COMMISSIONERS FOR DECLARATIONS IN THE STATE OF WESTERN AUSTRALIA

## APPENDIX 5 - \*Sample of required data for a 'Rates Exemption Register'

Assess No	Street No	Property Address	Suburb	Ratepayer	Notes	Use of Property	Non-Rateable Reason	Non Rateable Description	Next Review Date	Local Govt Code	GRV	Rate in \$	Revenue Loss from exemption
111111	10	Park	PERTH WA 6000	Charitable Accommodation		Accommodation & support to men & women who are homeless or at risk of homelessness	CHARITABLE	Used for charitable purpose LGA 1995 S6.26(2)(g)	Nov 2017	Residential	17940	0.04220	\$757.07
222222	20	Mayfair	PERTH WA 6000	Alcohol & Drug Service (Inc)		Alcohol & drug counselling & support services for the aboriginal community	CHARITABLE	Used for charitable purpose LGA 1995 S6.26(2)(g)	Nov 2017	Office	455,000	0.02700	\$12,285.00
333333	30	Regent	PERTH WA 6000	Community Church Inc	Review letter sent 19/11/14, due back 18/12/14	Church Services, prayer meetings, Miracle Cafe for homeless & underprivileged communities, marriage courses, bible studies, wedding venue	RELIGIOUS	Place of worship, convent LGA 1995 S6.26(2)(d)	Due now	Commercial	63,900	0.05073	\$3,241.65
555555	50	Bond	PERTH WA 6000	A Church		Main church hall - worship services & bible studies	RELIGIOUS	Place of worship, convent LGA 1995 S6.26(2)(d)	Jun 2016	Commercial	101,860	0.05073	\$5,167.36
666666	60-70	North	PERTH WA 6000	A Church		Minor church hall for Christian based activities, Sunday School & offices used by Pastor & his staff	RELIGIOUS	Place of worship, convent LGA 1995 S6.26(2)(d)	Apr 2016	Commercial	52,490	0.05073	\$2,662.82
777777	80	Fleet	PERTH WA 6000	Health & Welfare Services Inc		Offices used for community, separation, relationship services. Youth services, education & training & various other programs	CHARITABLE	Used for charitable purpose LGA 1995 S6.26(2)(g)	Mar 2016	Office	670,228	0.02700	\$18,096.16
												<b>Total</b>	<b>\$42,210.05</b>

# APPENDIX 6

## Approval Letter

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Enquiries:      Rates Officer Name      Council Logo  
Finance:        Phone number  
Email:  
Council Ref:    Assessment ##### or record keeping ##  
Date

Applicant Name  
Applicant Address  
Address  
Address Applicant Name

Dear ,

### ASSESSMENT NUMBER ##### – PROPERTY ADDRESS

Reference is made to your rates exemption application, which was received by the council name on date, for the above mentioned property.

Council is pleased to advise that pursuant to the provisions of section 6.26(2)(x), rate exemption has been approved effective from date for the above property. The 2014/15 rates, which have been paid, will be adjusted and a refund will be issued shortly.

This exemption applies from date for (1 or 3) years and will be subject to a review at the end of this period.

Please note that whilst (council name) has approved the exemption, it is your responsibility to ensure that the property is used for both the purpose of the approval and by your organisation only.

Should any of the circumstances for your organisation change, please advise the council name within 30 days of the change.

Please also note that a rate exemption does not apply to the rubbish collection charges and that the Emergency Services Levy is a State Government Levy and is not eligible for any rating exemptions under their Act.

Should you have any queries regarding this matter, please do not hesitate to contact me on phone number.

Yours sincerely

Rates Officer Name

RATES OFFICER POSITION

# APPENDIX 7

## *Refusal Letter*

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Enquiries: Rates Officer Name  
Finance: Phone number  
Email:  
Council Ref: Assessment ##### or record keeping ##  
Date

Council Logo

Applicant Name  
Applicant Address  
Address  
Address Applicant Name

Dear ,

### **RATE EXEMPTION APPLICATION - ASSESSMENT NUMBER ##### – PROPERTY ADDRESS**

Reference is made to your recent application for a rate exemption on the above mentioned property.

Section 6.76 of the Local Government Act 1995 (The Act) advises that a person may in accordance with this section, object to the rate record of a local government on the ground that the land or part of the land is not rateable land. It also states that the objection may be made by the person named in the rate record as the owner of the land or by the agent or attorney of that person. Pursuant to Section 6.26(2)(g) of the Local Government Act 1995, rate exemptions may be granted where the land is used **exclusively** for charitable purposes.

Based on the information provided in your application, the property at **property address** is not being used **exclusively** for charitable purposes at this time. Therefore your application for rate exemption has been unsuccessful.

However, if this situation changes in the future, you may apply to the **council name** again providing further information in support of the application.

Should you have any queries regarding this matter, please do not hesitate to contact me on (08) **xxxx  
xxxx**.

Yours sincerely

Rates Officer Name

| RATES OFFICER POSITION

# APPENDIX 8

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## *Review Letter*

Enquiries: Rates Officer Name  
Finance: Phone number  
Email:  
Council Ref: Assessment ##### or record keeping ##  
Date

Council Logo

Applicant Name  
Applicant Address  
Address  
Address Applicant Name

Dear ,

### **RATE EXEMPTION REVIEW - ASSESSMENT NUMBER ##### – PROPERTY ADDRESS**

The council name is currently undertaking a review of properties which has previously been determined for an exemption from rates.

The purpose of the review is to ensure that the property still complies with the rates exemption provisions of section 6.26 of the Local Government Act 1995.

Section 6.76 of the Local Government Act 1995 (The Act) advises that a person may in accordance with this section, object to the rate record of a local government on the ground that the land or part of the land is not rateable land. It also states that the objection may be made by the person named in the rate record as the owner of the land or by the agent or attorney of that person.

Enclosed is a rates exemption application form which needs to be fully completed and returned to the council name by no later than return date.

Should you have any queries regarding this matter, please do not hesitate to contact me on (08) xxxx xxxx.

Yours sincerely

Rates Officer Name

RATES OFFICER POSITION

## 7.7 REVIEW OF COUNCIL POLICY CP/FIN-3209 RATES CONCESSIONS (RATEABLE LAND)

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Veronica Gulland, Senior Rates Officer
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.11.79
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended Policy *CP/FIN-3209 Rates Concessions (Rateable Land)*.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and consider recommending to the Council that it adopt the amendments made to Council Policy *CP/FIN-3209 Rates Concessions (Rateable Land)*.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

On the 18 March 2014 the Council reviewed and adopted the current Council Policy *CP/FIN-3209 – Rates Concession Policy (Rateable Land)* - (Council Minute No.10344).

On 23 June 2015 the Council adopted the 2014 Probity Compliance Audit Report – (Council Minute No. 11017). The report included the following recommendation:

#### ***RECOMMENDATION 16***

***That Council arranges for the completion of a comprehensive review of its policies and adopts those reviewed policies by 31 December 2015.***

## **STATUTORY IMPLICATIONS**

### **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 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 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  
*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.*

#### **6.47. Concessions**

*Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.*

*\* Absolute majority required.*

#### **6.48. Regulation of grant of discounts and concessions**

*Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.*

### **Local Government (Financial Management) Regulations 1996 Part 5 – Rates and service charges**

#### **69A. When concession under Act s. 6.47 can not be granted**

*A local government is not to exercise a power to grant a concession in relation to a rate or service charge under section 6.47 of the Act in circumstances where the concession is based on whether or not, or the extent to which, the land in respect of which the rate or service charge is imposed is occupied by a person who owns the land.*

### **POLICY IMPLICATIONS**

Policy CP/FIN-3209 - Rates Concessions (Rateable Land) is intended to be a Council Policy and as such would only be amended by resolution of the Council. Recommending policy amendments or new policies to ensure appropriate internal controls could however be considered within the scope of the Audit (Finance and Risk) Committee's Terms of Reference.

### **FINANCIAL IMPLICATIONS**

The total value of rates concessions granted for the 2015/16 financial year was \$48,227.76. All current rates concessions are for a period of two years and are due for review in March 2016 for the 2016/17 and 2017/18 financial years.

It should be noted that this amount includes the concession applied for the waste management charge, however it is proposed in the amended policy that waste management charges are not incorporated, and they are still charged given the overall purpose is for contributions from each rateable property to contribute to the provision of waste management services across the Shire. This would reduce the overall concession by an estimated \$2,000 in total.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

Strategy 1.4.2: Improve the efficiency and productivity of Shire services.

Strategy 1.4.3: Maintain Council's long term financial viability.

## **RISK IMPLICATIONS**

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

Operational Risk: Non-collection of rates and debts resulting in financial and/or reputation loss.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

Engagement will take place in accordance with the Shire's Community Engagement Guidelines and will include:

1. Correspondence to those organisations that have concessions currently;
2. SWEK News advertisement to invite applications;
3. Facebook notification to invite applications;
4. Phone calls to any new organisations that the Shire may be aware of.

## **COMMENTS**

The purpose of policy *CP/FIN-3209 Rates Concessions (Rateable Land)* is to outline a process to be followed, by a 'not for profit' community group or association providing a benefit to the community from rateable land, for the relief of rates.

The Policy provides a mechanism for the Council to demonstrate how valuable it believes the goods or services that a group or association provides is to the community through the provision of rates relief.

The Policy provides an administrative framework for assessing any application requesting the waiving or granting concession from rates to 'not for profit' community based organisations occupying rateable land in accordance with Council's discretionary powers provided by section 6.47 of the *Local Government Act 1995*.

The Policy has been reviewed and amended in line with the recommendations of the 2014 Probity Compliance Audit Report and has been updated to the current policy format. There has only been one fundamental change proposed to the existing policy which is to exclude the waste management charge from being considered as part of the concession amount. This would effectively mean a \$200 contribution is still being sought from any not for profit community group or association for the provision of waste management services across the Shire.

### **ATTACHMENTS**

Attachment 1 - Current Policy *CP/FIN-3209 Rates Concessions (Rateable Land)*

Attachment 2 – Amended Policy *CP/FIN-3209 Rates Concessions (Rateable Land)*

Attachment 3 – Application Form – Rates Concessions (Rateable Land)

### **COMMITTEE RESOLUTION**

**Minute No. AC382**

**Moved: Cr B Robinson**

**Seconded: Cr N Perry**

**That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the amended Policy *CP/FIN-3209 Rates Concessions (Rateable Land)*.**

**Carried Unanimously 4/0**



## Council Policy Number: CP FIN - 3209

### Rates Concession Policy (Rateable Land)

#### OBJECTIVE:

*This policy will provide an administrative framework for assessing any application requesting the waiving or granting concession from rates to 'not for profit' community based organisations occupying rateable land in accordance with Council's discretionary powers provided by section 6.47 of the Local Government Act 1995.*

#### POLICY:

##### Scope & Limitations

*In accordance with the Local Government Act 1995 –*

##### 6.47 Concessions

*Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.*

##### 6.48. Regulation of grant of discounts and concessions

*Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.*

*In accordance with the Local Government (Financial Management) Regulations 1996*

##### 69A. When concession under Act s. 6.47 can not be granted

*A local government is not to exercise a power to grant a concession in relation to a rate or service charge under section 6.47 of the Act in circumstances where the concession is based on whether or not, or the extent to which, the land in respect of which the rate or service charge is imposed is occupied by a person who owns the land.*

##### Background

*The Shire of Wyndham East Kimberley recognises the value and importance of the services and contributions that community groups and associations provide to the community for the East Kimberley to be a thriving community with opportunities for all.*

*The purpose of this policy is to identify a process to be followed by a 'not for profit' community group or association providing a benefit to the community from rateable land for the relief of rates.*



### Guiding Statements

- a) *All applications for rates concessions under s6.47 of the Local Government Act 1995 must be in writing on the prescribed form and contain a declaration as to the accuracy of the information contained therein;*
- b) *An application for a concession is only applicable to rates, and not to service charges nor the Emergency Services Levy;*
- c) *Rates concessions will only be provided to community groups or associations that operate as a body corporate or an Incorporated Association, and not to an individual;*
- d) *The Council will determine what is of benefit to the community for the purpose of this policy;*
- e) *Rates concessions for residential properties not used in the primary service delivery of the community group or association's activities or services will not be eligible for a concession;*
- f) *Community groups or associations, that in the opinion of Council, provide activities which are not core activities, and are in direct competition with a service provided by any established private operator within the district, will not be eligible for a rates concession;*
- g) *A concession will not be provided if there is an outstanding rate debt owed to the Shire on the property;*
- h) *Any concession granted will cease if a debt to the Council on the property is overdue for payment;*
- i) *The concessional percentage will generally be either 50% or 100% of the rates that are payable;*
- j) *Whether a concession is granted in response to an application or, if a concession is granted, the percentage of rates that may be waived, is entirely at the discretion of Council;*
- k) *The granting of a rates concession by Council in any year, will not guarantee that any future concessions will be granted;*
- l) *An application will be required to be lodged every two years and is to be assessed in accordance with this policy upon satisfaction of the requirements of the policy;*
- m) *Council may request information from an organisation on a yearly basis if Council considers this appropriate;*



- n) Council may request additional information from an organisation making application if it considers it necessary to do so;
- o) Information requested under paragraph m. above is not limited to, but typically include copies of the Constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land the subject of the application is used;
- p) For rates concessions to be considered, an application must be made by the date determined by Council for the rating year that precedes the rating year to which the application relates;

### Outcomes

The policy provides an equitable basis to assess applications for Rate Concessions that is compliant with legislation.

### GOVERNANCE REFERENCES

<b>Statutory Compliance</b>	Local Government Act 1995
<b>Industry Compliance</b>	Not Applicable
<b>Organisational Compliance</b>	Not Applicable
<b>Process Links</b>	Annual Budget Process

### POLICY ADMINISTRATION

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Corporate Services		Director Corporate Services		Ext: 121	
<b>Date Effective</b>	18/03/2014	<b>CEO Approved</b> <i>Ben Bell</i>			
<b>Date Adopted</b>	18/03/2014	<b>Last Reviewed</b>		18/03/2014	
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	18/03/2015



## Application for Rates Concession Section 6.47 of the *Local Government Act 1995*

### 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 concession, pursuant to Section 6.47 of the *Local Government Act 1995*. The provision of this concession 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

- Are you the owner or lessee and occupier of the land with the rate notice being issued in the organisation's name?
- Is your organisation an Incorporated body as per the *Association Incorporated Act 1987*? If so, please provide the Certificate of Incorporation.



**Application for Rates Concession**  
**Section 6.47 of the *Local Government Act 1995***

- Is your organisation considered not for profit? If yes, please state the purpose of the organisation.  
 .....  
 .....  
 .....
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities for the benefit of juniors and rely on player fees and fundraising only?
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities and charge entrance fees for viewing or participating?
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities and hold a liquor licence?
- 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?
- 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.  
 .....
- Is your organisation applying for a 50% rates concession?
- Is your organisation applying for a 100% rates concession?

**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.





## Application for Rates Concession Section 6.47 of the *Local Government Act 1995*

### *Local Government Act 1995*

#### *Part 6*

#### *Division 6*

#### **6.47. Concessions**

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.

\* *Absolute majority required.*

#### **6.48. Regulation of grant of discounts and concessions**

Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.

### *Local Government (Financial Management) Regulations 1996 Part 5*

#### **69A. When concession under Act s. 6.47 can not be granted**

A local government is not to exercise a power to grant a concession in relation to a rate or service charge under section 6.47 of the Act in circumstances where the concession is based on whether or not, or the extent to which, the land in respect of which the rate or service charge is imposed is occupied by a person who owns the land.

*[Regulation 69A inserted in Gazette 7 Jan 2005 p. 72.]*



<b>POLICY NO</b>	<b>CP/FIN-3209</b>	
<b>POLICY</b>	<b>Rates Concessions (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:
	Date:	Resolution No:
<b>REVIEW DUE</b>	November 2017	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. Local Government Act 1995 – Sections 6.26, 6.47, 6.48,</li> <li>2. Rates and Charges (Rebates and Deferments) Act 1992</li> <li>3. Local Government (Financial Management) Regulations 1996 – Regulations Part 5 - 69A</li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3200 Strategic Rating Policy</li> <li>2. CP/FIN-3208 Rates Exemptions for Charitable Organisations (Non-Rateable Land)</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 a 'not for profit' community group or association providing a benefit to the community from rateable land for the relief of rates.

This Policy aims to provide an equitable basis to assess applications for Rates Concessions that is compliant with legislation.

### **DEFINITIONS:**

**Concession** is an application that is considered by the Council to grant a concession or waiver of rates at either 50% or 100% in accordance with its discretionary powers provided by section 6.47 of the *Local Government Act 1995*.

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

**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 provides an administrative framework for assessing any application requesting the waiving or granting concession from rates to 'not for profit' community based organisations occupying rateable land in accordance with Council's discretionary powers provided by section 6.47 of the *Local Government Act 1995*.

- a) All applications for rates concessions under s6.47 of the Local Government Act 1995 must be in writing on the prescribed form (Attachment A of this Policy) and contain a declaration as to the accuracy of the information contained therein;
- b) An application for a concession is only applicable to rates, and not to service charges, the waste management charge, nor the Emergency Services Levy;
- c) Rates concessions will only be provided to community groups or associations that operate as a body corporate or an incorporated association, and not to an individual;
- d) The Council will determine what is of benefit to the community for the purpose of this policy;
- e) Residential properties not used in the primary service delivery of the community group or association's activities or services will not be eligible for a concession;
- f) Community groups or associations that, in the opinion of the Council, provide activities which are not core activities and are in direct competition with a service provided by any established private operator within the district, will not be eligible for a rates concession;
- g) A concession will not be provided if there is an outstanding debt owed to the Shire on the property;
- h) Any concession granted will cease if a debt to the Council on the property is overdue for payment;
- i) The concessional percentage will generally be either 50% or 100% of the rates that are payable;
- j) Whether a concession is granted in response to an application or, if a concession is granted, the percentage of rates that may be waived, is entirely at the discretion of the Council;
- k) The granting of a rates concession by the Council in any year, will not guarantee that any future concessions will be granted;
- l) An application will be required to be lodged every two years and is to be assessed in accordance with this policy upon satisfaction of the requirements of the policy;
- m) The Council may request information from an organisation on a yearly basis if the Council considers this appropriate;

- n) The Council may request additional information from an organisation making application if it considers it necessary to do so;
- o) Information requested under paragraph m. above is not limited to, but typically include copies of the constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land the subject of the application is used;
- p) For rates concessions to be considered, 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;

### **Scope & Limitations**

*In accordance with the Local Government Act 1995 –*

**6.47 Concessions**

*Subject to the Rates and Charges (Rebates and Deferments) Act 1992, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.*

**6.48. Regulation of grant of discounts and concessions**

*Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.*

*In accordance with the Local Government (Financial Management) Regulations 1996*

**69A. When concession under Act s. 6.47 cannot be granted**

*A local government is not to exercise a power to grant a concession in relation to a rate or service charge under section 6.47 of the Act in circumstances where the concession is based on whether or not, or the extent to which, the land in respect of which the rate or service charge is imposed is occupied by a person who owns the land.*

### **EXPLANATORY NOTES:**

The Shire of Wyndham East Kimberley recognises the value and importance of the services and contributions that community groups and associations provide to the community for the East Kimberley to be a thriving community with opportunities for all.

### **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.



**Appendix A to CP/FIN-3209**  
**Application for Rates Concession**  
**Local Government Act 1995, Section 6.47**

**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 concession, pursuant to Section 6.47 of the Local Government Act 1995. The provision of this concession 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**

- Are you the owner or lessee and occupier of the land with the rate notice being issued in the organisation's name?



**Appendix A to CP/FIN-3209  
Application for Rates Concession  
Local Government Act 1995, Section 6.47**

- Is your organisation an Incorporated body as per the *Association Incorporated Act 1987*? If so, please provide the Certificate of Incorporation.
- Is your organisation considered not for profit? If yes, please state the purpose of the organisation.  
.....  
.....  
.....
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities for the benefit of juniors and rely on player fees and fundraising only?
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities and charge entrance fees for viewing or participating?
- Are you a not for profit organisation that undertakes particular sporting, community or recreational activities and hold a liquor licence?
- 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?
- 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.  
.....
- Is your organisation applying for a 50% rates concession?
- Is your organisation applying for a 100% rates concession?



## Appendix A to CP/FIN-3209 Application for Rates Concession *Local Government Act 1995, Section 6.47*

### 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.

### 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 concessions 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-3209 Rates Concessions (Rateable Land)*.

Name:	
Position:	
Organisation:	
Signed:	Date:



**Appendix A to CP/FIN-3209**  
**Application for Rates Concession**  
***Local Government Act 1995, Section 6.47***

**6. OFFICE USE ONLY**

Rates Concession Application Approved:                      Yes                       No   
Rates Concession Percentage Approved:                      \_\_\_\_\_ %  
Effective Financial Years for Concession:    \_\_\_\_\_ / \_\_\_\_\_ and \_\_\_\_\_ / \_\_\_\_\_

The decision to approve / deny a Rates Concession under Section 6.47 of the *Local Government Act 1995* was approved / denied by Council at the \_\_\_\_\_ meeting of Council on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_.

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

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



**Appendix A to CP/FIN-3209  
Application for Rates Concession  
Local Government Act 1995, Section 6.47**

**Local Government Act 1995  
Part 6  
Division 6**

**6.47. Concessions**

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive\* a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.

*\* Absolute majority required.*

**6.48. Regulation of grant of discounts and concessions**

Regulations may prescribe circumstances in which a local government is not to exercise a power under section 6.46 or 6.47 or regulate the exercise of the power.

**69A. When concession under Act s. 6.47 can not be granted**

A local government is not to exercise a power to grant a concession in relation to a rate or service charge under section 6.47 of the Act in circumstances where the concession is based on whether or not, or the extent to which, the land in respect of which the rate or service charge is imposed is occupied by a person who owns the land.

*[Regulation 69A inserted in Gazette 7 Jan 2005 p. 72.]*

## 7.8 REVIEW OF COUNCIL POLICY CP/FIN-3213 CORPORATE CREDIT CARDS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Felicity Heading, Coordinator Financial Operations
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	CM.11.1
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it:

1. Adopts the amended Council Policy *CP/FIN-3213 Corporate Credit Cards* to be effective from the day following the Ordinary Council Meeting; and
2. Notes that the amended Council Policy *CP/FIN-3213 Corporate Credit Cards* will not be applied retrospectively; and
3. Notes the new Organisational Directive *OD/FIN-4202 Issue and Use of Corporate Credit Cards*.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and consider recommending to the Council that it adopt the amended policy *CP/FIN-3213 Corporate Credit Cards* and note the new Organisational Directive *OD/FIN-4202 Issue and Use of Corporate Credit Cards* to ensure the Shire adheres to the commitment made to the Department of Local Government and Communities in relation to the review of Policies.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

During the last Financial Management Review that was undertaken by the Council's auditors UHY Haines Norton, it was identified that the Council did not have an adopted Credit Card Policy.

The comments by UHY Haines Norton that formed part of the review were:

*“to help ensure usage of Council credit cards is in line with Council’s intent for issuing credit cards, a policy should be adopted and all credit card holders should sign and date a copy of the credit card policy as evidence of acknowledgement of their responsibilities and legal obligations when using the credit cards.”*

The Policy was not only identified by UHY Haines Norton as a recommended action in the Financial Management Review but also highlighted as an action within the Corporate Governance (Finance and Risk) Project Plan for 2014 that was endorsed by the Audit (Finance and Risk) Committee and subsequently the Council in February 2014.

On 12 August 2014, the Audit (Finance and Risk) Committee resolved the following:

**COMMITTEE RESOLUTION**

**Minute: AC312**

**Moved: Cr J Moulden**

**Seconded: Cr B Robinson**

***That the Audit (Finance and Risk) Committee recommends to Council that it adopts the attached proposed Corporate Credit Card Policy CP/FIN-3213.***

***Carried Unanimously 4/0***

The Corporate Credit Card Policy was subsequently adopted by the Council at the Ordinary Council Meeting on 26 August 2014:

**COUNCIL DECISION**

**Minute No. 10504**

**Moved: Cr K Wright**

**Seconded: Cr B Robinson**

***That Council confirms the Minutes of Audit (Finance and Risk) Committee Meeting held on 12 August 2014.***

***Carried Unanimously 9/0***

At the April 2015 Ordinary Council Meeting, Council were advised that a three stage review of Council policies was being undertaken. Stage two, specifically identified that a number of policies were to be provided to Council each month for consideration and adoption and that some new policies would be developed for Council consideration. This is in accordance with Recommendation 16 of the Department of Local Government and Communities Probity and Compliance Audit Report of the Shire which recommended a comprehensive review of the Shire’s policies. It is appropriate that the Audit (Finance and Risk) Committee review this Policy in the first instance, for Council to consider the Committee recommendations.

## **STATUTORY IMPLICATIONS**

The use of corporate credit cards is not specifically mentioned in the *Local Government Act 1995*, however the impacts of the use and control of corporate credit cards are related to the following sections:-

### **2.7. Role of council**

- (1) *The council —*
- (a) *governs the local government's affairs; and*
  - (b) *is responsible for the performance of the local government's functions.*
- (2) *Without limiting subsection (1), the council is to —*
- (a) *oversee the allocation of the local government's finances and resources; and*
  - (b) *determine the local government's policies.*

### **6.5. Accounts and records**

- The CEO has a duty —*
- (a) *to ensure that there are kept, in accordance with regulations, proper accounts and records of the transactions and affairs of the local government; and*
  - (b) *to keep the accounts and records up to date and ready for inspection at any time by persons authorised to do so under this Act or another written law.*

## **Local Government (Financial Management) Regulations 1996**

### **11. Payments, procedures for making etc.**

- (1) *A local government is to develop procedures for the authorisation of, and the payment of, accounts to ensure that there is effective security for, and properly authorised use of —*
- (a) *cheques, credit cards, computer encryption devices and passwords, purchasing cards and any other devices or methods by which goods, services, money or other benefits may be obtained; and*
  - (b) *petty cash systems.*

## **POLICY IMPLICATIONS**

While not a Policy, the Audit (Finance and Risk) Committee's Terms of Reference is relevant. Part 2 states:

*The primary objective of the Audit (Finance and Risk) Committee is to accept responsibility for the annual external audit and liaise with the Shire's auditor so that Council can be satisfied with the performance of the Shire in managing its financial affairs.*

*Reports from the Committee will assist Council in discharging its legislative responsibilities of controlling the Shire's affairs, determining the Shire's policies and overseeing the allocation of the Shire's finances and resources. The Committee will ensure openness in the Shire's financial reporting and will liaise with the CEO to ensure the effective and efficient management of the Shire's financial accounting systems and compliance with legislation.*

*The Committee is to facilitate –*

- *the enhancement of the credibility and objectivity of external financial reporting;*

- *effective management of financial and other risks and the protection of Council assets;*
- *compliance with laws and regulations as well as use of best practice guidelines relative to audit, risk management, internal control and legislative compliance; and*
- *the provision of an effective means of communication between the external auditor, the CEO and the Council.*

Council's Policy CP/FIN-3213 *Corporate Credit Cards* can only be amended by resolution of the Council. It is however, within the Audit (Finance and Risk) Committee's Terms of Reference, to recommend Policy amendments or new policies to Council for adoption, if they are finance or risk related.

### **FINANCIAL IMPLICATIONS**

There are no direct financial implications associated with this matter, although with a clear Policy and Organisational Directive for the use of corporate credit cards it will maintain the internal financial controls that are currently in place.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.3: Maintain Council's long term financial viability

### **RISK IMPLICATIONS**

Strategic Risk:

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

Operational Risks:

- Non-compliance with procurement policy and procedures resulting in financial and/or reputation loss.
- Non-compliance with DLG advisory standards and regulations.

### **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required however the Department of Local Government and Communities have been consulted.

## **COMMENTS**

The Council Policy *CP/FIN-3213 Corporate Credit Cards* was first considered and adopted in 2014. Moving forward, and to ensure that the CEO can appropriately undertake the administrative functions of the Shire, it would seem appropriate that the Committee recommend to the Council that it (the Council) retain an appropriate-level Policy and that there is an associated Organisational Directive that includes some of the more administrative functions currently contained within the Policy.

While Guideline 11 – Use of Corporate Credit Cards outlines a model Policy, Guideline 17 – Delegations specifies that some of the more administrative functions, such as establishing procedures (a requirement of Regulation 11 of the *Local Government (Financial Management) Regulations 1996* are suitable for “acting through” as they are already one of the CEO’s duties in relation to financial management outlined in Regulation 5 of the *Local Government (Financial Management) Regulations 1996*.

Amendments are therefore not only recommended in relation to the separation of Policy and Organisational Directive functions, but it is also recommended at the Policy level to establish the total combined facility limit for the Shire’s corporate credit cards at \$55,000 and to impose the limit on cards issued to a maximum of \$10,000 to be determined according to the requirements of the Officer’s position at the discretion of the Chief Executive Officer.

By separating the current Council Policy into a Council Policy and an Organisational Directive, this ensures that the CEO can undertake their functions in accordance with Regulation 5 of the *Local Government (Financial Management) Regulations 1996*.

The Department of Local Government and Communities has confirmed that this is an appropriate method of operating moving forward.

## **ATTACHMENTS**

Attachment 1 – Current Council Policy *CP/FIN-3213 Corporate Credit Cards*

Attachment 2 – Amended Policy *CP/FIN-3213 Corporate Credit Cards*

Attachment 3 – Organisational Directive *OD/FIN 4202 Issue and Use of Corporate Credit Cards*

Attachment 4 – DLGC LG Operational Guideline 11– Use of Corporate Credit Cards

**COMMITTEE RESOLUTION**

**Minute No. AC383**

**Moved: Cr B Robinson**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee recommends to the Council that it:**

- 1. Adopts the amended Council Policy *CP/FIN-3213 Corporate Credit Cards* to be effective from the day following the Ordinary Council Meeting; and**
- 2. Notes that the amended Council Policy *CP/FIN-3213 Corporate Credit Cards* will not be applied retrospectively; and**
- 3. Notes the new Organisational Directive *OD/FIN-4202 Issue and Use of Corporate Credit Cards*.**

**Carried Unanimously 4/0**



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

#### OBJECTIVE

Shire of Wyndham East Kimberley corporate credit cards are provided to members of staff to enable the purchase of goods and services.

The objective of this policy is to provide employees issued with corporate credit cards a clear framework to enable the appropriate usage of corporate credit cards. It will ensure transparency in usage and will reduce the risk of fraud and misuse of corporate credit cards.

This policy applies to all employees of the Shire of Wyndham East Kimberley who are assigned a corporate credit card.

#### POLICY

##### Scope & Limitations

The use of corporate credit cards is not specifically mentioned in the *Local Government Act 1995*, however the impacts of the use and control of corporate credit cards are related to the following sections:-

##### 2.7. Role of Council

- (1) *The Council –*
  - (a) *Governs the local government's affairs; and*
  - (b) *is responsible for the performance of the local governments' functions.*
- (2) *Without limiting subsection (1), the council is to –*
  - (a) *Oversee the allocation of the local government's finances and resources; and*
  - (b) *Determine the local government's policies*

##### 6.5. Accounts and Records

*The CEO has a duty –*

- (a) *To ensure that there are kept, in accordance with regulations, proper accounts and records of the transactions and affairs of the local government act; and*
- (b) *To keep the accounts and records up to date and ready for inspection at any time by persons authorised to do so under this Act or another written law.*



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

*The Local Government (Financial Management) Regulations 1996*

11. Payments, procedures for making etc.

- (1) *A local government is to develop procedures for the authorisation of, and the payment of, accounts to ensure that there is effective security for, and properly authorised use of –*
  - (a) *cheques, credit cards, computer encryption devices and passwords, purchasing cards and any other devices or methods by which goods, services, money or other benefits may be obtained; and*
  - (b) *Petty cash systems.*

The *Local Government Act 1995* does not allow for the issue of corporate credit cards to elected members. There are no provisions in the Act which allow an elected member to incur a debt, as would be the case with a credit card.

### **BACKGROUND**

A corporate credit card can deliver significant benefits but they can also expose a local government to significant risks if not controlled properly. This policy aims to incorporate the necessary controls to ensure that the risk is mitigated.

All purchases using the corporate credit card shall be included in the monthly list of accounts paid by delegated authority presented to the Council.

### **GUIDING STATEMENTS**

#### 1. Eligibility

- 1.1 Only the Chief Executive Officer, Directors and the Executive Assistant can apply for a corporate credit card. Managers and other officers that require a corporate credit card must show reason to warrant having a credit card and can only purchase specific goods and services relating to their position.
- 1.2 The Chief Executive Officer must approve all applications and in the case of the Chief Executive Officer's corporate credit card application the Shire President shall approve the application.
- 1.3 Once approved, the application must be signed by the cardholder and two (2) signatories to the Shire's bank accounts.



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

1.4 Employees who are authorised to hold a corporate credit card will be issued only one (1) corporate credit card at a time.

#### 2. Limits

2.1 The total combined limit for the Shire's corporate credit cards is a maximum of \$50,000.

2.2 The corporate credit card issued to the Chief Executive Officer will have a maximum limit of \$10,000 applied;

2.3 The corporate credit card issued to the Directors, Managers, Executive Assistant and any other officer will be limited to a maximum of \$5,000.

#### 3. General

3.1 The Corporate Credit Card User Agreement must be signed by the cardholder and the Chief Executive Officer, setting out the cardholder's limit, responsibilities and legal obligations when using the corporate credit card.

3.2 The cardholder is to sign the Corporate Credit Card User Agreement on receipt of the corporate credit card.

3.3 A register must be kept of all current cardholders including, card number, expiry date of the credit card, credit limit and details of goods and services the cardholder has authority to purchase.

3.4 In the event that a cardholder moves to a position which doesn't require the use of a corporate credit card or ceases employment, the cardholder must notify the Coordinator Financial Operations to arrange cancellation of the corporate credit card and in the instance ceasing employment a minimum of two (2) weeks' notice is required to ensure all receipts have been received and credit card account settled. The cardholder must return the credit card to Coordinator Financial Operations for destruction.

3.5 Corporate credit cards cannot be transferred to another user.



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

- 3.6 Reward schemes cannot be used for personal benefit. If the corporate credit card has a rewards scheme attached, the rewards will accumulate in the name of Shire of Wyndham East Kimberley and at the discretion of the Chief Executive Officer, he or she will decide on how these rewards are utilised.
- 3.7 The corporate credit card must be kept in a safe location at all times. In the event that a cardholder misplaces or loses their credit card, the cardholder must report this immediately in writing to the Coordinator Financial Operations. The Coordinator Financial Operations is to notify the issuing financial institution immediately on receipt of written notification.
- 3.8 In the case where the corporate credit card is misplaced or lost over a weekend, the cardholder shall immediately notify the bank, and advise the Coordinator Financial Operations in writing on the next working day.
- 3.9 If the Coordinator Financial Operations is on leave the Coordinator Financial Management or the Director Corporate Services is to be contacted.
- 3.10 The corporate credit card must be issued from the financial institution that municipal transactions are made from.
4. Conditions of Use
- 4.1 The corporate credit card cannot be used to obtain cash advances.
- 4.2 Charging personal expenditure transactions on the corporate credit cards is not acceptable under any circumstances. Breach of this policy can lead to disciplinary action against the cardholder concerned. In all cases of misuse, the Shire of Wyndham East Kimberley reserves the right to recover any monies from the cardholder.
- 4.3 Transactions that seem to be unreasonable, excessive and unauthorised will be reported to the Chief Executive Officer. Any breach by a cardholder will be investigated and necessary action taken by the Chief Executive Officer, which may result in withdrawal of the credit card or termination of employment.



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

- 4.4 Cardholders who breach the Shire's Purchasing Policy or Corporate Credit Card User Agreement may at the discretion of the Chief Executive Officer, have their corporate credit card cancelled.
- 4.5 All documentation regarding a corporate credit card transaction is to be retained by the cardholder and produced as part of the reconciliation procedure.
- 4.6 Credit limits are not to be exceeded. If additional credit is required during the month, the Coordinator Financial Operations is to be notified so appropriate steps can be taken to ensure sufficient funds are available or balances are refreshed.

#### 5. Purchasing

- 5.1 Purchases on the corporate credit card are to be made in accordance with the Shire of Wyndham East Kimberley's Procurement Policy.
- 5.2 Corporate credit cards are only to be used to purchase goods and services on behalf of the Shire which are authorised in the current budget.
- 5.3 A tax invoice is required for all corporate credit card purchases. All tax invoices must include an ABN, total amount, whether GST applies and a brief description of goods and services purchased. Confirmation document and EFTPOS receipts are not acceptable.
- 5.4 The purchase of fuel on a corporate credit card should only be used in emergency situation, as the Shire has an account with BP that offers fuel a lower rate than what is on display if the BP fuel card is used. In conjunction with the fuel card the Shire has a fuel stock at the Kununurra Depot.

#### 6. Reconciliation Procedures

- 6.1 A corporate credit card reconciliation statement will be supplied to all cardholders on the 15<sup>th</sup> of each month. Cardholders have seven (7) days to complete their reconciliation statement and have the Chief Executive Officer authorise the transactions listed on the statement.



## Council Policy Number: CP/FIN-3213

### Corporate Credit Card Policy

- 6.2 The Chief Executive Officer's credit card reconciliation statement must be authorised by the Shire President.
- 6.3 Transactions shall be accompanied by a succinct explanation of why the expense was incurred.
- 6.4 Transactions shall be accompanied by an account/job number for costing purposes.
- 6.5 If no supporting documentation is available the cardholder will provide a declaration detailing the nature of the expense and must state on that declaration "all expenditure is of a business nature". Approval of this expense is referred to the Chief Executive Officer or Shire President for a decision. Should a lack of detail be a regular occurrence for a particular cardholder, the cardholder may have their credit card withdrawn. Use of a statutory declaration is for exceptional circumstances rather than the norm.
- 6.6 Should approval of expenses be denied by the Chief Executive Officer or the Shire President, recovery of the expense shall be met by the cardholder.
- 6.7 The cardholder shall sign and date the credit card statement with supporting documentation attached stating "all expenditure is of a business nature".

### 7. Payment

- 7.1 Payment of the corporate credit cards will occur on the due date listed on the credit card statement to reduce interest and additional fees being charged.

### OUTCOMES

This policy provides a clear guideline to employees who have been issued with a corporate credit card.



## Council Policy Number: CP/FIN-3213

### ATTACHMENT 1

#### Corporate Credit Card User Agreement

I (insert cardholder name) acknowledge and accept the conditions listed below, which govern the use of the Shire of Wyndham East Kimberley corporate credit card.

You have been authorised a corporate credit card limit of (insert limit) for your position of (insert position title).

#### Conditions of Use:

1. Ensure corporate credit card is maintained in a secure manner and guarded against improper use.
2. Corporate credit cards are only to be used for the purchasing of goods and services on behalf of the Shire of Wyndham East Kimberley which are authorised in the current budget.
3. The Shire of Wyndham East Kimberley's Purchasing Policy must be followed at all times.
4. Cash withdrawals from the corporate credit card are strictly prohibited.
5. Personal expenditure is strictly prohibited.
6. Credit limits are not to be exceeded. If additional credit is required during the month, notification must be provided to the Coordinator Financial Operations to make the appropriate arrangements.
7. The corporate credit card is not to be tied to any reward system, which provides the cardholder with any personal benefit or reward.
8. If the card is lost or misplaced the cardholder will notify the Coordinator Financial Operations in writing as soon as possible who will made contact with the bank. If this occurs over a weekend, the bank is to be notified immediately and the Coordinator Financial Operations is to be formally notified on the next working day.
9. A tax invoice is required for all corporate credit card purchases. All tax invoices must include an ABN, total amount, whether GST applies and a brief description of goods and services purchased. Confirmation documents and EFTPOS receipts are not acceptable.
10. If the corporate credit card is used for entertainment expenditure, the number of people and full names of all Shire employees and associates that attended must be listed on the receipt for Fringe Benefits Tax purposes.



**Council Policy Number: CP/FIN-3213**

**ATTACHMENT 1**

**Corporate Credit Card User Agreement**

11. A monthly reconciliation of credit card purchases is to be completed on the supplied template and all relevant fields completed. The reconciliation with all supporting documents must be signed by the cardholder and authorised by the Chief Executive Officer, in the case of the Chief Executive Officer the Shire President is to authorise, and returned within seven (7) days of the date of the statement being issued to the Creditors Officer.
12. If no supporting documentation is supplied, the cardholder will provide a declaration detailing the nature of the expense and must state on the declaration 'all expenditure is of a business nature'. Approval of this transaction must be sought from the Chief Executive Officer. Should this be a reoccurring event, it may result in the credit card being revoked.
13. Should approval of expenses be denied by the Chief Executive Officer or Shire President, recovery of the expenses shall be met by the cardholder.
14. In the event that a cardholder moves to a position which doesn't require the use of a corporate credit card or ceases employment, the cardholder must notify the Coordinator Financial Operations to arrange cancellation of the corporate credit card and in the instance of ceases employment a minimum of two (2) weeks' notice is required to ensure all receipts have been received and the credit card account settled. The cardholder must return the credit card to Coordinator Financial Operations for destruction.

Breach of this policy can lead to disciplinary action against the cardholder concerned. In all cases of misuse, the Shire of Wyndham East Kimberley reserves the right to recover any monies from the cardholder. Any breach by a cardholder will be investigated and necessary action taken by the Chief Executive Officer, which may result in withdrawal of the credit card or termination of employment.

Failure to comply with any of these requirements could result in the card being withdrawn from the employee. In the event of loss or theft through negligence or failure to comply with the Corporate Credit Card Policy any liability arising from the use of the card may be passed to the cardholder.

.....  
Cardholder Signature

.....  
Chief Executive Officer Signature

.....  
Date

.....  
Date



**Council Policy Number: CP/FIN-3213**

**Corporate Credit Card User Agreement**

**POLICY ADMINISTRATION**

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Corporate Services		Director Corporate Services		Ext: 121	
<b>Date Effective</b>	27/08/2014	CEO Approved <i>[Signature]</i>			
<b>Date Adopted</b>	26/08/2014	<b>Last Reviewed</b>		<del>26/08/2014</del>	
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	26/08/2015



<b>POLICY NO</b>	<b>CP/FIN-3213</b>	
<b>POLICY</b>	<b>Corporate Credit Cards</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Coordinator Financial Operations	
<b>COUNCIL ADOPTION</b>	Date: 26 August 2014	Resolution No: 10505
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015	Resolution No:
	Date:	Resolution No:
<b>REVIEW DUE</b>	November 2017	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. Local Government Act 1995 – Sections 2.7(2)(a), 2.7(2)(b), 6.5(a), 6.12, 6.13, 6.16</li> <li>2. Local Government (Financial Management) Regulations 1996: <ul style="list-style-type: none"> <li>• Regulation 11. Payments, procedures for making etc.</li> <li>• Regulation 13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.</li> </ul> </li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3204 Purchasing</li> <li>2. CP/CNC-3140 Elected Member Allowances and Entitlements</li> <li>3. Code of Conduct for Council Members, Committee Members and Employees</li> <li>4. Audit (Finance and Risk) Committee Terms of Reference</li> </ol>	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	<ol style="list-style-type: none"> <li>1. OD/FIN-4202 Issue and Use of Corporate Credit Cards</li> <li>2. Delegations Register - Delegation 12: Payments from the Municipal Fund and Trust Fund</li> </ol>	

### **PURPOSE:**

This purpose of this policy is to provide Shire of Wyndham East Kimberley employees issued with corporate credit cards a clear framework to enable the appropriate issue and usage of corporate credit cards. It will ensure transparency in usage and will reduce the risk of fraud and misuse of corporate credit cards.

### **DEFINITIONS:**

None Required

### **POLICY STATEMENTS:**

#### **1. Application of Policy**

1.1 This policy applies to all employees of the Shire of Wyndham East Kimberley who are assigned a corporate credit card.

#### **2. Authority for Use of Corporate Credit Cards**

2.1 Shire of Wyndham East Kimberley corporate credit cards may be issued to the Chief Executive Officer, Directors and the Executive Assistant upon application.

2.2 The Chief Executive Officer may issue corporate credit cards to additional Shire employees where appropriate.

### **3. Authority for Approval of Corporate Credit Cards**

- 3.1 The Council must approve the issue of a credit card to the Chief Executive Officer and any change to the credit card limit.
- 3.2 The *Local Government Act 1995* does not allow for the issue of credit cards to elected members of local governments. Elected members are entitled to allowances or the reimbursement of expenses incurred on Council business in accordance with Council's Policy *CP/CNC-3140 Elected Member Allowances and Entitlements*.

### **4. Limits**

- 4.1 The total combined limit for the Shire's corporate credit cards is a maximum of \$55,000.
- 4.2 The corporate credit card issued to the Chief Executive Officer will have a maximum limit of \$10,000 applied.
- 4.3 The Chief Executive Officer will determine the maximum limit for each corporate credit card issued to Shire employees up to \$10,000.
- 4.4 The Chief Executive Officer may approve any change to credit card limits for any credit cards issued to Shire employees.

### **5. Conditions of Use**

- 5.1 The corporate credit card cannot be used to obtain cash advances even for official functions.
- 5.2 A corporate credit card shall only be used for the purchases of goods and services in the performance of official duties.
- 5.3 In all cases of misuse, the Shire of Wyndham East Kimberley reserves the right to recover any monies from the cardholder.
- 5.4 Transactions that seem to be unreasonable, excessive and unauthorised will be subject to audit and reported to the Chief Executive Officer where appropriate action will be undertaken.

### **6. Purchasing**

- 6.1 Purchases on the corporate credit card are to be made in accordance with the Council's Policy *CP/FIN-3204 Purchasing*.
- 6.2 Corporate credit cards are only to be used to purchase goods and services for which there is a budget provision.

### **7. General**

- 7.1 The corporate credit card must be issued from the financial institution that municipal transactions are made from.
- 7.2 All corporate credit card holders will sign a Corporate Credit Card User Agreement which will set out the cardholder's limit, responsibilities and legal obligations when using the corporate credit card.

- 7.3 A register must be kept of all current cardholders including, card number, expiry date of credit card, credit limit and details of goods and services the cardholder has authority to purchase.
- 7.4 Reward schemes cannot be used for personal benefit. If the corporate credit card has a rewards scheme attached, the rewards will accumulate in the name of the Shire of Wyndham East Kimberley and at the discretion of the Chief Executive Officer, he or she will decide on how these rewards are utilised.

## 8. Reconciliation Procedures

- 8.1 The Chief Executive Officer's credit card reconciliation statement must be authorised by the Shire President.
- 8.2 Transactions shall be accompanied by a succinct explanation of why the expense was incurred.
- 8.3 Transactions shall be accompanied by an account/job number for costing purposes.
- 8.4 If no supporting documentation is available, the cardholder will provide a declaration detailing the nature of the expense and must state on the declaration "all expenditure is of a business nature". Approval of the expense is referred to the Chief Executive Officer or Shire President for a decision. Should a lack of detail be a regular occurrence for a particular cardholder, the cardholder may have their credit card withdrawn. Use of a statutory declaration is for exceptional circumstances rather than the norm.
- 8.5 Should approval of expenses be denied by the Chief Executive Officer or the Shire President, recovery of the expense shall be met by the cardholder.
- 8.6 The cardholder shall sign and date the credit card statement with supporting documentation attached stating "all expenditure is of a business nature".

## 9. Reporting

- 9.1 All purchases using a corporate credit card shall be included in the list of accounts paid under delegated authority and presented to the Council in accordance with the requirements of Regulation 13 of the *Local Government (Financial Management) Regulations 1996*.

## EXPLANATORY NOTES:

### 1. Legislation

The *Local Government Act 1995* does not specifically mention the use of corporate credit cards by officers in a local government. However, Section 6.5(a) of the Act requires the CEO to ensure that proper accounts and records of the transactions and affairs of the local government are kept in accordance with regulations. In addition, Regulation 11(1)(a) of the *Local Government (Financial Management) Regulations* requires the local government to develop procedures for the authorisation and payment of accounts to ensure that there is effective security and appropriate authorisation in place for the use of credit cards.

## 2. Advantages of Credit Cards

Corporate credit cards can deliver significant benefits but they can also expose a local government to significant risks if not controlled properly.

Corporate credit cards, when used correctly can –

- a. eliminate or reduce time spent on paper based ordering and payments;
- b. reduce administrative costs;
- c. reduce the number of payments made per month;
- d. provide a useful resource in remote and emergency situations;
- e. reduce the need to carry cash;
- f. reduce cash purchases;
- g. effectively support on-line purchases (over the internet);
- h. effectively support on-line registrations (over the internet); and
- i. provide an effective audit trail of expenditures.

This Policy aims to incorporate the necessary controls to ensure that the risk is mitigated.

### **RISK:**

#### **Risk:**

1. Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.
2. Non-compliance with procurement policy and procedures resulting in financial and/or reputation loss.
3. Non-compliance with the DLG advisory standards and regulations.

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



<b>ORGANISATIONAL DIRECTIVE NO:</b>	<b>OD/FIN-4202</b>
<b>ORGANISATIONAL DIRECTIVE</b>	<b>Issue and Use of Corporate Credit Cards</b>
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services
<b>RESPONSIBLE OFFICER/S</b>	Coordinator Financial Operations
<b>CEO APPROVAL</b>	Date: Insert date approved / written approval by the CEO is required in the form of a memo or email correspondence
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015
	Date:
<b>REVIEW DUE</b>	Date: November 2017
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. <i>Local Government Act 1995 – Sections 2.7(2)(a), 2.7(2)(b), 6.5(a), 6.12, 6.13, 6.16</i></li> <li>2. <i>Local Government (Financial Management) Regulations 1996:</i> <ul style="list-style-type: none"> <li>• <i>Regulation 11. Payments, procedures for making etc.</i></li> <li>• <i>Regulation 13. Payments from municipal fund or trust fund by CEO, CEO's duties as to etc.</i></li> </ul> </li> </ol>
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3213 Corporate Credit Cards</li> <li>2. CP/FIN-3204 Purchasing</li> <li>3. Code of Conduct for Council Members, Committee Members and Employees</li> <li>4. Audit (Finance and Risk) Committee Terms of Reference</li> </ol>
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	Delegations Register - Delegation 12: Payments from the Municipal Fund and Trust Fund

### **PURPOSE:**

The purpose of this Organisation Directive is to clearly set out the procedural system associated with the appropriate issue and usage for corporate credit cards ensuring transparency in usage and to reduce the risk of fraud and misuse of corporate credit cards.

### **DEFINITION:**

**None Required**

### **TRAINING REQUIRED:**

Corporate Credit Cardholders will be provided with Council's Policy *CP/FIN-3213 Corporate Credit Cards* and an explanation of the connection between and requirements of that Policy and this Organisational Directive.

### **PROCEDURE:**

#### **1. Authority for Use of Corporate Credit Cards**

- 1.1 Shire of Wyndham East Kimberley corporate credit cards may be issued to the Chief Executive Officer, Directors and the Executive Assistant upon application.

- 1.2 The Chief Executive Officer may issue corporate credit cards to additional Shire employees where appropriate.
- 1.3 The Chief Executive Officer will consider any application for a corporate credit card.
- 1.4 Shire employees, with the exception of Directors and the Executive Assistant must demonstrate reason to warrant having a credit card and can only purchase specific goods and services relating to their position.

## **2. Authority for Approval of Corporate Credit Cards**

- 2.1 The Council must approve the issue of a credit card to the Chief Executive Officer and any change to the credit card limit.
- 2.2 The *Local Government Act 1995* does not allow for the issue of credit cards to elected members of local governments. Elected members are entitled to allowances or the reimbursement of expenses incurred on Council business in accordance with Council's Policy *CP/CNC-3140 Elected Member Allowances and Entitlements*.
- 2.3 The Chief Executive Office must approve all applications (where the application is considered appropriate) and in the case of the Chief Executive Officer's corporate credit card application the Council shall approve the application.
- 2.4 Once approved, the application must be signed by the cardholder and two (2) signatories to the Shire's bank accounts.
- 2.5 Employees who are authorised to hold a corporate credit card will be issued only one (1) credit card at a time.

## **3. Limits**

- 3.1 The total combined limit for the Shire's corporate credit cards is a maximum of \$55,000.
- 3.2 The corporate credit card issued to the Chief Executive Officer will have a maximum limit of \$10,000 applied.
- 3.3 The Chief Executive Officer may approve any change to credit card limits for any credit cards issued to Shire employees.
- 3.4 The Chief Executive Officer will determine the maximum limit for each credit card issued to an amount up to \$10,000 taking into account the requirements of the officer's position.

## **4. Conditions of Use**

- 4.1 The corporate credit card cannot be used to obtain cash advances even for official functions.
- 4.2 A corporate credit card shall only be used for the purchases of goods and services in the performance of official duties.
- 4.3 In all cases of misuse, the Shire of Wyndham East Kimberley reserves the right to recover any monies from the cardholder.

- 4.4 Transactions that seem to be unreasonable, excessive and unauthorised will be subject to audit and reported to the Chief Executive Officer where appropriate action will be undertaken.
- 4.5 All documentation regarding a corporate credit card transaction is to be retained by the cardholder and produced as part of the reconciliation procedure.
- 4.6 Card limits are not to be exceeded. If additional credit is required during the month, the Coordinator Financial Operations is to be notified so appropriate steps can be taken to ensure sufficient funds are available or balances are refreshed.
- 4.7 Any breach by a cardholder will be investigated and necessary action taken by the Chief Executive Officer, which may result in withdrawal of the credit card or termination of employment.
- 4.8 Cardholders who breach Council's Policy *CP/FIN-3204 Purchasing* or the Corporate Credit Card User Agreement may at the discretion of the Chief Executive Officer, have their corporate credit card cancelled.

## **5. Purchasing**

- 5.1 Purchases on the corporate credit card are to be made in accordance with the Council's Policy *CP/FIN-3204 Purchasing*.
- 5.2 Corporate credit cards are only to be used to purchase goods and services for which there is a budget provision.
- 5.3 A tax invoice is required for all corporate credit card purchases. All tax invoices must include an ABN, total amount, whether GST applies and a brief description of goods and service purchased. Confirmation documents and EFTPOS receipts are not acceptable.
- 5.4 The purchase of fuel on a corporate credit card should only be undertaken in emergency situations, as the Shire has a Puma fuel card account which offers fuel at a lower rate than the displayed price. In conjunction with the Puma fuel cards the Shire also has a fuel stock at the Kununurra Depot.
- 5.5 Where purchases are made over the telephone or on the internet, an invoice should be requested to support the purchase. If no invoice or receipt is available, as much detail about the transaction should be recorded and used to support the payment when required (date, company, address, ABN, amount, and any GST included).
- 5.6 Where a payment is made for entertainment, it is important to note on the invoice/receipt the number of persons entertained and the names of any Shire of Wyndham East Kimberley employees in that number. This is required to ensure the Shire pays the correct amount of Fringe Benefits Tax.

## **6. General**

- 6.1 The corporate credit card must be issued from the financial institution that municipal transactions are made from.
- 6.2 All corporate credit card holders will sign a Corporate Credit Card User Agreement which will set out the cardholder's limit, responsibilities and legal obligations when using the corporate credit card.

- 6.3 A register must be kept of all current cardholders including, card number, expiry date of credit card, credit limit and details of goods and services the cardholder has authority to purchase.
- 6.4 Reward schemes cannot be used for personal benefit. If the corporate credit card has a rewards scheme attached, the rewards will accumulate in the name of the Shire of Wyndham East Kimberley and at the discretion of the Chief Executive Officer, he or she will decide on how these rewards are utilised.
- 6.5 The Corporate Credit Card User Agreement which forms Appendix A to this Organisational Directive, must be signed by the cardholder and the Chief Executive Officer, setting out the cardholder's limit, responsibilities and legal obligations when using the corporate credit card.
- 6.6 The cardholder is to sign the Corporate Credit Card User Agreement on receipt of the corporate credit card.
- 6.7 Upon receipt of the corporate credit card, the cardholder shall sign on the reverse side of the card, operated by use of a PIN, and any prior cards shall be destroyed.
- 6.8 The cardholder shall not disclose their PIN to another party.
- 6.9 The cardholder shall not allow use of their card by another party, including a Shire employee.
- 6.10 In the event that a cardholder moves to a position which does not require the use of a corporate credit card or ceases employment, the cardholder must notify the Coordinator Financial Operations to arrange cancellation of the corporate credit card and in the instance of ceasing employment, a minimum of two (2) weeks' notice is required to ensure all receipts have been received and the credit card account settled. The cardholder must return the credit card to the Coordinator Financial Operations for cancellation and destruction.
- 6.11 Corporate credit cards cannot be transferred to another user.
- 6.12 The corporate credit card must be kept in a safe location at all times.

## **7. Corporate Credit Card Lost or Stolen**

- 7.1 In the event that a cardholder misplaces or loses their credit card, the cardholder must report this immediately in writing to the Coordinator Financial Operations.
- 7.2 The Coordinator Financial Operations is to notify the issuing financial institution immediately on receipt of written notification.
- 7.3 The Coordinator Financial Operations, in conjunction with the cardholder must perform a reconciliation of the card account from the date the card was lost or stolen.
- 7.4 In the case where the corporate credit card is misplaced or lost over a weekend, the cardholder shall immediately notify the bank, and advise the Coordinator Financial Operations in writing on the next working day.
- 7.5 If the Coordinator Financial Operations is on leave the Coordinator Financial Management or the Director Corporate Services is to be contacted.

## 8. Reconciliation Procedures

- 8.1 A corporate credit card reconciliation statement will be supplied to all cardholders on the 15th of each month. Cardholders have seven (7) days to complete their reconciliation statement and have the Chief Executive Officer authorise the transactions listed on the statement.
- 8.2 The Chief Executive Officer's credit card reconciliation statement must be authorised by the Shire President.
- 8.3 Transactions shall be accompanied by a succinct explanation of why the expense was incurred.
- 8.4 Transactions shall be accompanied by an account/job number for costing purposes.
- 8.5 If no supporting documentation is available, the cardholder will provide a declaration detailing the nature of the expense and must state on the declaration "all expenditure is of a business nature". Approval of the expense is referred to the Chief Executive Officer or Shire President for a decision. Should a lack of detail be a regular occurrence for a particular cardholder, the cardholder may have their credit card withdrawn. Use of a statutory declaration is for exceptional circumstances rather than the norm.
- 8.6 Should approval of expenses be denied by the Chief Executive Officer or the Shire President, recovery of the expense shall be met by the cardholder.
- 8.7 The cardholder shall sign and date the credit card statement with supporting documentation attached stating "all expenditure is of a business nature".

## 9. Payment

- 9.1 Payment of the corporate credit cards will occur on the due date listed on the credit card statement to reduce interest and additional fees being incurred.

## 10. Reporting

- 10.1 All purchases using a corporate credit card shall be included in the list of accounts paid under delegated authority and presented to the Council in accordance with the requirements of Regulation 13 of the *Local Government (Financial Management) Regulations 1996*.

### **RISK:**

#### **Risk:**

1. Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.
2. Non-compliance with procurement policy and procedures resulting in financial and/or reputation loss.
3. Non-compliance with the DLG advisory standards and regulations.

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



## Appendix A to *OD/FIN-4202 Issue and Use of Corporate Credit Cards*

### Corporate Credit Card User Agreement

I (insert cardholder name) acknowledge and accept the conditions listed below, which govern the use of the Shire of Wyndham East Kimberley corporate credit card.

You have been authorised a corporate credit card limit of (insert limit) for your position of (insert position title).

#### Conditions of Use:

1. Ensure the corporate credit card is maintained in a secure manner and guarded against improper use.
2. Ensure that you do not disclose the PIN of the corporate credit card to any other party, including Shire employees.
3. Ensure that the corporate credit card is not used by another party, including Shire employees.
4. Corporate credit cards are only to be used for the purchasing of goods and services on behalf of the Shire of Wyndham East Kimberley which is authorised in the current budget.
5. The Council's Policy *CP/FIN-3204 Purchasing* must be followed at all times.
6. Cash withdrawals from the corporate credit card are strictly prohibited.
7. Personal expenditure is strictly prohibited.
8. Credit limits are not to be exceeded. If additional credit is required during the month, notification must be provided to the Coordinator Financial Operations to make the appropriate arrangements.
9. The corporate credit card is not to be tied to any reward system, which provides the cardholder with any personal benefit or reward.
10. If the card is lost or misplaced the cardholder will notify the Coordinator Financial Operations in writing as soon as possible who will made contact with the bank. If this occurs over a weekend, the bank is to be notified immediately and the Coordinator Financial Operations is to be formally notified on the next working day.
11. A tax invoice is required for all corporate credit card purchases. All tax invoices must include an ABN, total amount, whether GST applies and a brief description of goods and services purchased. Confirmation documents and EFTPOS receipts are not acceptable.
12. If the corporate credit card is used for entertainment expenditure, the number of people and full names of all Shire employees that attended must be listed on the receipt for Fringe Benefits Tax purposes.



**Appendix A to OD/FIN-4202 Issue and Use of Corporate Credit Cards**

**Corporate Credit Card User Agreement**

- 13. A monthly reconciliation of credit card purchases is to be completed on the supplied template and all relevant fields completed. The reconciliation with all supporting documents must be signed by the cardholder and authorised by the Chief Executive Officer, in the case of the Chief Executive Officer the Shire President is to authorise, and returned within seven (7) days of the date of the statement being issued to the Creditors Officer.
- 14. If no supporting documentation is supplied, the cardholder will provide a declaration detailing the nature of the expense and must state on the declaration 'all expenditure is of a business nature'. Approval of this transaction must be sort from the Chief Executive Officer. Should this be a reoccurring event, it may result in the credit card being revoked.
- 15. Should approval of expenses be denied by the Chief Executive Officer or Shire President, recovery of the expenses shall be met be the cardholder.
- 16. In the event that a cardholder moves to a position which doesn't require the use of a corporate credit card or ceases employment, the cardholder must notify the Coordinator Financial Operations to arrange cancellation of the corporate credit card and in the instance of ceases employment a minimum of two (2) weeks' notice is required to ensure all receipts have been received and the credit card account settled. The cardholder must return the credit card to Coordinator Financial Operations for destruction.

Breach of this policy can lead to disciplinary action against the cardholder concerned. In all cases of misuse, the Shire of Wyndham East Kimberley reserves the right to recover any monies from the cardholder. Any breach by a cardholder will be investigated and necessary action taken by the Chief Executive Officer, which may result in withdrawal of the credit card or termination of employment.

Failure to comply with any of these requirements could result in the card being withdrawn from the employee. In the event of loss or theft through negligence or failure to comply with Council's Policy *CP/FIN-3213 Corporate Credit Cards*, any liability arising from the use of the card may be passed onto the cardholder.

.....  
Cardholder Signature

.....  
Chief Executive Officer Signature

.....  
Date

.....  
Date

## 7.9 REVIEW OF COUNCIL POLICY CP/FIN-3203 INVESTMENTS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Natalie Octoman, Director Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.10.5
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the Revised Council Policy *CP/FIN-3203 Investments* as outlined in Attachment 2.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and recommend to the Council that it adopt the revised Council Policy *CP/FIN-3203 Investments* to ensure the Shire adheres to the commitment made to the Department of Local Government and Communities in relation to the review of Policies.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices  
Regulator - enforce state legislation and local laws

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

At the April 2015 Ordinary Council Meeting, Council were advised that a three stage review of Council policies was being undertaken. Stage two, specifically identified that a number of policies were to be provided to Council each month for consideration and adoption and that some new policies would be developed for Council consideration. This is in accordance with Recommendation 16 of the Department of Local Government and Communities Probity and Compliance Audit Report of the Shire which recommended a comprehensive review of the Shire's policies.

The Council Policy *CP/FIN-3203 Investments* was adopted on 20 December 2005 and last reviewed on 24 June 2014. It is appropriate that the Audit (Finance and Risk) Committee review this Policy in the first instance, for Council to consider the Committee recommendations.

## **STATUTORY IMPLICATIONS**

### **Local Government Act 1995**

#### **6.14. Power to invest**

(1) Money held in the municipal fund or the trust fund of a local government that is not, for the time being, required by the local government for any other purpose may be invested as trust funds may be invested under the Trustees Act 1962 Part III.

(2A) A local government is to comply with the regulations when investing money referred to in subsection (1).

(2) Regulations in relation to investments by local governments may —

(a) make provision in respect of the investment of money referred to in subsection (1);  
and

[(b) deleted]

(c) prescribe circumstances in which a local government is required to invest money held by it; and

(d) provide for the application of investment earnings; and

(e) generally provide for the management of those investments.

### **Local Government (Financial Management) Regulations 1996**

#### **8. Separate bank etc. accounts required for some moneys**

(1) A local government is to maintain a separate account with a bank or other financial institution for each of the following purposes —

(a) money required to be held in the municipal fund (other than money for which an account is to be established under paragraph (c)); and

(b) money required to be held in the trust fund; and

(c) money required to be held in reserve accounts.

(2) Money related to a purpose set forth in subregulation (1) is to be banked in the account maintained for that purpose.

(3) Money from different accounts may be placed in a common investment authorised by the Act.

#### **19. Investments, control procedures for**

(1) A local government is to establish and document internal control procedures to be followed by employees to ensure control over investments.

(2) The control procedures are to enable the identification of —

(a) the nature and location of all investments; and

(b) the transactions related to each investment.

#### **19C. Investment of money, restrictions on (Act s. 6.14(2)(a))**

(1) In this regulation —

**authorised institution** means —

- (a) an authorised deposit-taking institution as defined in the Banking Act 1959 (Commonwealth) section 5; or
- (b) the Western Australian Treasury Corporation established by the Western Australian Treasury Corporation Act 1986; foreign currency means a currency except the currency of Australia.

**foreign currency** means a currency except the currency of Australia.

(2) When investing money under section 6.14(1), a local government may not do any of the following —

- (a) deposit with an institution except an authorised institution;
- (b) deposit for a fixed term of more than 12 months;
- (c) invest in bonds that are not guaranteed by the Commonwealth Government, or a State or Territory government;
- (d) invest in bonds with a term to maturity of more than 3 years;
- (e) invest in a foreign currency.

#### 28. Investment information required in notes

The notes to the annual budget are to include, in relation to money invested by the local government, an estimate of —

- (a) the amount to be earned from the investment of money held in reserve; and
- (b) the amount to be earned from the investment of other money; and
- (c) the total earnings from investments.

#### 49. Invested money, information about in annual financial report

The annual financial report is to include, in relation to money invested, details of —

- (a) the amount earned from the investment of money held in reserve; and
- (b) the amount earned from the investment of other money; and
- (c) the total earnings from investments.

### **POLICY IMPLICATIONS**

Council's Policy CP/FIN-3203 Investments can only be amended by resolution of the Council. It is however, within the Audit (Finance and Risk) Committee's Terms of Reference to recommend Policy amendments to the Council for adoption, if they are finance or risk related.

While not a Policy, the Audit (Finance and Risk Committee's Terms of Reference is relevant. Part 2 states:

*The primary objective of the Audit (Finance and Risk) Committee is to accept responsibility for the annual external audit and liaise with the Shire's auditor so that Council can be satisfied with the performance of the Shire in managing its financial affairs.*

*Reports from the Committee will assist Council in discharging its legislative responsibilities of controlling the Shire's affairs, determining the Shire's policies and overseeing the allocation of the Shire's finances and resources. The Committee will ensure openness in the Shire's*

*financial reporting and will liaise with the CEO to ensure the effective and efficient management of the Shire's financial accounting systems and compliance with legislation.*

*The Committee is to facilitate –*

- the enhancement of the credibility and objectivity of external financial reporting;*
- effective management of financial and other risks and the protection of Council assets;*
- compliance with laws and regulations as well as use of best practice guidelines relative to audit, risk management, internal control and legislative compliance; and*
- the provision of an effective means of communication between the external auditor, the CEO and the Council.*

## **FINANCIAL IMPLICATIONS**

There are no financial implications associated with the review of this Policy, however it will ensure that the Shire's internal control procedures and restrictions over investments continue to be maintained and adhered to, and meet all statutory requirements, and therefore forms a key element of the Shire's financial management framework.

Effective investment portfolio management will ensure that the Shire earns an appropriate return on any cash balances held, with due consideration to the preservation of capital, and satisfying liquidity requirements.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

## **RISK IMPLICATIONS**

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

Operational Risk – Non-compliance with the DLG advisory standard and regulations.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

The CEO currently has delegation (Number 15. Investments) *to invest any monies held in the municipal fund or the trust fund that is not, for the time being, required by the local government for any other purpose; and determine to invest these monies in accordance with Council Policy CP/FIN-3203 Investments.*

The CEO has sub-delegated this function in accordance with section 5.42 of the *Local Government Act 1995* to ensure that the day to day administration of the portfolio can be appropriately managed.

All investments are subject to externally sourced bank confirmations as part of the annual audit process, and the Council receive monthly reports on the investment portfolio.

The revised Policy contains very few modifications, however it is now in the corporate style and has expanded definitions in accordance with the revised template used for Council Policies.

## **ATTACHMENTS**

Attachment 1 - Current Council Policy *CP/FIN-3203 Investments*

Attachment 2 - Revised Council Policy *CP/FIN-3203 Investments*

## **COMMITTEE RESOLUTION**

**Minute No. AC384**

**Moved: Cr B Robinson**

**Seconded: Cr S Rushby**

**That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the Revised Council Policy *CP/FIN-3203 Investments* as outlined in Attachment 2.**

**Carried Unanimously 4/0**



## Council Policy Number: CP FIN - 3203

### Investment Policy

#### OBJECTIVE:

*To invest the Shire of Wyndham East Kimberley surplus funds with consideration of risk and at the most favourable rate of interest available to it at the time, for that investment type, whilst ensuring that liquidity requirements are being met.*

*Preservation of capital is to be the principal objective with consideration given to liquidity, cash flow requirements and return on investment.*

- *Preservation of capital is the principal objective of the investment portfolio. Investments are to be performed in a manner that seeks to ensure security and safeguarding the investment portfolio. This includes managing credit and interest rate risk within identified thresholds and parameters.*
- *The investment portfolio will ensure there is sufficient liquidity to meet all reasonably anticipated cash flow requirements, as and when they fall due, without incurring significant costs due to the unanticipated sale of an investment.*
- *The investment is expected to achieve a predetermined market average rate of return that takes into account the Council's risk tolerance. Any additional target set by Council will also consider the risk limitation and prudent investment principles.*

#### POLICY:

##### Scope & Limitations

*All investments are to comply with the following:*

- *Local Government Act 1995 – Section 6.14;*
- *The Trustees Act 1962 – Part III Investments;*
- *Local Government (Financial Management) Regulations 1996 – Regulations 19, 28 and 49 and Amendment regulations 2012; and*
- *Australian Accounting Standards.*

##### Delegation of Authority

*Authority for implementation of the Investment Policy is delegated by Council to the CEO in accordance with the Local Government Act 1995. The CEO may in turn delegate the day-to-day management of Council's Investment to senior staff subject to regular reviews.*

##### Prudent Person Standard

*Investments are to be managed with the care, diligence and skill that a "prudent person" (as derived by legislation, Trustees Act 1962, and case law) would exercise. Officers are to manage investments to safeguard the portfolio in accordance with the spirit of this Investment Policy, and not for speculative purposes.*

### Ethics and Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investments, and must disclose any conflict of interest to the CEO.

### Approved Investments

Without approvals from Council, investments are limited to:

- State/Commonwealth Government Bonds;
- Interest Bearing Deposits;
- Bank accepted/endorsed bank bills;
- Commercial paper;
- Bank negotiable Certificate of Deposits;

### Prohibited Investments

This investment policy prohibits any investment carried out for speculative purposes including:

- *Derivative based instruments; (Derivatives are financial contracts, or financial instruments, whose values are derived from the value of something else (known as the underlying). The underlying on which a derivative is based can be an asset (e.g., commodities, equities (stocks), residential mortgages, commercial real estate, loans, bonds), an index (e.g., interest rates, exchange rates, stock market indices, consumer price index (CPI) — see inflation derivatives), or other items (e.g., weather conditions, or other derivatives). Credit derivatives are based on loans, bonds or other forms of credit. The main types of derivatives are: forwards (which if traded on an exchange are known as futures); options; and swaps);*
- *Principal only investments or securities that provide potentially nil or negative cash flow;*
- *Stand alone securities issued that have underlying futures, options, forwards contracts and swaps of any kind;*
- *Deposits with an institution except an authorised institution;*
- *(Authorised institution mean (a) an authorised deposit taking institution as defined in the Banking Act 1959 (Commonwealth) section 5: or (b) the Western Australian Treasury Corporation established by the Western Australian Treasury Corporation Act 1986);*
- *Deposit for a fixed term of more than 12 months;*
- *Investment in bond that are not guaranteed by the Commonwealth Government, or a State or Territory government;*
- *Invest in bonds with a term to maturity of more than 3 years; and*
- *Investment in a foreign currency: (foreign currency means a currency except the currency of Australia).*

*This policy also prohibits the use of leveraging (borrowing to invest) of an investment.*

### Risk Management Guidelines

Investments obtained are to comply with three key criteria relating to:

- a) *Portfolio Credit Framework - to limit overall credit exposure of the portfolio;*
- b) *Counterparty Credit Framework – to limit exposure to individual counterparties/institutions;*
- c) *Term to Maturity Framework – limits based upon maturity of securities.*

#### a) Overall Portfolio Limits

To control credit quality on the entire portfolio, the following credit framework limits the percentage of the portfolio exposed to a particular credit rating category:

S & P Long Term Rating	S & P Short Term Rating	Direct Investment Maximum %
AAA	A-1+	100%
AA	A-1	100%
A	A-2	60%

#### b) Counterparty Credit Framework

Exposure to an individual counterparty/institution will be restricted by its credit rating so that single entity exposure is limited as detailed in the table below:

S & P Long Term Rating	S & P Short Term Rating	Direct Investment Maximum %
AAA	A-1+	45%
AA	A-1	35%
A	A-2	20%

If any of the investments are downgraded such that they no longer fall within the investment policy, they will be divested as soon as practicable.

#### c) Term to Maturity Framework

The investment portfolio is to be invested within the following maturity constraints:

Overall Portfolio Term to Maturity Limits	
Portfolio % < 1 year	100 Max; 40% Min
Portfolio % > 1 year	60%
Portfolio % > 3 year	35%

Individual Investment Maturity Limits	
Authorised Deposit Institution	12 Months
State/Commonwealth Government Bonds	3 years

*Note: Authorised Deposit Institutions are corporations that are authorised under the Banking Act 1959 to take deposits from customers.*

#### Investment Advisor

*Should an Investment Advisor be appointed they must be approved by Council and be licensed by the Australian Securities and Investment Commission. Any advisor appointed must be an independent person who has no actual or potential conflict of interest in relation to investment products being recommended; and is free to choose the most appropriate product within the terms and conditions of the investment policy.*

#### Reporting and Review

*A monthly report will be provided to Council in support of the monthly statement of activity. The report will detail the investment portfolio in terms of performance, percentage exposure of total portfolio, maturity date and changes in market value (if applicable).*

*Documentary evidence must be held for each investment and details thereof maintained in an investment register.*

#### Investment Guidelines

*Municipal funds will be invested for short to medium terms, and reserve funds for medium to long terms. To maintain accountability and transparency, municipal funds and reserve funds are to be invested in separate accounts.*

*For the purposes of this policy:*

- “Long term” refers to a term of up to a maximum of 12 months.*
- “Medium term” refers to a term of up to 6 months.*
- “Short term” refers to liquid investments (at call) or up to 3 months or less that are readily convertible to cash with no impairment to the original value of the investment.*

*Appendix B - Investment Policy checklist from Local Government Operational Guidelines – Number 19 - Investment Policy (February 2008) shall be used to assess each new investment. The form shall be retained as evidence.*

*Three quotes will be obtained when investing any funds. Once the rate is finalised the investment must be approved by two signatories to the bank account.*

#### Benchmarking

*Performance benchmarks need to be established.*

Investment	Performance Benchmark
Cash	Cash Rate
Enhanced/Direct Investments	UBSWA Bank Bill
Bonds	CPI + appropriate margin over rolling 3 year periods (depending upon composition of fund)

### Investment Strategy

An Investment Strategy will run in conjunction with this investment policy. The investment strategy will be presented to Councils Audit (Finance and Risk) Committee every six months.

The Strategy will outline:

- Council's cash flow expectations
- Optimal target allocation of investment types, credit rating exposure, and term to maturity exposure; and
- Appropriateness of overall investment types for Council's Portfolio.

Certificates will be obtained from financial institutions confirming the amounts of investments held on Council's behalf as at 30 June each year and reconciled to the Investment Register.

This Investment Policy will be reviewed at least once a year or as required in the event of legislative changes.

### **GOVERNANCE REFERENCES**

<b>Statutory Compliance</b>	<i>Local Government Act 1995 – Section 6.14; The Trustees Act 1962 – Part III Investments; Local Government (Financial Management) Regulations 1996 – Regulation 19, Regulation 28 and Regulation 49</i>
<b>Industry Compliance</b>	<i>Australian Accounting Standards</i>
<b>Organisational Compliance</b>	<i>Delegations and Sub-Delegations Manual</i>
<b>Process Links</b>	<i>Investments</i>

### **POLICY ADMINISTRATION**

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
<i>Corporate Services</i>		<i>Director Corporate Services</i>		Ext: 121	
<b>Date Effective</b>	24/06/2014	<b>CEO Approved:</b>			
<b>Date Adopted</b>	20/12/2005	<b>Last Reviewed</b>	24/06/2014		
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	24/06/2015



<b>POLICY NO</b>	<b>CP/FIN-3203</b>	
<b>POLICY</b>	<b>Investments</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Director Corporate Services	
<b>COUNCIL ADOPTION</b>	Date: 24 June 2014	Resolution No: 10448
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015	Resolution No:
	Date:	Resolution No:
<b>REVIEW DUE</b>	Date: November 2017	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. <i>Local Government Act 1995 – Section 6.14</i></li> <li>2. <i>Local Government (Financial Management) Regulations 1996 – Regulations 8, 19, 19C, 28 and 49</i></li> <li>3. <i>The Trustees Act 1962 – Part III Investments</i></li> <li>4. <i>Banking Act 1959</i></li> <li>5. <i>Australian Accounting Standards:</i> <ol style="list-style-type: none"> <li>a. <i>AASB 132 – Financial Instruments: Disclosure and Presentation;</i></li> <li>b. <i>AASB 7 – Financial Instruments: Disclosure;</i></li> <li>c. <i>AASB 139 – Financial Instruments: Recognition and Measurement;</i></li> <li>d. <i>AASB 136 – Impairment of Assets</i></li> </ol> </li> </ol>	
<b>RELATED POLICIES</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> <li>3. <i>CP/FIN-3201 Significant Accounting Policies</i></li> </ol>	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	Delegations Register: <ol style="list-style-type: none"> <li>a. Delegation 15: Investments</li> <li>b. Delegation 12: Payments from the Municipal Fund and Trust Fund</li> </ol>	

### **PURPOSE:**

The purpose of this policy is to outline the Council's position, and to provide guidance to Officers when investing surplus funds in order to maximise the return to the Shire while minimising risk.

### **DEFINITIONS:**

**ADI** Authorised Deposit-Taking Institutions (ADI) are corporations that are authorised under the *Banking Act 1959* to take deposits from customers.

**Authorised Institution** means an authorised deposit taking institution (ADI) as defined in the *Banking Act 1959* (Commonwealth) section 5 or the Western Australian Treasury Corporation established by the *Western Australian Treasury Corporation Act 1986*.

**Currency risk** is the risk that the fair value or future cash flows of an investment will fluctuate because of changes in foreign exchange rates.

**Credit Risk** is the risk of loss to an investor due to counterparties failure to pay the interest and/or repay principal of an investment.

**Counterparty** is both a legal and financial term that refers to the other individual or institution to an agreement or contract.

**Derivative Based Instruments** are financial contracts, or financial instruments, whose values are derived from the value of something else (known as the underlying). The underlying on which a derivative is based can be an asset (e.g., commodities, equities (stocks), residential mortgages, commercial real estate, loans, bonds), an index (e.g., interest rates, exchange rates, stock market indices, consumer price index (CPI) — see inflation derivatives), or other items (e.g., weather conditions, or other derivatives). Credit derivatives are based on loans, bonds or other forms of credit. The main types of derivatives are: forwards (which if traded on an exchange are known as futures); options; and swaps).

**Financial Instrument** is any contract that gives rise to a financial asset of one entity, and a financial liability or equity instrument of another entity.

**Interest Rate Risk** is the risk that the fair value or future cash flows of an investment will fluctuate because of changes in market interest rates.

**Investment Portfolio** is a collection of investments.

**Liquidity Risk** is the risk an investor is unable to realise at a fair price within a timely period.

**Leverage Risk** is the magnification of an investor's risk and return that occurs when the investor takes on financial leverage through an investment product.

**Market Risk** is the risk that the fair value or future cash flows of an investment will fluctuate due to changes in market prices.

**Maturity Risk** is the risk relating to the length of term to maturity of the investment. The larger the term, the greater the length of exposure.

**OTC – Over the Counter** can generally be described as markets where financial instruments are exchanged directly between two parties rather than through the mechanism of an organised market or centralised exchange.

**Par Value** is the maturity value or face value of a security that an issuer agrees to pay on maturity.

**Preservation of Capital** refers to an investment strategy with the primary goal of preventing losses in an investment portfolio's total value.

**Risk Aversion** is the reluctance of an individual to invest in a product with a higher risk compared to a product with lower risk, but possibly lower returns.

**Rating Agencies** include Credit Rating Agencies such as Standard and Poor's (S&P), Moody's and Fitch are professional organisations that provide opinion on the general credit worthiness of an obligor with respect to particular debt security or other financial obligations. Credit ratings are based, in varying degrees, on the following considerations:

- Likelihood of payment;
- Nature and provisions of the obligation;
- Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganisation or other laws affecting creditor rights.

**Speculative** includes a speculative deal which involves deliberately taking a higher risk, in the hope of making an extraordinary gain.

**Vanilla Instrument/Transaction** is a straightforward one. These are the most basic or standard versions of a financial instrument and can be contrasted with its opposite, an exotic instrument, which alters the components of a traditional financial instrument, resulting in a more complex security. Structured products are therefore clearly not vanilla instruments. Vanilla instruments are generally also traded in more liquid markets according to more or less standardised contracts and market conventions.

**Yield** is the annual rate of return on an investment.

## **POLICY STATEMENTS:**

### 1. Objectives

The principal objectives are:

- a. Preservation of capital – whereby investments are to be undertaken in a manner that seeks to ensure security and safeguard the investment portfolio.
- b. Ensure sufficient liquidity to meet all reasonable anticipated cashflow requirements, as and when they fall due, without incurring significant costs due to the unanticipated sale of an investment.
- c. A rate of return comparable to a predetermined market average rate of return that takes into account the Council's risk tolerance while maximising the financial return to the Shire.

### 2. Legislative Requirements

All investments are to comply with the following:

- a. *Local Government Act 1995, section 6.14*
- b. *Local Government (Financial Management) Regulations 1996*
- c. *The Trustee Act 1962, Part III Investments*
- d. Australian Accounting Standards

If at any stage the legislation or standards are amended which are contrary to this Policy, then the legislative or standards requirements will prevail.

### 3. Delegation of Authority

Authority for implementation of this Policy is delegated by Council to the CEO in accordance with section 5.42 of the Local Government Act 1995. The CEO may in turn delegate the day-to-day management of Council's Investments to senior staff subject to regular reviews.

### 4. Prudent Person Standard

Investments are to be managed with the care, diligence and skill that a "prudent person" (as derived by legislation, Trustees Act 1962, and case law) would exercise. Officers are to manage investments to safeguard the portfolio in accordance with the spirit of this Investment Policy, and not for speculative purposes.

### 5. Ethics and Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's investments, and must disclose any conflict of interest to the CEO as soon as possible.

6. Approved Investments

Without approval from Council, investments are limited to:

- a. State/Commonwealth Government Bonds;
- b. Interest Bearing Deposits;
- c. Bank accepted/endorsed bank bills;
- d. Commercial paper;
- e. Bank negotiable Certificate of Deposits

7. Prohibited Investments

This investment policy prohibits any investment carried out for speculative purposes including:

- a. Derivative based instruments;
- b. Principal only investments or securities that provide potentially nil or negative cash flow;
- c. Stand-alone securities issued that have underlying futures, options, forwards contracts and swaps of any kind;
- d. Deposits with an institution except an authorised institution;
- e. Deposit for a fixed term of more than 12 months;
- f. Investment in bonds that are not guaranteed by the Commonwealth Government, or a State or Territory government;
- g. Invest in bonds with a term to maturity of more than 3 years; and
- h. Investment in a foreign currency.

This policy also prohibits the use of leveraging (borrowing to invest) of an investment.

8. Risk Management Guidelines

Investments obtained are to comply with three (3) key criteria relating to:

- a. Portfolio Credit Framework - to limit overall credit exposure of the portfolio;
- b. Counterparty Credit Framework – to limit exposure to individual counterparties/institutions;
- c. Term to Maturity Framework – limits based upon maturity of securities.

9. Portfolio Credit Framework

To control credit quality on the entire portfolio, the following credit framework limits the percentage of the portfolio exposed to a particular credit rating category:

S & P Long Term Rating	S & P Short Term Rating	Direct Investment Maximum %
AAA	A-1+	100%
AA	A-1	100%
A	A-2	60%

10. Counterparty Credit Framework

Exposure to an individual counterparty/institution will be restricted by its credit rating so that single entity exposure is limited as detailed in the table below:

S & P Long Term Rating	S & P Short Term Rating	Direct Investment Maximum %
AAA	A-1+	45%
AA	A-1	35%
A	A-2	20%

If any of the investments are downgraded such that they no longer fall within the investment policy, they will be divested as soon as practicable.

#### 11. Term to Maturity Framework

The investment portfolio is to be invested within the following maturity constraints:

Overall Portfolio Term to Maturity Limits	
Portfolio % < 1 year	100% Max; 40% Min
Portfolio % > 1 year	60%
Portfolio % > 3 year	35%

Individual Investment Maturity Limits	
Authorised Deposit Institution	12 Months
State/Commonwealth Government Bonds	3 years

#### 12. Investment Guidelines

Not less than three (3) quotations shall be obtained from authorised institutions when an investment is proposed. The best quotation will be accepted after allowing for banking, administrative and transactional costs as well as limitations outlined in this Policy for each institution. The investment must then be approved by two signatories to the bank account who are authorised by way of a Sub Delegation made by the Chief Executive Officer.

Municipal funds will be invested for short term, and reserve funds for short or long terms, depending on the purpose of the funds and when they're intended to be utilised. To maintain accountability and transparency, municipal funds and reserve funds are to be invested in separate accounts.

#### 13. Reporting and Review

A monthly report will be provided to Council in support of the monthly statement of activity. The report will detail the investment portfolio in terms of performance, percentage exposure of total portfolio, maturity date and changes in market value (if applicable).

Documentary evidence must be held for each investment and details thereof maintained in an investment register.

For audit purposes, certificates will be obtained from financial institutions confirming the amounts of investment held on the Shire's behalf as at 30 June each year and reconciled to the Investment Register.

#### 14. Benchmarking

Performance benchmarks will be based upon the following table:

Investment Product	Performance Benchmark
Cash	Cash Rate
Enhanced/Direct Investments	UBSWA Bank Bill Index (United Bank of Switzerland Australia)
Bonds	CPI + appropriate margin over rolling

	3 year periods (depending upon composition of fund)
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**EXPLANATORY NOTES:**

For the purposes of this Policy funds are categorised into the following:

- Short term – liquid investments (at call) that are readily convertible to cash with no impairment to the original value of the investment and mature in 12 months or less.
- Long term – refers to a term of greater than 12 months and matures within 3 years of the initial investment.

Investment Advisor

Should an Investment Advisor be appointed they must be approved by Council and be licensed by the Australian Securities and Investment Commission. Any advisor appointed must be an independent person who has no actual or potential conflict of interest in relation to investment products being recommended; and is free to choose the most appropriate product within the terms and conditions of this Policy.

**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.

## 7.10 REVIEW OF COUNCIL POLICY CP/FIN-3215 SELF-SUPPORTING LOANS

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Natalie Octoman, Director Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	FM.04.18
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the Revised Council Policy *CP/FIN-3218 Self-Supporting Loans* as outlined in Attachment 2.

### **PURPOSE**

For the Audit (Finance and Risk) Committee to review and recommend to the Council that it adopt the revised Council Policy *CP/FIN-3215 Self-Supporting Loans* to ensure the Shire adheres to the commitment made to the Department of Local Government and Communities in relation to the review of Policies.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices  
Regulator - enforce state legislation and local laws

### **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

At the April 2015 Ordinary Council Meeting, Council were advised that a three stage review of Council policies was being undertaken. Stage two, specifically identified that a number of policies were to be provided to Council each month for consideration and adoption and that some new policies would be developed for Council consideration. This is in accordance with Recommendation 16 of the Department of Local Government and Communities Probity and Compliance Audit Report of the Shire which recommended a comprehensive review of the Shire's policies.

The Council Policy *CP/FIN-3215 Self-Supporting Loans* was first considered and adopted on 27 August 2014. It is appropriate that the Audit (Finance and Risk) Committee review this Policy in the first instance, for Council to consider the Committee recommendations.

## **STATUTORY IMPLICATIONS**

### **Local Government Act 1995**

#### **6.20. Power to borrow**

(1) *Subject to this Act, a local government may —*

- (a) *borrow or re borrow money; or*
- (b) *obtain credit; or*
- (c) *arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit,*

*to enable the local government to perform the functions and exercise the powers conferred on it under this Act or any other written law.*

(2) *Where, in any financial year, a local government proposes to exercise a power under subsection (1) (power to borrow) and details of that proposal have not been included in the annual budget for that financial year —*

- (a) *unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and*
- (b) *the resolution to exercise that power is to be by absolute majority.*

(3) *Where a local government has exercised a power to borrow and —*

- (a) *it does not wish to proceed with the performance of the function or the exercise of the power for which the power to borrow was exercised; or*
- (b) *after having completed the performance of the function or the exercise of the power for which the power to borrow was exercised, any part of the money borrowed, credit obtained or financial accommodation arranged has not been expended or utilized,*

*the local government may resolve\* to expend the money or utilize the credit or financial accommodation for another purpose if one month's local public notice is given of the proposed change of purpose.*

*\* Absolute majority required.*

(4) *A local government is not required to give local public notice under subsection (3) —*

- (a) *where the change of purpose has been disclosed in the annual budget of the local government for the relevant financial year; or*
- (b) *in such other circumstances as are prescribed.*

(5) *A change of purpose referred to in subsection (3) is to be disclosed in the annual financial report for the year in which the change occurs.*

### 6.21. Restrictions on borrowing

- (1) *Where, under section 6.20(1), a regional local government borrows money, obtains credit or arranges for financial accommodation to be extended to the regional local government that money, credit or financial accommodation is to be secured only —*
  - (a) *by the regional local government giving security over the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government; or*
  - (b) *by the regional local government giving security over Government grants which were not given to the regional local government for a specific purpose; or*
  - (c) *by a participant giving security over its general funds to the extent agreed by the participant.*
- (1a) *Despite subsection (1)(a) and (c), security cannot be given over —*
  - (a) *the financial contributions of a particular participant to the regional local government's funds; or*
  - (b) *the general funds of a particular participant, if the participant is not a party to the activity or transaction for which the money is to be borrowed by, the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.*
- (2) *Where, under section 6.20(1), a local government borrows money, obtains credit or arranges for financial accommodation to be extended to the local government that money, credit or financial accommodation is only to be secured by giving security over the general funds of the local government.*
- (3) *The Treasurer or a person authorised in that behalf by the Treasurer may give a direction in writing to a local government with respect to the exercise of its power under section 6.20(1) either generally or in relation to a particular proposed borrowing and the local government is to give effect to any such direction.*
- (4) *In this section and in section 6.23 —*

**general funds** means the revenue or income from —

- (a) *general rates; and*
- (b) *Government grants which were not given to the local government for a specific purpose; and*
- (c) *such other sources as are prescribed.*

### **POLICY IMPLICATIONS**

Council's Policy *CP/FIN-3215 Self-Supporting Loans* can only be amended by resolution of the Council. It is however, within the Audit (Finance and Risk) Committee's Terms of Reference to recommend Policy amendments to the Council for adoption, if they are finance or risk related.

While not a Policy, the Audit (Finance and Risk Committee's Terms of Reference is relevant. Part 2 states:

*The primary objective of the Audit (Finance and Risk) Committee is to accept responsibility for the annual external audit and liaise with the Shire's auditor so that Council can be satisfied with the performance of the Shire in managing its financial affairs.*

*Reports from the Committee will assist Council in discharging its legislative responsibilities of controlling the Shire's affairs, determining the Shire's policies and overseeing the allocation of the Shire's finances and resources. The Committee will ensure openness in the Shire's financial reporting and will liaise with the CEO to ensure the effective and efficient management of the Shire's financial accounting systems and compliance with legislation.*

*The Committee is to facilitate –*

- the enhancement of the credibility and objectivity of external financial reporting;*
- effective management of financial and other risks and the protection of Council assets;*
- compliance with laws and regulations as well as use of best practice guidelines relative to audit, risk management, internal control and legislative compliance; and*
- the provision of an effective means of communication between the external auditor, the CEO and the Council.*

### **FINANCIAL IMPLICATIONS**

There are no financial implications associated with the review of this Policy, however it will ensure that the Shire's financial management framework and internal controls are maintained appropriately.

It should be noted that the Shire does not currently have any self-supporting loans that are outstanding, and that each application for a self-supporting loan would be different and considered at that time.

### **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

Strategy 1.4.3: Maintain Council's long term financial viability

### **RISK IMPLICATIONS**

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

Operational Risk – Non-compliance with the DLG advisory standard and regulations.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

No community engagement is required.

## **COMMENTS**

Prior to August 2014 there was no Policy or application process in place for the Council to consider the provision of self-supporting loans to community based organisations and yet the Council had considered and provided self-supporting loans in the past.

The Policy therefore established a framework within which the Council may consider providing self-supporting loans to community based organisations, subject to the financial position of the Shire, prevailing budget circumstances, forecast funding requirements for municipal operations and capital projects, competing demands for funds, debt financing structure and the capacity of the Shire to borrow.

The revised Policy contains very few modifications; however, it is now in the corporate style in accordance with the revised template used for Council Policies.

## **ATTACHMENTS**

Attachment 1 - Current Council Policy *CP/FIN-3218 Self-Supporting Loans*

Attachment 2 - Revised Council Policy *CP/FIN-3218 Self-Supporting Loans*

## **COMMITTEE RESOLUTION**

**Minute No. AC385**

**Moved: Cr B Robinson**

**Seconded: Cr A Petherick**

**That the Audit (Finance and Risk) Committee recommends to the Council that it adopts the Revised Council Policy *CP/FIN-3218 Self-Supporting Loans* as outlined in Attachment 2.**

**Carried Unanimously 4/0**



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

#### OBJECTIVE

This policy will establish the principles, constraints, criteria and administrative guidelines for the allocation and utilisation of Shire borrowings to finance self-supporting loans for community based organisations that lease/occupy land or buildings owned or vested in the Shire of Wyndham East Kimberley for the purposes of capital asset acquisition or development.

This policy will establish the framework within which the Council may consider provision of self-supporting loans to community based organisations, subject to the financial position of the Shire, prevailing budget circumstances, forecast funding requirements for municipal requirements and capital projects, competing demands for funds, debt financing structure and the capacity of the Shire to borrow.

#### POLICY

##### Scope & Limitations

This policy applies to all requests received from community based organisations for financial support by way of self-supporting loans. The policy limits the availability of self-supporting loans and provides a guide to the eligibility and assessment criteria for each request.

Self-supporting loans will only be considered for capital asset acquisition or development and will not be approved by the Council for operational equipment or operating expense purposes.

The Council will only consider applications where the applicant has exhausted all other financial avenues, such as grants, sponsorship, fundraising or application for credit from a lending institution.

*In accordance with the Local Government Act 1995:-*

#### **6.20. Power to borrow**

- (1) *Subject to this Act, a local government may —*
- (a) *borrow or re-borrow money; or*
  - (b) *obtain credit; or*
  - (c) *arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit,*

*to enable the local government to perform the functions and exercise the powers conferred on it under this Act or any other written law.*



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

- (2) *Where, in any financial year, a local government proposes to exercise a power under subsection (1) (power to borrow) and details of that proposal have not been included in the annual budget for that financial year —*
- (a) *unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and*
  - (b) *the resolution to exercise that power is to be by absolute majority.*
- (3) *Where a local government has exercised a power to borrow and —*
- (a) *it does not wish to proceed with the performance of the function or the exercise of the power for which the power to borrow was exercised; or*
  - (b) *after having completed the performance of the function or the exercise of the power for which the power to borrow was exercised, any part of the money borrowed, credit obtained or financial accommodation arranged has not been expended or utilized,*
- the local government may resolve\* to expend the money or utilize the credit or financial accommodation for another purpose if one month's local public notice is given of the proposed change of purpose.*
- \* Absolute majority required.*
- (4) *A local government is not required to give local public notice under subsection (3) —*
- (a) *where the change of purpose has been disclosed in the annual budget of the local government for the relevant financial year; or*
  - (b) *in such other circumstances as are prescribed.*
- (5) *A change of purpose referred to in subsection (3) is to be disclosed in the annual financial report for the year in which the change occurs.*

### **BACKGROUND**

The Shire has considered self-supporting loans to community based organisations in the past and requires a clear process for outlining to both the officers and the community group, what the requirements are for their application and assessment moving forward.



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

#### GUIDING STATEMENTS

Self-supporting loans are loans taken out by the Shire of Wyndham East Kimberley on behalf of community clubs or community organisations who undertake to meet the capital, interest and loan guarantee payments as and when they fall due.

#### 1. Application Requirements

- 1.1. The applicant must lease/occupy land or buildings owned or vested in the Shire of Wyndham East Kimberley.
- 1.2. The loan can only be used for the construction and/or acquisition of capital assets.
- 1.3. All Self-Supporting Loan applicants shall provide the following information for assessment:-
  - 1.3.1. The Shire's Self-Supporting Loan Application completed in full.
  - 1.3.2. Audited financial statements for 3 years to demonstrate the ability to repay the loan.
  - 1.3.3. Statement demonstrating alternative funding options have been investigate prior to seeking the Council's assistance and the reasons why they weren't successful.
  - 1.3.4. Statements demonstrating the need for the loan together with a business plan for the construction and/or capital acquisition which is to include detailed costings and an overall budget.
  - 1.3.5. Forward financial plans to cover the term of the loan which are certified by a Certified Practising, Chartered or similarly qualified and experienced Accountant.
  - 1.3.6. Certificate of incorporation.
  - 1.3.7. Statements of satisfactory past payment history from at least three (3) principal suppliers, the Shire may be included where such history exists.
  - 1.3.8. Minutes from the meeting that the motion for a self-supporting loan was put to.



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

1.3.9. Any additional information that will assist the Council with consideration of the application.

#### 2. Assessment of Applications

2.1. The assessment of applications will be undertaken by the Coordinator Financial Management and the Director Corporate Services who will then put a recommendation to the Audit (Finance and Risk) Committee for consideration by the Council on the outcome.

#### 2.2. *Matters that are to be considered include:-*

- a) The current number of self-supporting loans the Shire may have.
- b) The Shire's Long Term Financial Plan and forecast debt financing capacity across the prospective life of a requested loan.
- c) Regulated borrowing limits as determined by WA Treasury Corporation.
- d) Debt Service Coverage Ratio (calculated as annual surplus before interest expense and depreciation divided by annual debt service payments) meets the required Department of Local Government Standard. Below is the indicator which is used by the WA Treasury Corporation in considering loan applications from the Shire:-
  - i. Standard is NOT met if ratio is less than two (2).
  - ii. Basic Standard if ratio is between two (2) and five (5)
  - iii. Advance Standard if greater than five (5)
- e) Annual budget and current financial position of the Shire.
- f) Compliance with legislative requirements associated with borrowing monies in accordance with section 6.20 of the *Local Government Act 1995*.

#### 2.3. *Assessment of Applications will be based on:-*

2.3.1. Perceived ability for the loan repayments to be made on time and for the loan to be paid in full at the end of the loan period.

2.3.2. Benefit to the wider community.



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

- 2.3.3. The community organisation that is applying for the loan must have been in existence for 5 years and can clearly demonstrate a stable and / or increased membership.
- 2.3.4. The life of the capital asset acquisition or development exceeds the life of the self-supporting loan.
- 2.3.5. Whether all other funding options have been fully exhausted.

### 3. Term of Loan

- 3.1. Shall not exceed the term of any existing lease agreement.
- 3.2. The term of the loan should be less than or equal to the half-life of the capital asset acquisition or development being undertaken. This enables the community base organisation sufficient time to set aside a cash reserve for future refurbishment or replacement. If the term of the loan is longer than half-life of the capital asset acquisition or development being undertaken the organisation is to demonstrate how it will fund future refurbishment or replacement whilst still servicing the loan.
- 3.3. The term of the loan can be less than the maximum if the Applicant has the ability to repay the loan over a shorter timeframe.

Self-Supporting Loan Amount	Maximum Term of Loan*
Up to \$50,000	5 years
\$50,000 - \$99,999	10 years
\$100,000 and above	15 years
<i>*Note that these are indicative only and will be dependent upon each application</i>	

### 4. Approval Requirements

- 4.1. The final decision on the granting of a Self-Supporting Loan will be by resolution of the Council.
- 4.2. A 'Deed of Loan' for the period of loan repayments is to be prepared and executed as contractual evidence for repayment of the loan.
- 4.3. For each year of the loan an independently audited end of year financial statement must be supplied to the Shire.



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

4.4. If requested by the Shire, a profit and loss statement must be produced within three (3) weeks of the request being made.

4.5. No community based organisation can have more than one (1) self-supporting loan at any one time.

4.6. The loan will not include a redraw facility.

#### 5. Administration Costs and Loan Guarantee Fees

The following costs incurred by the Shire of Wyndham East Kimberley will be recouped from clubs or organisations applying for self-supporting loans:

5.1. Actual advertising costs (including GST);

5.2. Costs associated with the preparation and stamping of the 'Deed of Loan';

5.3. Loan Application Fee as determined by the Council when setting the fees and charges;

5.4. Stamp duties or other duties or taxes applicable to the self-supporting loan application or documentation, will be on charged to the applicant at actual cost;

5.5. Any additional charges associated with the self-supporting loan.

#### 6. Loan Default

6.1. Any default of loan repayments will incur penalty interest as determined by the Council when setting the fees and charges, unless arrangements have been made with Council, prior to the re-payment being defaulted.

6.2. If the community base organisation defaults on a loan, it will not be permitted to receive any further self-supporting loans from the Council until the outstanding loan is repaid in full.

6.3. In exceptional circumstances this may be reviewed, but not until the timeframe allowed for the initial loan expires.

6.4. Defaulting on the loan may result in the lease between the Shire and the applicate for the land or buildings being cancelled.



## **Council Policy Number: CP/FIN-3215**

### **Self-Supporting Loan Policy**

#### **OUTCOMES**

The Shire will only provide access to self-supporting loans in exceptional circumstances and when financial circumstances permit. There must be compelling evidence of positive benefits to the community if the Shire was to provide a self-supporting loan.

This policy establishes a framework aligned to financial standards and indicators in the determination of the Shire's capacity to provide financial assistance to community based organisations by way of self-supporting loans.



## Council Policy Number: CP/FIN-3215

### Self-Supporting Loan Policy

#### Application for a Self-Supporting Loan

#### 1. PROPERTY OWNER DETAILS

Rates Assessment Number:	
Organisation:	
Property Address:	
Contact Person:	ABN:
Telephone:	Postcode:
Mobile:	Facsimile:
Email:	

#### 2. ELIGIBILITY

- Is the Organisation an incorporated body?
- Does the Organisation have an ABN?
- Has the Organisation been operational for at least 5 years?
- Can the Organisation demonstrate an established relationship with the Shire?
- Will the results from the loan be an asset?
- Does the land / buildings that the Organisation lease / occupy belong to the Shire?

#### 3. LOAN INFORMATION

Loan amount required: \$ \_\_\_\_\_

Term of Loan: \_\_\_\_\_

Purpose of Loan: \_\_\_\_\_

Description of the Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## Council Policy Number: CP/FIN-3215

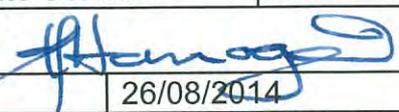
### Self-Supporting Loan Policy

#### 4. DOCUMENT REQUIREMENTS

(Please provide a copy of the following documents)

- Certificate of Incorporation
- ABN Certificate
- Plans and specifications associated with the project
- Audited financial statements for the last three (3) years
- Current business plan
- Copy of Minutes from the meeting that the motion for a self-supporting loan was put to
- Detailed costings and budget for the project
- Statement demonstrating alternative funding options have been investigate prior to seeking Council's assistance
- Statement demonstrating the need for the loan
- Demonstration of ability to repay loan
- Forward financial plans to cover the term of the loan
- Payment history from three (3) principal suppliers
- Any other information for consideration

#### POLICY ADMINISTRATION

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Corporate Services		Director Corporate Services		Ext: 121	
<b>Date Effective</b>	27/08/2014	<input checked="" type="checkbox"/> <b>CEO Approved</b> 			
<b>Date Adopted</b>	26/08/2014	<b>Last Reviewed</b>	26/08/2014		
<b>Risk Rating</b>	Low Medium High	<b>Review Cycle</b>	Annual	<b>Next Due</b>	26/08/2015



<b>POLICY NO</b>	<b>CP/FIN-3215</b>	
<b>POLICY</b>	<b>Self-Supporting Loans</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Director Corporate Services	
<b>COUNCIL ADOPTION</b>	Date: 27 August 2014	Resolution No: 10505
<b>REVIEWED/MODIFIED</b>	Date: 24 November 2015	Resolution No:
	Date:	Resolution No:
<b>REVIEW DUE</b>	Date: November 2017	
<b>LEGISLATION</b>	<i>Local Government Act 1995 – Sections 6.20 and 6.21</i>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3211 Fees and Charges Pricing</li> <li>2. Code of Conduct for Council Members, Committee Members and Employees</li> <li>3. Audit (Finance and Risk) Committee Terms of Reference</li> </ol>	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	Not Applicable	

#### **PURPOSE:**

This Policy will establish the principles, constraints, criteria and administrative guidelines for the allocation and utilisation of Shire borrowings to finance self-supporting loans for community based organisations that lease/occupy land or buildings owned or vested in the Shire of Wyndham East Kimberley for the purposes of capital asset acquisition or development.

This Policy will establish the framework within which the Council may consider provision of self-supporting loans to community based organisations, subject to the financial position of the Shire, prevailing budget circumstances, forecast funding requirements for municipal requirements and capital projects, competing demands for funds, debt financing structure and the capacity of the Shire to borrow.

#### **DEFINITIONS:**

**Community Based Organisation** is an incorporated, not for profit, service group or association.

#### **POLICY STATEMENTS:**

This Policy applies to all requests received from community based organisations for financial support by way of self-supporting loans. The Policy limits the availability of self-supporting loans and provides a guide to the eligibility and assessment criteria for each request.

Self-supporting loans will only be considered for capital asset acquisition or development and will not be approved by the Council for operational equipment or operating expense purposes.

The Council will only consider applications where the applicant has exhausted all other financial avenues, such as grants, sponsorship, fundraising or application for credit from a lending institution.

The Shire will only provide access to self-supporting loans in exceptional circumstances and when financial circumstances permit. There must be compelling evidence of positive benefits to the community if the Shire was to provide a self-supporting loan.

This Policy establishes a framework aligned to financial standards and indicators in the determination of the Shire's capacity to provide financial assistance to community based organisations by way of self-supporting loans.

Self-supporting loans are loans taken out by the Shire of Wyndham East Kimberley on behalf of community clubs or community organisations who undertake to meet the capital, interest and loan guarantee payments as and when they fall due.

## 1. Application Requirements

1.1. The applicant must lease/occupy land or buildings owned or vested in the Shire of Wyndham East Kimberley.

1.2. The loan can only be used for the construction and/or acquisition of capital assets.

1.3. All Self-Supporting Loan applicants shall provide the following information for assessment:-

1.3.1. The Shire's Self-Supporting Loan Application (Appendix A to this Policy) completed in full.

1.3.2. Audited financial statements for 3 (three) years to demonstrate the ability to repay the loan.

1.3.3. Statement demonstrating alternative funding options have been investigated prior to seeking the Shire's assistance and the reasons why they weren't successful.

1.3.4. Statements demonstrating the need for the loan together with a business plan for the construction and/or capital acquisition which is to include detailed costings and an overall budget.

1.3.5. Forward financial plans to cover the term of the loan which are certified by a Certified Practising, Chartered or similarly qualified and experienced Accountant.

1.3.6. Certificate of incorporation.

1.3.7. Statements of satisfactory past payment history from at least three (3) principal suppliers, the Shire may be included where such history exists.

1.3.8. Minutes from the meeting that the motion for a self-supporting loan was put to.

1.3.9. Any additional information that will assist the Council with consideration of the application.

## 2. Assessment of Applications

2.1. The assessment of applications will be undertaken by the Coordinator Financial Management and the Director Corporate Services who will then put a

recommendation to the Audit (Finance and Risk) Committee for consideration by the Council on the outcome.

2.2. Matters that are to be considered include:-

- a) The current number of self-supporting loans the Shire may have.
- b) The Shire's Long Term Financial Plan and forecast debt financing capacity across the prospective life of a requested loan.
- c) Regulated borrowing limits as determined by WA Treasury Corporation.
- d) Debt Service Coverage Ratio (calculated as annual surplus before interest expense and depreciation divided by annual debt service payments) meets the required Department of Local Government Standard. Below is the indicator which is used by the WA Treasury Corporation in considering loan applications from the Shire:-
  - i. Standard is NOT met if ratio is less than two (2).
  - ii. Basic Standard if ratio is between two (2) and five (5)
  - iii. Advance Standard if greater than five (5)
- e) Annual budget and current financial position of the Shire.
- f) Compliance with legislative requirements associated with borrowing monies in accordance with section 6.20 of the *Local Government Act 1995*.

2.3. Assessment of Applications will be based on:-

- 2.3.1. Perceived ability for the loan repayments to be made on time and for the loan to be paid in full at the end of the loan period.
- 2.3.2. Benefit to the wider community.
- 2.3.3. The community organisation that is applying for the loan must have been in existence for 5 years and can clearly demonstrate a stable and / or increased membership.
- 2.3.4. The life of the capital asset acquisition or development exceeds the life of the self-supporting loan.
- 2.3.5. Whether all other funding options have been fully exhausted.

3. Term of Loan

- 3.1. Shall not exceed the term of any existing lease agreement.
- 3.2. The term of the loan should be less than or equal to the half-life of the capital asset acquisition or development being undertaken. This enables the community base organisation sufficient time to set aside a cash reserve for future refurbishment or replacement. If the term of the loan is longer than half-life of the capital asset

acquisition or development being undertaken the organisation is to demonstrate how it will fund future refurbishment or replacement whilst still servicing the loan.

- 3.3. The term of the loan can be less than the maximum if the Applicant has the ability to repay the loan over a shorter timeframe.

<b>Self-Supporting Loan Amount</b>	<b>Maximum Term of Loan*</b>
Up to \$50,000	5 years
\$50,000 - \$99,999	10 years
\$100,000 and above	15 years
<i>*Note that these are indicative only and will be dependent upon each application</i>	

#### 4. Approval Requirements

- 4.1. The final decision on the granting of a Self-Supporting Loan will be by resolution of the Council.
- 4.2. A 'Deed of Loan' for the period of loan repayments is to be prepared and executed as contractual evidence for repayment of the loan.
- 4.3. For each year of the loan an independently audited end of year financial statement must be supplied to the Shire.
- 4.4. If requested by the Shire, a profit and loss statement must be produced within three (3) weeks of the request being made.
- 4.5. No community based organisation can have more than one (1) self-supporting loan at any one time.
- 4.6. The loan will not include a redraw facility.

#### 5. Administration Costs and Loan Guarantee Fees

The following costs incurred by the Shire of Wyndham East Kimberley will be recouped from clubs or organisations applying for self-supporting loans:

- 5.1. Actual advertising costs (including GST);
- 5.2. Costs associated with the preparation and stamping of the 'Deed of Loan';
- 5.3. Loan Application Fee as determined by the Council when setting the fees and charges;
- 5.4. Stamp duties or other duties or taxes applicable to the self-supporting loan application or documentation, will be on charged to the applicant at actual cost;
- 5.5. Any additional charges associated with the self-supporting loan.

#### 6. Loan Default

- 6.1. Any default of loan repayments will incur penalty interest as determined by the Council when setting the fees and charges, unless arrangements have been made with Council, prior to the re-payment being defaulted.

- 6.2. If the community base organisation defaults on a loan, it will not be permitted to receive any further self-supporting loans from the Council until the outstanding loan is repaid in full.
- 6.3. In exceptional circumstances this may be reviewed, but not until the timeframe allowed for the initial loan expires.
- 6.4. Defaulting on the loan may result in the lease between the Shire and the applicant for the land or buildings being cancelled.

## **EXPLANATORY NOTES:**

In accordance with the *Local Government Act 1995*:-

### 6.20. Power to borrow

- (1) *Subject to this Act, a local government may —*
- (a) *borrow or re borrow money; or*
  - (b) *obtain credit; or*
  - (c) *arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit,*
- to enable the local government to perform the functions and exercise the powers conferred on it under this Act or any other written law.*
- (2) *Where, in any financial year, a local government proposes to exercise a power under subsection (1) (power to borrow) and details of that proposal have not been included in the annual budget for that financial year —*
- (a) *unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and*
  - (b) *the resolution to exercise that power is to be by absolute majority.*
- (3) *Where a local government has exercised a power to borrow and —*
- (a) *it does not wish to proceed with the performance of the function or the exercise of the power for which the power to borrow was exercised; or*
  - (b) *after having completed the performance of the function or the exercise of the power for which the power to borrow was exercised, any part of the money borrowed, credit obtained or financial accommodation arranged has not been expended or utilized,*
- the local government may resolve\* to expend the money or utilize the credit or financial accommodation for another purpose if one month's local public notice is given of the proposed change of purpose.*
- \* Absolute majority required.*
- (4) *A local government is not required to give local public notice under subsection (3) —*

- (a) *where the change of purpose has been disclosed in the annual budget of the local government for the relevant financial year; or*
  - (b) *in such other circumstances as are prescribed.*
- (5) *A change of purpose referred to in subsection (3) is to be disclosed in the annual financial report for the year in which the change occurs.*

#### 6.21. Restrictions on borrowing

- (1) *Where, under section 6.20(1), a regional local government borrows money, obtains credit or arranges for financial accommodation to be extended to the regional local government that money, credit or financial accommodation is to be secured only —*
- (a) *by the regional local government giving security over the financial contributions of the participants to the regional local government's funds as set out or provided for in the establishment agreement for the regional local government; or*
  - (b) *by the regional local government giving security over Government grants which were not given to the regional local government for a specific purpose; or*
  - (c) *by a participant giving security over its general funds to the extent agreed by the participant.*
- (1a) *Despite subsection (1)(a) and (c), security cannot be given over —*
- (a) *the financial contributions of a particular participant to the regional local government's funds; or*
  - (b) *the general funds of a particular participant, if the participant is not a party to the activity or transaction for which the money is to be borrowed by, the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.*
- (2) *Where, under section 6.20(1), a local government borrows money, obtains credit or arranges for financial accommodation to be extended to the local government that money, credit or financial accommodation is only to be secured by giving security over the general funds of the local government.*
- (3) *The Treasurer or a person authorised in that behalf by the Treasurer may give a direction in writing to a local government with respect to the exercise of its power under section 6.20(1) either generally or in relation to a particular proposed borrowing and the local government is to give effect to any such direction.*
- (4) *In this section and in section 6.23 —*
- general funds** *means the revenue or income from —*
- (a) *general rates; and*
  - (b) *Government grants which were not given to the local government for a specific purpose; and*
  - (c) *such other sources as are prescribed.*

**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.

## 7.11 PROPOSED MEETING DATES FOR THE AUDIT (FINANCE AND RISK) COMMITTEE FOR 2016

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Natalie Octoman, Director Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	N/A
<b>DISCLOSURE OF INTERESTS:</b>	Nil

### **VOTING REQUIREMENT**

Simple Majority

### **OFFICER'S RECOMMENDATION**

That the Audit (Finance and Risk) Committee recommends to Council:

1. That the Audit (Finance and Risk) Committee meetings for 2016 are held in accordance with the following dates, times and place:

Date	Time	Place
Tuesday, 9 February 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 10 May 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 9 August 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 8 November 2016	3:00pm	Council Chambers, Kununurra

2. That local public notice of the meetings outlined in recommendation (1) above is provided in accordance with Regulation 12 of the *Local Government (Administration) Regulations 1996*.

### **PURPOSE**

To consider the proposed dates, times and place for the Audit (Finance and Risk) Committee meetings to be held for 2016 in accordance with Regulation 12 of the *Local Government (Administration) Regulations 1996* and recommend that the Council endorse the proposed dates, times and place for the meetings to be held.

### **NATURE OF COUNCIL'S ROLE IN THE MATTER**

Leader - plan and provide direction through policy and practices

## **BACKGROUND/PREVIOUS CONSIDERATIONS BY COUNCIL/COMMITTEE**

Pursuant to section 7.12A of the *Local Government Act 1995*, the Council provided delegated authority to the Audit (Finance and Risk) Committee to meet annually with the Shire's auditor(s) at the 22 September 2015 Ordinary Council Meeting, the delegation for which was contained within the Delegations Register for 2015/16.

## **STATUTORY IMPLICATIONS**

### ***Local Government Act 1995***

#### ***Part 5, Division 2***

##### ***5.23. Meetings generally open to public***

- (1) *Subject to subsection (2), the following are to be open to members of the public —*
- (a) all council meetings; and*
  - (b) all meetings of any committee to which a local government power or duty has been delegated.*

### ***Local Government (Administration) Regulations 1996***

#### ***Part 2***

##### ***12. Meetings, public notice of (Act s. 5.25(1)(g))***

- (1) *At least once each year a local government is to give local public notice of the dates on which and the time and place at which —*
- (a) the ordinary council meetings; and*
  - (b) the committee meetings that are required under the Act to be open to members of the public or that are proposed to be open to members of the public,*
- are to be held in the next 12 months.*
- (2) *A local government is to give local public notice of any change to the date, time or place of a meeting referred to in subregulation (1).*
- (3) *Subject to subregulation (4), if a special meeting of a council is to be open to members of the public then the local government is to give local public notice of the date, time, place and purpose of the special meeting.*
- (4) *If a special meeting of a council is to be open to members of the public but, in the CEO's opinion, it is not practicable to give local public notice of the matters referred to in subregulation (3), then the local government is to give public notice of the date, time, place and purpose of the special meeting in the manner and to the extent that, in the CEO's opinion, is practicable.*

## **POLICY IMPLICATIONS**

There are no direct policy implications associated with this item.

## **FINANCIAL IMPLICATIONS**

Minor expenditure will be incurred to ensure the appropriate advertising occurs for the proposed meetings which is provided for in the 2015/16 annual budget.

## **STRATEGIC IMPLICATIONS**

*Strategic Community Plan 2012-2022*

Goal 1: Strong leadership and governance that underpins a more strategic approach to community engagement, regional development and organisational sustainability

Objective 1.4: Business innovation, efficiency and improved service

Strategy 1.4.1: Ensure legislative compliance and follow best practice principles in planning and service delivery

## **RISK IMPLICATIONS**

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

Operational Risk - Non-compliance with the DLG advisory standards and regulations.

## **COMMUNITY ENGAGEMENT**

The Shire of Wyndham East Kimberley's CP/GOV-3100 Community Engagement Policy has been considered in relation to this item.

Engagement will take place in accordance with the Shire's Community Engagement Guidelines and will include local public notice of the proposed meeting dates, times and place in accordance with the legislative requirements.

## **COMMENTS**

The proposed schedule has taken into account the dates and times of the Council briefing sessions to ensure that the Committee meeting dates and times can be aligned with a briefing session date.

It is therefore proposed that the Committee meetings take place at 3.00pm on the day of the briefing sessions (briefing sessions commence at 5.00pm) to be held in the Council Chambers in Kununurra on:

- 9 February
- 10 May
- 9 August
- 8 November.

## ATTACHMENTS

Nil

### COMMITTEE RESOLUTION

Minute No. AC386

Moved: Cr B Robinson

Seconded: Cr N Perry

That the Audit (Finance and Risk) Committee recommends to Council:

1. That the Audit (Finance and Risk) Committee meetings for 2016 are held in accordance with the following dates, times and place:

Date	Time	Place
Tuesday, 9 February 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 10 May 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 9 August 2016	3:00pm	Council Chambers, Kununurra
Tuesday, 8 November 2016	3:00pm	Council Chambers, Kununurra

2. That local public notice of the meetings outlined in recommendation (1) above is provided in accordance with Regulation 12 of the *Local Government (Administration) Regulations 1996*.

Carried Unanimously 4/0

## 8. MATTERS BEHIND CLOSED DOORS

Cr S Rushby declares a financial interest in the next item (8.1. Confidential – Minor Case Claim Update) and leaves the Chambers at 4.02pm.

Cr B Robinson Chairs the meeting as the Deputy Chair.

### **COMMITTEE RESOLUTION**

**Minute No. AC387**

**Moved: Cr B Robinson**

**Seconded: Cr A Petherick**

**That the Audit (Finance and Risk) Committee move behind closed doors to consider item 8.1 Confidential – Minor Case Claim Update, with the officers remaining in Chambers.**

**Carried Unanimously 3/0**

The Committee moves behind closed doors at 4.03pm.

### 8.1 CONFIDENTIAL - MINOR CASE CLAIM UPDATE

<b>DATE:</b>	10 November 2015
<b>AUTHOR:</b>	Natalie Octoman, Director Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Natalie Octoman, Director Corporate Services
<b>FILE NO:</b>	LS.05.3
<b>DISCLOSURE OF INTERESTS:</b>	Nil

This item in a Council Meeting needs to be discussed behind closed doors under section 5.23(2)(e)(iii) of the *Local Government Act 1995* because the item may disclose information about the business, professional, commercial or financial affairs of a person.

#### **PURPOSE**

For the Audit (Finance and Risk) Committee recommend to the Council that it note the status of the Minor Case Claim lodged against the Shire.

#### **VOTING REQUIREMENT**

Simple Majority

**COMMITTEE RESOLUTION**

**Minute No. AC388**

**Moved: Cr N Perry**

**Seconded: Cr B Robinson**

**That the Audit (Finance and Risk) Committee recommends to the Council that it:**

- 1. Notes the progress of the case.**

**Carried 2/1**

**COMMITTEE RESOLUTION**

**Minute No. AC389**

**Moved: Cr B Robinson**

**Seconded: Cr N Perry**

**That the Audit (Finance and Risk) Committee moves out from behind closed doors.**

**Carried Unanimously 3/0**

The Committee moves out from behind closed doors at 4.26pm.

Cr S Rushby enters the Chambers at 4.26pm and resumes the Chair.

**9. DATE OF NEXT MEETING**

9 February 2016.

**10. CLOSURE**

The Chairperson closes the meeting at 4.27pm.