

## Reference/s

Local Government Act 1995

## Date Proposed/Adopted

XX December 2023

## Motion Number

Reviewed	New Policy
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***This policy supports the delivery of the Shire of Cranbrook Vision****That the Shire of Cranbrook is a proactive, sustainable, safe, friendly and prosperous place to be***OBJECTIVE**

To provide an equitable basis and administrative framework from which to assess applications for rates exemptions pursuant to Section 6.26(2)(g) of the *Local Government Act 1995* (the Act), where it is claimed the land is used exclusively for charitable purposes.

**SCOPE**

This policy applies to charitable and not-for-profit organisations that own land in the Shire of Cranbrook and are liable for payment of rates.

**POLICY STATEMENT****Introduction**

Section 6.26(2) of the Act 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. This policy seeks to clearly define the basis on which this section of the Act is to be applied by Council.

Council is committed to adhering to the Act 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.

*Charitable Purpose* has the same meaning as defined at common law, as it is not currently defined in the Local Government Act 1995, being:

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

The Western Australian case law 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 in 1891 in *The Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel*;
- (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.

The key considerations when assessing an application for exemption pursuant to Section 6.26(2)(g) of the Act are:

- The use of the land, not the purpose of the applicant.
- The land must be used exclusively for a charitable purpose.
- The land use must be for public benefit, where the benefit is available to members of the public generally, or a particular section of the public.

When considering Australian case law, 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.

### **Principle**

Rates exemptions are to be 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 Shire's finances.

### **Criteria**

1. An application for rates exemption for charitable purposes must be made in writing by completing a Rates Exemption Application form.
2. Charitable organisations are required to evidence their right to an exemption and demonstrate the land is used exclusively for charitable purposes.
3. The applicant applying for more than one property must submit a separate application for each property. This supports the principle that it is 'land use', not the applicant that is being assessed.
4. If any information has not been provided, or is unclear, the applicant may be required to provide the additional information before the application will be assessed.
5. If the property is leased, a copy of the lease is required with the application.

### **Determination**

1. An application will be assessed by the Manager of Finance and have a report prepared to be presented to Council with an officer recommendation to either approve or decline the request.
2. The applicant must be a registered charity with Australian Charities and Not-for-Profits Commission (ACNC) or an incorporated Not-for-Profit organisation.

3. The applicant must own the property on which rates are levied or be a tenant liable for payment of the rates under a lease.
4. The land must be used exclusively for charitable purposes, as defined at common law.
5. The applicant must not conduct any commercial operation from the property.
6. Council may request additional information from an organisation making application if it considers it necessary to do so.
7. Applicants will be notified in writing of the Council's decision, with correspondence to include the date the exemption applies from, the section of the Act applicable to the exemption and the amount of general rates reversed.
8. Where an exemption is approved, the property will still be subject to the Emergency Services levy and any other service charges including rubbish collection charges.

### **Rejected Applications**

1. Where an application is declined, the applicant has options to challenge the determination.
  - i. The applicant may object under Section 6.76 of the Act, on the basis that the land or part of the land was not rateable land.
  - ii. The applicant has the right to appeal a decision made under Section 6.76 to the State Administrative Tribunal (SAT).
  - iii. Apply for a concession under Section 6.47 of the Act. Such concessions would be considered on a case-by-case basis and determined by Council.

### **ROLES AND RESPONSIBILITIES**

#### **Elected Members**

- Make decisions based upon the principles of this policy.

#### **Executive Management Team**

- Make recommendations based upon the principles of this policy.

### **RELEVANT DOCUMENTS**

#### **External:**

Local Government Act 1995

WALGA Best Practise Guideline - Rates and Charitable Land Use Exemption Applications