

Rates Exemption Eligibility Criteria

Legislation/local law requirement

Local Government Act 1996 Section 6.26

The purpose of this document is to identify a process to be followed when an organisation wishes to apply for an exemption of rates pursuant to Section 6.26(2)(g) of the *Local Government Act 1995* (LGA), where it is claimed the land is used exclusively for charitable purposes.

This document also provides an equitable basis to assess applications for rates exemptions that is compliant with legislation and provides an administrative framework for assessing any application for properties to be classified as not rateable land on the grounds of it being used for charitable purposes.

This document applies to charitable and not-for-profit organisations that own or lease land within the City of Stirling and are liable for payment of rates.

Criteria

Section 6.26(2) of the LGA identifies several situations where land is not rateable. Most are clearly defined and straightforward to apply. However Section 6.26(2)(g) is open to some interpretation and therefore, this document seeks to clearly define under what basis, this section of the LGA is to be applied by Council.

Council is committed to adhering to the LGA and providing support and guidance to applicants who provide assistance to members of the public and as such, a benefit to the community. Claimants are required to evidence their right to an exemption, and demonstrate the land is used exclusively for charitable purposes.

6.26.(2)(g) 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 local government and is used for the purposes of that 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 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.

The LGA does not define what a charitable purpose is, therefore, the definition under Commonwealth Law may be applied.

Section 12(1) of the Charities Act 2013, a charitable purpose means any of the following:

- (a) the purpose of advancing health;
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of advancing the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);
- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

- (i) in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
- (ii) in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

It must not be a disqualifying purpose under Section 11 of the Charities Act 2013.

In this Act:

disqualifying purpose means:

- (a) the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy; or
- (b) the purpose of promoting or opposing a political party or a candidate for political office.

Each application for the Rates Exemption – Charitable Use must be considered on its individual merits, and on its individual facts.

The applicant must demonstrate that its land satisfies each of the **3 elements of the test** in the LGA below.

- (a) the land must be currently used (or being currently developed for use) (**Use**);
- (b) the land must be used for a charitable purpose(s) (**Charitable Purpose**); and
- (c) the land must be used exclusively for that charitable purpose(s) (**Exclusivity**).

In other words, what must be assessed is:

- (a) how the land is being used;
- (b) what the purpose(s) of that use is and whether that purpose(s) is charitable, and
- (c) whether the land is only used for charitable purposes.

Rates exemptions are applied in a clear, transparent and equitable way to all eligible claimants, with relevant consideration given to the impact on other ratepayers and the sustainability of the City's public finances.

Applications made under Section 6.26 of the *Local Government Act 1995*:

- (a) All applications must be made in writing on the prescribed form;
- (b) An application must be from the owner of the property on which rates are levied or a tenant liable for rates payment under a lease (if the property is leased, a copy of the lease is required with the application to establish if the lessee is liable for payment of the rates in the terms of the lease)
- (c) An application for exemption is only applicable to rates, and not to service charges or the Emergency Services Levy;
- (d) An application will be required to be lodged every year (leased properties) or every three years (owned properties) and will be assessed in accordance with this policy;
- (e) The Shire may request information from an organisation on a yearly basis if the Shire considers this appropriate;
- (f) The Shire may request additional information from an organisation making application if it considers it necessary to do so;
- (g) Information requested under paragraphs (e) or (f) above is not limited to, but typically includes copies of the Constitution of the organisation and information demonstrating precisely how any land subject to the application is used;

- (h) The Applicant must be a registered charity with Australian Charities and Not-for-Profits Commission (ACNC) or an incorporated Not-for-Profit organisation;
- (i) Rates and charges are still payable until a determination has been made. A refund will be made if the application is successful;
- (j) The applicant must not conduct any commercial operation from the property;
- (k) The applicant must not hold a liquor licence for the provision of alcohol for sale to the public for profit;
- (l) For land to be treated as newly recognised not rateable land under section 6.26(2)(g) of the LGA, or if a new application for exemption is required under paragraphs (c) or (d) above, an application must be made 42 days after the service of the rates notice (**or the date as outlined in the correspondence that is sent by the City**) for the rating year to which the application relates.

Grant of a Rates Exemption:

- (a) An application will only be granted if the applicant has demonstrated they are eligible under the relevant legislation by completing the appropriate form and providing applicable supporting documentation.
- (b) An application received after the due date outlined by the City on the renewal reminder, may be pro-rated from the date the completed application is received at the City.
- (c) An application received after the 1st of July will be pro-rated from the date the completed application is received at the City.
- (d) Applicants will be notified in writing of the determination. Correspondence will include details of:
 - The date the exemption applies from,
 - The relevant section of the Act,
 - The review period; and,
 - The value of rates to which the exemption applies
- (e) If the property has been used for the stated purpose as of July 1st of the relevant financial year, the exemption can be applied from that date and a refund given if rates have been paid prior to the determination;
- (f) Where the land use has changed during a financial year, any exemption granted is only applicable from the date of the change;
- (g) A partial exemption may be applied where only part of a defined lot is used for a charitable purpose;
- (h) The granting of an exemption in any year does not guarantee an ongoing exemption.

Rejected Applications

Where an application is declined, the applicant has options to challenge the determination.

1. Under Section 6.76 of the Local Government Act 1995;

s.6.76(1)(a)(ii) Grounds of objection

- (1) A person may, in accordance with this section, object to the rate record of a local government on the ground —
 - (a) that there is an error in the rate record —
 - (ii) on the basis that the land or part of the land is not rateable land;

or;

2. Under Section 6.77 of the Local Government Act 1995;

s.6.77. Review of decision of local government on objection

Any person who is dissatisfied with the decision of a local government on an objection by that person under section 6.76 may, within 42 days (or such further period as the State Administrative Tribunal, for reasonable cause shown by the person, allows) after service of notice of the decision, apply to the State Administrative Tribunal for a review of the decision.

s. 6.47 Concessions

Apply for a concession in accordance with this section. Such applications would be considered on a case-by-case basis and determined by Council.

Definitions

Charitable Organisation is a not-for-profit organisation with objects stated for the promotion of a Charitable Purpose. Indicia of whether an organisation is charitable include:

- Registered with the Australian Charities and Not-for-profits Commission (ACNC),
- Tax concession status;
- Deductible Gift Recipient status; and
- Public benevolent institution status.

Charitable Purpose is a purpose that is a not-for-profit purpose to promote as defined in the Charities Act 2013:

- the relief of poverty, financial hardship, disadvantage, marginalisation, infirmity (for example: providing subsidised aged care, providing low-income services, providing housing at substantially below market rates);
- education (for example: providing adult education services);
- the elderly;
- religion (for example: churches, other places of worship); or
- any other activity which is beneficial to the public.

Council means the Council of the City of Stirling.

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*.

Not-for-profit organisations are organisations that provide services to the community and do not operate to make a profit.

Owner of land may be, as set out in, section 1.4 of the *Local Government Act 1995*:

- The freehold titleholder of the land;
- A person under a contract or arrangement with the Crown to possess the land with a right to purchase the land;
- A Crown lessee;
- A lessee or tenant where the land is not rateable in the hands of the landlord, but would be rateable land in the tenant's hand; or
- A mortgagee.

Shire means the City of Stirling.