

**WESTERN AUSTRALIAN  
LOCAL GOVERNMENT ASSOCIATION  
North Metropolitan Zone**

**MINUTES**

Meeting Date: 26 March 2009

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## LATE REPORTS

### 7.5 LATE REPORT - LOCAL GOVERNMENT ACT RATING EXEMPTIONS FOR CHARITABLE PURPOSES – SECTION 6.26(2)(G) OF THE LOCAL GOVERNMENT ACT 1995

*Report submitted by the City of Stirling*

#### IN BRIEF

**The City of Stirling would like to again raise its concern over the Charitable Rating Exemption provisions of the Local Government Act (1995). The City believes that these provisions are now applying in situations they were never intended to and are responsible for a significant loss of funding from Local Governments prime revenue source.**

#### BACKGROUND

The City of Stirling would like to raise its concern over the Charitable Rating Exemption provisions of the Local Government Act (1995). The City believes that these provisions are now applying in situations they were never intended to and are responsible for a significant loss of funding from Local Governments prime revenue source.

The charitable exemption provision of the old Local Government Act was not changed when the new Act was drafted in 1995. This provision was previously used to provide rating exemptions to properties that were used to provide crisis accommodation to individuals and families. These properties were typically very old, with basic facilities, owned by charities or religious organisations and provided at a very low, even uneconomic rent. Over time, these properties were used less and less as other welfare arrangements provided a better standard of accommodation for those in need.

Over time and with less use these old properties were redeveloped into accommodation for pensioners and the long standing exemptions continued without review. The owners of these properties (registered charities and religious organisations) soon realised that there was a developing market for retirement properties, particularly those providing community facilities in a “village” atmosphere.

New properties were purchased and the rate of construction of these developments increased tremendously. The City of Stirling and many other local governments recognised the changes and reassessed the rating exemptions previously awarded.

These new developments no longer provide just “a roof over their heads” of the disadvantaged but rather provide quality housing for a range of people including those still working and those who are independent in retirement.

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## COMMENT

In 2005 the City of Stirling lost an appeal to the state Administrative Tribunal relating to rating exemptions for independent living units in retirement villages owned by charitable organisations. Since that time, pressure has been mounting to allow charitable exemptions in other situations.

The circumstances of the latest situation involve a large number of Homeswest properties which have been leased to charitable organisations at a peppercorn rent. These properties are then leased to individuals or families where one or more of the occupants has a disability. Legal advice has indicated to the City that given the rulings in the retirement village case these community housing properties are also exempt from rates under the current legislation.

The City has now lost revenue of \$1.090M per annum relating to independent living units in retirement villages and \$0.171M per annum in relation to “community housing” properties predominately leased from Homeswest.

The fact is the City is still required to provide facilities and services to the residents of these properties and no longer receive any contribution from them. This burden now falls on the remainder of the community resulting in a pseudo welfare system.

Unfortunately, the current situation involves the incremental cost shifting of welfare to local governments. Pensioners and persons with disabilities are able to access state funded rating concessions through the Pensioners Rates Rebates and Deferment Act 1992. This is considered to be an appropriate means tested, welfare arrangement where the benefit goes directly to the targeted recipient. It should be noted that the benefit from any rates exemption goes to the owner, in these cases this is the charitable organisation, which may or may not pass on the benefit to their tenants.

The charitable exemption provisions of the Act have been in place for over half a century. During this time, the world has taken on a much more business focussed approach. It is Local Governments belief that the previous exemption provisions which gave rate relief to crisis care accommodation is now being exploited for business purposes. The State Administrative Tribunal concluded that the exemption provisions would need amendment if the independent living units in retirement villages were to become rateable.

Since the State Administrative Tribunal ruling in 2005 the Local Government Advisory Board has held an “Inquiry into the Operation of Section 6.26(2)(G) of the Local Government Act 1995 - rating of land used for charitable purposes”. The previous government, after much political lobbying and media attention generated by the charitable sector, decided not to change the Act. This was extremely disappointing and the City of Stirling requests that this matter be revised and some fairer outcome result.

The attachment (Attachment 2) is an advertisement announcing the latest stage to the Freemasons retirement village in Alexander Drive, Menora. In their own words “First Class Retirement Village Lifestyle” offering “stunning new luxury 3 bedroom, 2 bathroom retirement villas” – are “priced for today’s market at \$750,000”. These are not freehold sales but “lease for life” arrangements where the owner, Freemasons WA, is able to obtain a charitable exemption from Council Rates.

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**MOVED Mayor Boothman SECONDED Cr Stewart that the North Metropolitan Zone Committee SEEKS the support of the West Australian Local Government Association (WALGA) to lobby the State Government for a change to the Charitable Rating Exemption provisions within the Local Government Act (1995).**

Discussion ensued.

**MOVED Cr Fishwick SECONDED Cr Re that consideration of this matter be DEFERRED to enable views to be provided by Member Councils.**

**The Motion was Put and**

**CARRIED**

## Attachment 2

24 November 2006

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Garry Hunt  
9400 4556

07125 622534  
637168



Hon Jon Ford MLC  
Minister for Local Government & Regional Development  
Dumas House  
Level 9 2 Havelock Street  
WEST PERTH WA 6005

Dear Minister

### LOCAL GOVERNMENT RATING OF LAND USED FOR CHARITABLE PURPOSES

Further to your letter of 3 August 2006 and your subsequent correspondence granting an extension for our submission to the end of November, we advise that Council considered this item at its meeting of 21 November 2006 and resolved as follows-

*That the Minister for Local Government & Regional Development be provided with the following response in relation to the issue of local government rating of land used for charitable purposes and a copy be provided to the Western Australian Local Government Association as follows:*

1 *In relation to the eight proposed strategies the City's responses are as follows -*

(a) *Strategy 1*

*This proposal is not supported in its current form as there is no current definition of "subsidised" which is crucial to considering the impact of this proposal and the phasing in of rating effectively amounts to a retrospective change.*

(b) *Strategy 2*

*This proposal is not supported in its current form as a number of facilities will not qualify for these types of subsidies but are still considered to be providing charitable services.*

(c) *Strategy 3*

*The proposal is generally supported however there needs to be very clear definitions around the notions of crisis accommodation and housing for people with a disability.*

(d) Strategy 4

*The request to undertake further work is supported and the key issues in relation to determining any form of exemption are around clear definitions and guidelines on which a local government can make an assessment and clear provisions requiring applicants requesting an exemption to supply information that enables the assessment to be done.*

e) Strategy 5

*The strategy as proposed is not supported but an alternative proposal that is supported is that an owner of vacant land be required to declare their intention to use it for a charitable purpose in the future, however pay rates annually on the vacant land until the charitable purpose is established at which point they become entitled to a refund of the rates paid.*

(f) Strategy 6

*It has already been established that incidental and ancillary non charitable land uses do not jeopardise the overall dominant charitable purpose of a property despite the fact that it is not spelt out in the current legislation. The issue really is not that this type of use should not jeopardise the overall dominant use but the question of the quantum of what constitutes incidental and ancillary. Any proposal that could define the quantum of incidental and ancillary is supported.*

(g) Strategy 7

*The proposal is supported but while it is acknowledged that in some cases there are non charitable uses there are instances where these are operated as part of the facility with proceeds being fed into the overall operation eg small coffee shops, and not with profits being taken by a commercial operator and this proposal should not enable operations in these circumstances to be rated.*

(h) Strategy 8

*This proposal is strongly supported particularly if the regulations also provide guidelines as to the type of information that is required to be provided. This is an area that causes great difficulty for the City in its current assessments of applications for exemptions from rates. It is not unusual for the City to be challenged as to why information needs to be provided or the type of information that is requested to be provided.*

- 2 *That the Minister be urged to give serious consideration to a whole of State approach to the issue of rating exemptions for land used for charitable purposes, such that individual local governments are not*

*unfairly burdened due to the amount of land within their local government area that is used for charitable purposes. There should be equity and fairness in rating or exemption of these types of facilities in the same way that there is a whole of State approach to the provision of rebates and deferrals for pensioners.*

- 3 *WALGA be advised of this response and in relation to point 2 be urged to advocate to the State Government the need for a whole of state approach to the issue of exemptions for land used for charitable purposes.*

Should you have any queries please do not hesitate to contact me.

Yours sincerely

**GARRY HUNT**  
**Chief Executive Officer**