



Strathallan Golf Club Inc.

Submission

Local Government Rating System Review

Cultural and Recreational Lands Act 1963

Introduction

This submission by the Strathallan Golf Club Inc. is based on its current situation with Darebin City Council, the rating authority, regarding the annual rates imposed upon the Club by the Council.

This experience highlights the inconsistent application of the Cultural and Recreational Land Act 1963 and the failure of councils to apply the law as it is intended.

It is proposed that the application of the law should be uniform with respect of any not for profit sporting body owning land or holding a lease/licence over Government land deemed as "recreational". Such application should consider exempting any sporting body from the payment of municipal rates given that the services provided by the sporting body in respect of the use of the land will be minimal when offset by the community benefits gained by the utilisation of the land for recreational purposes.

The Cultural and Recreational Lands Act 1963

The Cultural and Recreational Lands Act 1963 ("C & R Lands Act"), was introduced in parliament to primarily give protection to Sporting Bodies (incorporated or unincorporated) & members/public against the financial impact of rising Municipal Council Rates attributed to increasing land values. A notable quote from Hansard, that details the intentions and reasons of Parliament in enacting the legislations is:

Hon. J.W.Gallbally (3 December 1963 page 2686)

"My party will support the measure, and I shall enunciate the principles which I believe the House will endorse.

The first principle is that parklands and open areas which are to be used for cultural, recreational or sporting purposes must not be suffered to be diminished...

The second principle, which I regard as corollary to the first, is that security of tenure by itself is not a sufficient guarantee of their preservation because some privately owned areas may well be rated out of existence...

Parliament is supreme, and it should have the responsibility of saying, **in the best interests of the community**, that these areas are so precious not only may we give them security of tenure but **we must see that they are not rated out of existence... or must not only be used by the wealthy**, as they are the only people who would be able to carry them on". (Emphasis added.)

Sub-Section 4 (1) is the relevant section that details the calculation required to be undertaken in respect of Rateable land falling within **recreational lands**, as defined in Section 2 of the C & R Lands Act

Sub-Section 4(1) states:

Notwithstanding the provisions of any Act or enactment relating to the making and levying of rates by a municipal council in lieu of the rates that would otherwise be payable to a municipal council in respect of recreational lands there shall be paid to the municipal council as rates in each year such amount as the municipal council thinks reasonable having regard to the services provided by the municipal council in relation to such lands and having regard to the benefit to the community derived from such recreational lands.

The provision requires a Rates calculation taking into account the services provided by the municipal council, in respect of the land and the community benefits derived from utilising the land for recreational purposes. A number of municipal councils have adopted the calculation of Rates payable, with respect of land falling within the C & R Lands Act, utilising the Land Value as the starting point. Effectively calculating Rates payable along similar lines to that as per the Local Government Act 1989 ("Local Government Act").

Strathallan Golf Club Rates as charged by Darebin City Council

The Strathallan Golf Club ("Golf Club") has for a number of years leased land (utilised as a golf course) from La Trobe University ("LTU"). As such the Golf Club has been subject to annual Rates charges imposed by Darebin City Council ("DCC"). The 2017/18 Rates Notice detailed a total Rates liability of \$4,743.35. The 2018/19 Rates Notice detailed a total Rates liability of 23,742.45. Thus, an increase of \$18,999.10 (500%) compared with the prior year. This increase is attributed to a similar increase in the value of the land, for Rating purposes. That is, \$2.1 million-2017/18 year compared with \$13.5 million-2018/19 year.

A subsequent Objection lodged by the Golf Club was allowed in part with the value of the land marginally reduced to \$12.2 million. The Golf Club has lodged an application for review with the Victorian Civil and Administrative Tribunal ("VCAT"). This has resulted in initial

lodgement costs and potentially will lead to significant legal costs if the matter goes to a hearing, which now appears as the likely outcome

Although, the Golf Club has been assessed for Rates under the banner of “Cultural & Recreation Rate”, the Darebin City Council have advised that the Club doesn’t fall within the C & R Lands Act, given it holds a lease with La Trobe University, which is (in the view of DCC) not the Crown or a municipal council. Ironically, the University has offered to sell the land to DCC for use as open space. Should a sale eventuate, the Golf Club would according to DCC then fall within the C & R Lands Act.

Even if the Club is successful in its claim that the C & R Lands Act is applicable, the Club would still be liable for the same amount as currently disputed.

The matter is in VCAT and a hearing set for late March 2020. This has and will continue to place a significant strain on the financial position of the Golf Club.

C & R Lands Act-Policy/practices of Darebin City Council

Both Rates Notices (2017/18 & 2018/19) show a rate attributed as “Cult & Rec Land Rate” multiplied by the relevant figure attributed to the land value for Rating purposes.

The C & R Lands Act Policy of DCC is stated in a document titled:

Darebin City Council 2014/15 Rating Strategy

“7.4.4 Cultural and Recreational properties

The provision of rate relief to recreational land is provided by the Cultural and Recreational Lands Act 1963. The Act effectively provides for properties used for outdoor activities to be differentially rated unless it involves land that is being leased from a private landowner. The discretion whether to provide a cultural and recreational lands rate rests with Council.

The eight properties that are currently defined as Cultural and Recreational properties are:

Strathallan Golf Club” (Plus 7 other Community Sporting Clubs are listed.)

Thus, the calculation of Rates as pursuant to the DCC policy is in lines with “Section 161 Differential Rate” of the Local Government Act. ***Adopting this methodology effectively side-steps the C & R Lands Act and reverts to a Rates calculation based on the value of the land.*** As with Strathallan, should a significant increase in the land value occur this will result in a significant increase in the financial burden on the respective Community Sporting Body. Also, in turn an increase in fees imposed on the Public & Club members will likely result in a decline in affordability/use of the sporting facilities by individuals.

This is a situation that was specifically aimed to be avoided by the enactment of the R & C Lands Act. (Refer Hansard quote above.)

Financial Impact on Darebin City Council

The Darebin City Council Budget Report-2018/19 Budget, in basic terms, indicates:

Rates

Types/class of land	2017/18	2018/19
Cultural and Recreational	\$32,058	\$66,481
<i>Total raised by general rates</i>	<i>\$119,968,158</i>	<i>\$124,808,515</i>

Thus, the % of Rates charged under the heading “Cultural and Recreational” equates to approximation **0.03% (2017/18 year)** and **0.06% (2018/19 year)** of total Rates Charges. In **2017/18** the rates paid by the Strathallan Golf Club represented **14.6%** of the total rates collected by the Council under the Cultural and Recreational category. In **2018/19** this contribution has now increased to **35.7%** of the total rates charged by Council to organisations falling under the Cultural and Recreational category. The impact on the Golf Club has been significant given **\$23,742 (2018/19 Rates)** equates to **5%** of the Club’s gross income.

C & R Lands Act-Policy/Practices of City of Monash

The policy and practices of the City of Monash is outlined in a document titled:

Cultural and Recreational Lands Act Policy – June 2018

As per the attached link:

[Strathallan-Monash-cultural-and-recreational-lands-act-policy-june-2018.pdf](#)

The policy as summarised in Foot Note 1-Page 4, is that:

“effectively a 60% discount applied against an amount that would otherwise have been applied if that property was rated under the *Local Government Act* 1989. “

This is achieved by first deducting the expenditure categories of Council (e.g. waste collection and age care) considered not representing “service provided”. This effectively results in a 50% discount to the Rates normally charged/calculated pursuant to the Local Government Act. Then a further 20% discount is applied.

Two critical points:

1. The calculation of Rate Charges is still based on application of the Local Government Act. Thus, it is utilising the land value multiplied by a Rate as determined by Council. Effectively, side-stepping the stated & intended objective of the C & R Lands Act.
2. The “Community Benefits provided to the land” is just an arbitrary percentage of the Rates charges, subsequent to applying the 50% discount. With no attempt to analyse the actual “community benefits” derived by the respective sporting body utilising the land for recreational purposes.

It is considered Monash City Council has endeavoured to made some attempt to follow the act in determining direct and indirect services provided by the municipal council less a 20% discount. **But the council is still utilising a site valuation as the basis of the Rates calculation.** Other municipal councils have negotiated with the relevant Body an agreed Rates charge. In some cases, the relevant Body with a significant (multi-million dollar)

income stream utilising significant valuable assets (e.g. MCC-Melbourne Tennis Centre) have been expecting from any Rates charges or only charged a nominal amount by the respective municipal council.

Interaction between C & R Lands Act and application as adopted by some Municipal Councils

Sub-Section 4(1) states:

Notwithstanding the provisions of any Act or enactment relating to the making and levying of rates by a municipal council *in lieu of the rates that would otherwise be payable* to a municipal council in respect of recreational lands *there shall be paid to the municipal council as rates in each year such amount as the municipal council thinks reasonable* having regard to the *services provided by the municipal council in relation to such lands and having regard to the benefit to the community derived from such recreational lands. (Emphasis added.)*

As highlighted, within the sub-section there are a number of core elements relevant to the correct interpretation/application of the provision.

1. The Rates as calculated pursuant to Sub-section 4(1) are “in lieu of the rates that would otherwise be payable”. Thus, the initial step is to calculate the Rates payable pursuant to the Local Government Act, which does require a calculation based on the land value multiplied by a Rate as determined by the respective municipal council. However, this figure is then put aside.
2. The Rated payable, each year to the municipal council “shall be...such amount as the municipal council things reasonable”. The critical word is “shall”. Pursuant to the Interpretation Act 1984, sub-section 45 (2) states:

Where in this Act or any Act passed or subordinate instrument made on or after the commencement of this Act the word "shall" is used in conferring a power, that word shall be construed as meaning that the power so conferred must be exercised. (Emphasis added.)

Application of the provision is not discretionary or optional it “must be exercised”.

3. The Rates calculation is to be a reasonable amount taking into account:

“the services provided by the municipal council *in relation to such lands* and having regard to the *benefit to the community derived from such recreational lands.*”

Thus, the Rates calculation is to be based on the services provided by the municipal council “in relation to such lands” and having regards to the benefit to the community derived from “such recreational lands.”

It is the services provided by the municipal council in relation to such land. It is not the services as provided by the municipal council to all ratepayers within the municipality.

It is also the benefits to the community derived from “such recreational lands” that is required to be determined with respect of individual parcels of land.

In summary the C & R Lands Act does provide a clear path to follow in determining the Rates payable with respect of individual parcels of recreational lands. It involved the setting aside of the Rates payable as determined by application of the Local Government Act and the calculation of a Rate payable based on the services provided by the respective municipal council, in respect of the land and the community benefits derived from such recreational lands.

Darebin City Council, Monash City Council (as examples) are failing to correctly calculate the Rates payable pursuant to the C & R Lands Act by reverting back to a calculation based on the application of the Local Government Act.

Interaction between the Local Government Act 1989 & the C & R Lands Act.

The Local Government Act is an all-in compassing piece of legislation covering multiple phases of the establishment, roles & responsibilities and operation of individual municipal councils within the State of Victoria.

The Local Government Act provides the power/right of a municipal council to raise revenue, to fund the services provided to the local community within the municipality. The primary avenue for raising funds by a municipal council is via the imposition of annual Rates charges against property owner/occupiers within the municipality. This is covered in Part 8 of the Local Government Act. The core element on any Rates calculation is the value of the land (site, capital improved or net value) plus an applicable Rate (with the relevant provisions providing the municipal council various options re determination of the relevant Rate).

The C & R Lands Act, is supplementary to the Local Government Act in that a Rates liability pursuant to the Local Government Act has to be first calculated/established. The C & R Lands Act then is considered with respect of land utilised for cultural or recreational purposes. Accepting that the relevant entity and land use meets the requirements of the C & R Lands Act, the annual Rates are calculated as per Sub-Section 4 (1). This accounts for the services provided by the municipal council in respect of the land & the community benefits derived from the use of the land for recreational purposes.

The critical point is that the Local Government Act, Part 8 provides a mechanism for municipal councils to raise funds to provide an array of services within the municipality. The Rates as charged is calculated utilising the land value as the starting point then applying a multiple Rate as determined by the Council. ***Thus, it is a charge based on the ability of the respective land owner/occupier to pay.*** The C & R Lands Act is limited to not for profit bodies who own land or lease/licence Government land used for cultural and recreational purposes. It is based on having regard for a reasonable estimation of the cost to the municipal councils in providing services “in respect of the land” and the community benefits derived “from such recreational use”. Thus, the determining factors are the services provided & community benefits derived with respect of the recreational land.

The calculation of Rates pursuant to the C & R Lands Act is simply not a Rates charge based on the value of the land.

Recommendations

- 1. All municipal councils accept the view that the potential Rates that may be payable (given the Council services as provided in respect of the land) are far outweighed by the community benefits derived by the use of the land for recreational purposes. On this basis, municipal councils waive any potential Rate liability that may fall on a Body utilising land for recreational purposes.*
- 2. All Government held land (Government Statutory Body, Agency or Department) and leased to a Body utilising the land for recreational purposes, should be taken as falling within the definition of "recreational lands" as defined with section 2 of the C & R Lands Act*
- 3. Should such lands cease to be utilised as recreational lands, any municipal council Rates liability is to be calculated from the date the land ceased to be utilised for recreational purposes (not backdated 10 years).*

Should the above not be accepted by a particular municipal council:

- 4. The calculation of Rates pursuant to the C & R Lands Act should be determined as per sub-section 4 (1). That is not based on land valuation but services provided and community benefits derived.*
- 5. As part of the decision-making process the municipal council is to provide the relevant Body an opportunity to make a submission/presentation detailing the community benefits derived from the recreational use of the land.*
- 6. The municipal council is to provide details, to the respective Body, of the claimed council services provided in respect of the land and provide an opportunity for the Body to detail the services it considers are provided by council in respect of the land.*
- 7. That municipal councils acknowledge the degree of volunteers involved in providing the community with a local recreational facility.*
- 8. Should such lands cease to be utilised as recreational lands, any municipal council Rates liability is to be calculated from the date the land ceased to be utilised for recreational purposes (not backdated 10 years).*

Peter Roberts
President
Submission lodged on behalf of the
Committee of Management
Strathallan Golf Club Inc.
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