

COUNCIL POLICY NO: 076

Responsible Directorate	Corporate and Community Services
Responsible Section	Finance
Responsible Officer	Director Corporate and Community Services

OBJECTIVE:

1. Establish a consistent approach to determine whether land is rateable under section 6.26 of the *Local Government Act 1995*;
2. Determine the eligibility of a partial rate exemption to property where it is evidenced that a portion of the land is used for a not rateable purpose

SCOPE:

This policy applies to all directorates of the Town of Cambridge.

POLICY STATEMENT:

1. Principles for Determining Applications for Not Rateable Status

Except as provided in Section 6.26 of the *Local Government Act 1995*, all land within a district is rateable land.

Land categorised as exempt under a sub-section of Section 6.26, with the exception of sub-sections (2)(a)–(c), will require submission of an application for Not Rateable Status with supporting evidence to be assessed in accordance with this policy. The supporting evidence must demonstrate that the land is not rateable land under Section 6.26(2). Land will be treated as rateable land until sufficient evidence has been provided to establish otherwise.

When application is made for Not Rateable Status under Section 6.26(g) - land used exclusively for charitable purposes - the application will be determined with consideration of the following:-

- (a) 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 and;
- (b) The land use must be exclusively for charitable purposes, such as the relief of the disadvantaged, advancement of education, religious purposes or other purposes beneficial to the community at large and; and
- (c) Land will not be used for a charitable purpose if the predominant activity conducted on the land is a fundraising activity to produce an income that will be used for a charitable activity conducted somewhere else. For land to be used for a charitable purpose, the charitable activity itself must be conducted on the land and that activity must be the predominant use of the land.

1.1 Relevance of Land Use

When making a determination as to whether Section 6.26(2) applies in any particular case, careful consideration will be given to any commercial use of the land in question. If the land use is of the same nature as other land that is rateable land or the use is commercial in nature (for example, where a profit is being derived as the normal activity of a business), then it will be rateable land and Section 6.26(2) will not apply.

For a determination to be made that land is used exclusively for charitable purposes, the actual use of the land must be considered. Land will not be considered to be used exclusively for charitable purposes merely because it is owned or occupied by a charitable body.

In determining applications for Not Rateable Status where only a portion of the land is used for charitable purposes, consideration will be given as to whether or not the use of the land is ancillary to its primary use of charitable purposes. For example, where the primary use of the land is for a charitable purpose and an ancillary use of a portion of the land produces income which is subsidiary to the primary use, the land use will still be considered exclusively for charitable purposes and will therefore be eligible for Not Rateable Status.

Conversely, where the land is used for the purpose of deriving a profit, even if the proceeds are used to support charitable purposes, the use of the land will not be considered exclusively for charitable purposes and will therefore be considered rateable.

The applicant must provide sufficient information about the use of the land to demonstrate that the purpose for which the property is used is for a public or other benevolent community benefit and available to members of the public generally, or a sufficient section of the public.

In making the determinations of Not Rateable Status for land used exclusively for charitable purposes, consideration will be given to decisions made by other authorities and relevant case law.

2. Principles for Determining Applications for Partial Rate Exemption when only a portion of the land is used for a not rateable purpose

The Town may apply a Partial Rate Exemption to a rateable property where it is evidenced that a portion of the land is used exclusively for a not rateable purpose as defined under Section 6.26 of the *Local Government Act 1995*. In this case and at the determination of the Town, only the portion of land that is not used exclusively for a not rateable purpose and is a material part of the property will be rated.

Where sufficient evidence is provided that only a portion of a property is used for a rateable purpose and the remainder of the property is used for a not rateable purpose as classified under Section 6.26, then a proportionate assessment of rates will be levied for the portion of land used for the rateable purpose. For example, an educational institution making one of its buildings available to the general public for accommodation at a commercial rent, is subject to the payment of rates for that building. A religious organisation utilising a hall for general public use or community hire is subject to the payment of rates on that facility.

Whether the portion of the property used for the rateable purpose will be subject to rates will be determined by the materiality of the frequency of the rateable use and the actual use of the land as evidenced by information supplied with the application. The following will apply:-

- (a) Where the materiality of the frequency of the rateable use does not exceed 10% of the total land use, that portion of the land will be eligible for Not Rateable Status and a Partial Rate Exemption may be applied to the property.
- (b) Where the materiality of the frequency of the rateable use exceeds 10% of the total land use but the income earned is less than 10% of the total income derived from that property, that portion of the land will be eligible for Not Rateable Status and a Partial Rate Exemption may be applied to the property.
- (c) If the level of income derived from commercial activities is material in relation to total income from the property then a partial exemption will not be granted. Section 15 (a) of the Australian Accounting Standard for Materiality states; “an amount which is equal to or greater than 10 per cent of the appropriate base amount may be presumed to be material unless there is evidence or convincing argument to the contrary”.
- (d) The analysis of the financial data must be for the property to which the application applies and not the organisation as a whole.
- (e) Where a portion of rateable land is leased to a charitable organisation that uses the land for a charitable purpose, then the portion of the land subject to that lease will be eligible for Not Rateable Status and a Partial Rate Exemption may be applied to the property. For example; where 30% of the property is leased to be used for a charitable purpose, then 30% of that land will not be rateable and the remainder of the land will be rateable.
- (f) Where a clearly defined part of otherwise not rateable land is used for a rateable purpose, the portion of the property used for a rateable purpose will be rated and the remainder of the property will be eligible for Not Rateable Status and a Partial Rate Exemption may be applied to the property. For example commercial business leases being part of a property otherwise used for charitable purposes.

In any case where a portion of a rateable property is exempt or vice versa, any common area will be apportioned on a pro rata basis for rating purposes.

3. Applications for Not Rateable Status or Partial Rate Exemption

Applications are to be made on the form provided by the Town and contain a declaration as to the accuracy of the information contained therein. The Town may seek any additional information deemed necessary to evidence the application as to the nature and extent of the purposes for which the land is used.

Applications will be reviewed and determined in accordance with Section 6.26(2) of the *Local Government Act 1995*, general rating practices applied by local governments and any other criteria contained in this policy.

Where it is considered that an applicant does not qualify for Not Rateable Status or Partial Rate Exemption, the application will be refused and the applicant provided with written advice of the grounds for refusal.

Where a determination of Not Rateable Status or Partial Rate Exemption is granted, the amendment to the rate record indicating Not Rateable Status or Partial Rate Exemption

will take effect from the 1st July of the current financial year in which the application was received. In the instance where there has been a change of use of the land during a financial year an exemption can only be approved from the date of the change in use

4. Review of Determinations

A determination of Not Rateable Status or Partial Rate Exemption may apply for a maximum of three (3) years only where:-

1. the purpose for which the land is used is considered to be on a continuous basis, and;
2. the applicant has provided evidence of a legal right to occupy that land for the period of the determination and;
3. the land use continues to meet the qualifying criteria.

A determination of Not Rateable Status or Partial Rate Exemption is to be reviewed on a triennial or annual basis (whichever is considered applicable) for continued eligibility. The applicant is required to advise the Town within one month of any change occurring to either their operations and / or the use of the land or the portion of the land, where it no longer complies with the conditions of Not Rateable Status. In any case, all determinations will be subject to ongoing review to ensure that the land use continues to meet the qualifying criteria. The Town may review the Not Rateable Status of land or request additional information from an applicant at any time during the term of Not Rateable Status where it is considered that the circumstances of the land use may have changed.

A new application form is required to be submitted to the Town for each review.

5. Rates Exemption Register

The Town will maintain a register of determinations made in accordance with this Policy. The Register will record details of the organisation, the property and the purpose for which the land is used; the determination made and review dates and the equivalent amount of the rates levy amount. The register will be used to facilitate the initiation of the review processes as appropriate and also be supplied to Council each June for consideration prior to budget adoption.

DEFINITIONS:

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

Document Control	
Office Use Only:	
Previous Policy No	Policy No. 3.2.12
Statutory Legislation and Compliance	<i>Local Government Act 1995</i>
Related Documents/Legislation	<i>Local Government (Financial Management) Regulations 1996</i>
Date of Adoption by Council	Council Meeting – 28 July 2020
Date Reviewed/Amended	
Next Review Date	April 2024