

Policy

Title: Rate Exemption – Charitable Purposes

Category: Rates and Charges

Date Last Adopted: 15 February 2022

1. Objectives

The purpose of this policy is to outline the Council's approach to assessing whether land falls within the Charitable Exemption.

The objective of this policy is to increase community awareness about the circumstances that give rise to an entitlement to the Charitable Exemption. While the entitlement to the Charitable Exemption will always depend on the specific factual circumstances in each case, the Council seeks to explain the exemption and the way that the Council will assess whether or not it will apply.

The entitlement to the Charitable Exemption is ultimately a matter of law and is not subject to the discretion of the Council. Nevertheless, the Council has the practical task of assessing whether or not the exemption will apply. This policy sets out how it intends to do so.

2. Background

This Policy should be read in conjunction with Council's *Rates and Charges Policy* dated 27 July 2020.

All land in the Hobart municipality is rateable other than land which is exempt from certain rates (such as a general rate) pursuant to Section 87 of *the Local Government Act 1993 (Tas)*, including Section 87(1)(d) which states:

land or part of land owned and occupied exclusively for charitable purposes.

For convenience, this exemption will be referred to in this policy as the "Charitable Exemption".

Scope

This policy is limited to the exemption from rates pursuant to Section 87(1)(d) of the *Local Government Act 1993 (Tas)*. The exemption will apply to the General Rate imposed by the Council.

The exemption does not apply to the obligation to pay service rates and charges which continues subject to the Council's existing policy on remission of service rates and charges and the *Fire Services Act 1979*, which permits the exemption of the fire levy in certain circumstances.

3. Policy

That:

1. The only way to assess whether or not the exemption will apply in a particular situation is to examine the relevant facts. This policy may be used as a guide but it is not possible to set out blanket rules about the application of the exemption.
2. The Charitable Exemption will apply where both requirements are met, that is:
 - (i) the land is owned exclusively for charitable purposes; and
 - (ii) the land is occupied exclusively for charitable purposes.
3. Unless both requirements are met, the exemption will not apply. However, it is not essential that the same entity is the owner and the occupier, providing that both the owner and the occupier satisfy the requirement of owning/occupying the property for exclusively charitable purposes.
4. The application of the Charitable Exemption hinges on the interpretation of a number of terms which have a technical, legal meaning. They are as follows:
 - (i) "charitable purposes";
 - (ii) "occupied"; and
 - (iii) "exclusively".
5. The full meaning of each of those terms is as set out below.

Charitable Purposes

6. The technical meaning of the word "charitable" is not the same as the popular meaning of the word.

7. The following activities are charitable purposes:
 - (i) the relief of the aged;
 - (ii) the relief of those who are physically weak, disabled or helpless;
 - (iii) the relief of poor people;
 - (iv) the advancement of education;
 - (v) the advancement of religion; and
 - (vi) other purposes beneficial to the community, not falling under any of the preceding heads.
8. The activities carried out must be for the benefit of the public, except where they relate to the paragraphs 7(i) to 7(iii), not for the benefit of an individual or particular individuals.
9. It is not necessary that an entity is a registered charity in order to be carrying out a charitable purpose; and the registration of an entity as a charity is not conclusive evidence that it is carrying out a charitable purpose.
10. Some examples include:
 - (i) provision of childcare services on a not-for-profit basis; and
 - (ii) a school, unless the school:
 - (a) is operated for personal benefit; or
 - (b) requires the adherence to a particular religion, membership of a particular association, organisation of society.

Ownership

11. Evidence that a property is owned or beneficially owned by a charity does not in itself satisfy the qualifying requirement as to ownership necessary to establish the exemption.
12. In considering an application for exemption the "purpose" for owning the land must be determined. "Purpose" refers to the end or objective to be achieved by the ownership of the relevant land.
13. To satisfy the requirement of "ownership" in Section 87(1)(d) it must be established that the land is owned exclusively for a charitable purpose.

Occupied

14. In most cases, it will be clear who occupies a property; it will be the entity that has physical control of the property.

15. The occupation of a property may be less obvious for circumstances such as low-cost housing or a residence associated with another charitable organisation (such as a convent). Those properties may in fact be “occupied” by the charitable organisation, rather than the individual who resides there. The factors that may be relevant to determining this issue are:
 - (i) the location of the residence in relation to the balance of the property;
 - (ii) who resides there and what role they carry out within the charitable organisation;
 - (iii) whether any of the activities of the charitable organisation are carried out at the residence; and
 - (iv) whether the lease or licence give the occupants the right to exclude the charitable organisation from the residence.

16. The following are examples which may satisfy the “occupied” requirement:
 - (i) a presbytery (residence for parish priest);
 - (ii) a convent (resident for nuns);
 - (iii) a residence on school grounds used by the vice principal of the school, where the residence was used to a substantial extent for school purposes; and
 - (v) an independent living unit which is part of a retirement village operated by a charitable organisation.

17. The following will not satisfy the Charitable Exemption:
 - (i) low-cost (below market rental) housing, where the tenant has the right to possession of the property and the ability to restrict access to the owner – the housing will be occupied for residential purposes, not charitable purposes, and the purpose of the occupancy is not for the benefit of the public.

Exclusively

18. There may be activities of a non-charitable nature carried out at the property. However, in order to fall within the Charitable Exemption, the non-charitable purposes must only be incidental, and not a dual purpose for owning or occupying the land.

19. For example:

- (i) if a charitable organisation carries out a commercial enterprise on a property then it will not be occupied exclusively for a charitable purpose, even if the profits from those activities are used to fund the other activities of the charitable organisation; and
- (ii) if a school has a farm which it uses to educate its pupils about farming operations, and the produce from the farm was able to be sold for a surplus, the sale of produce would only be incidental to the charitable purpose of education and the property would therefore be exclusively occupied for charitable purposes.

Application to Council

20. In order to obtain the Charitable Exemption, an application may be made to the Council. Where an application is made to obtain the Charitable Exemption, the following information must be provided in relation to each piece of land, supported by a statutory declaration and copies of any relevant documents:

Ownership

- (i) who is the registered owner of the property;
- (ii) whether the beneficial owner of the property is different from the registered owner, and if so, provide details of the beneficial owner, supported by copies of any documents such as a share register or trust deed;
- (iii) if the owner is not an individual:
 - (a) what type of entity is the owner of the land, such as an incorporated association or a company, supported by a copy of a company or business name extract or other similar document; and
 - (b) who is the beneficial owner of any shares in the entity which owns the land, supported by copies of any documents such as a company extract or share register;
- (iv) what are the current objectives and activities of the owner of the land generally, supported by any relevant documents such as a constitution, rules or by-laws, and any documentation certifying a deductible gift recipient status;
- (v) what is the current purpose or purposes of ownership of the property;
- (vi) that purpose or are those purposes exclusively charitable and if so, provide details;

Occupation

- (vii) if the occupier of the property is different to the owner of the property, then provide the same details about the occupier as set out in paragraphs 20(i) to 20(iv) above;
 - (viii) what is the current purpose or purposes of occupation of the property, addressing the matters listed in paragraph 15 and supported by documents such as a lease or licence agreement; and
 - (ix) is that purpose or are those purposes exclusively charitable and if so, provide details.
21. As part of the assessment by the Council, it may be necessary for a Council officer to carry out an inspection of the property and/or to request further information to support the application.
 22. Once the Council has acknowledged that the Charitable Exemption applies, the exemption will continue to apply unless there is a change in the ownership or occupation of the property.
 23. If there is a change to the ownership of the property, the exemption will automatically cease to have effect from the date of the transfer of the property, unless an application is made by the new owner pursuant to this policy and the exemption accepted by the Council.
 24. If there is a change of occupier of the property, the owner must notify the Council immediately. If the exemption is sought in relation to the new occupier, an application must be made pursuant to this policy.
 25. If the property is not owned and occupied for a charitable purpose for the entire rating period, then the exemption will not apply to the property for the whole year.

Objection to Rates Notice

26. This policy acknowledges that a person may object to a Rates Notice on the ground that the land specified in the Rates Notice is exempt from the payment of those rates on the basis that the Charitable Exemption applies.
27. The General Manager shall expect that any objection made pursuant to Section 123(2) of the *Local Government Act 1993 (Tas)*, shall be accompanied by sufficient information to meet the requirements of clause 20 of this policy.

28. Eligibility for a rebate will be reviewed annually. Failure to confirm continued eligibility may result in the rebate being discontinued.

Remission of rates

29. If the Charitable Exemption does not apply, the land will be rateable and rates will be charged in accordance with Council's Rates and Charges Policy and the *Local Government Act 1993 (Tas)*. It is possible to apply to the Council for a remission of rates as set out in that Policy, or apply for a grant to be provided by the Council to effectively offset the rates. The information sought in paragraph 20 of this policy, in so far as it is relevant, should be provided in support of the application for a remission.

More Information

30. For more information on Council rates and charges please contact the Council's Rates Unit on: Tel: 6238 2787

Email: coh@hobartcity.com.au; or visit the Council's website at:
<http://www.hobartcity.com.au/Council/Rates>

4. Legislation, Terminology and References

Section 87(1)(d) of the *Local Government Act 1993 (Tas)*

Section 123(2) of the *Local Government Act 1993 (Tas)*

Fire Services Act 1979

Responsible Officer:	Director City Governance
Policy first adopted by the Council:	27/4/2015
History:	
Amended by Council	7/3/2016
Amended by Council	15/4/2019
Approved by Council	23/9/2019
Amended by Council	15/2/2022
Next Review Date:	October 2023
File Reference:	F16/65250