

3.1 **MINISTERS RESPONSE - APPEAL UNDER THE CULTURAL AND RECREATIONAL LANDS ACT 1963 (CRLA) – RIVERSDALE GOLF CLUB ANNUAL CHARGE 2020/21**

(Author: File No.)

Responsible Senior Officer: Danny Wain, Chief Financial Officer

RECOMMENDATION

That Council

Write to the Riversdale Golf Club advising that Council will comply with the Minister's determination regarding the refund of part of the 2020/21 CRL charge, however also advise that Council will stand by the provisions of the current CRLA policy, which takes into consideration:

- The amount of the charge "*having regard to the services provided*" and,
- The amount of the "*Community Benefit provided by the land*".

INTRODUCTION

Council has been informed of a determination received from the Hon, Lily D'Ambrosio, Minister for Energy, Environment and climate Change, Minister for Solar Homes, regarding an appeal, in relation Riversdale Golf Club's Cultural and Recreational lands Act (CRLA) charge for the 2020/21 year.

BACKGROUND

Riversdale Golf Club lodged an appeal (May 2021) to Minister D'Ambrosio (Energy, Environment and Climate Change) seeking intervention to set aside the 2020/21 charge and set a lower charge (as allowed under the CRLA).

In August 2021¹ Officers advised Council of a request from Minister D'Ambrosio (Energy, Environment and Climate Change) seeking Council's agreement to enter into negotiations for a reduced Cultural Recreation Lands Act 1963 (CRLA) charge for Riversdale Golf Club (the Club). The recommendation was for Council to advise the Minister that Council's 2020/21 CRLA charge stands.

- The amount of the charge "***having regard to the services provided***".
Each year Council determines that the following services are "provided" either directly or indirectly to cultural and recreational land in the municipality. This encompasses all services with the exception of:
 - Waste Collection;

¹ <https://www.monash.vic.gov.au/files/content/public/about-us/council/council-meetings/agendas-minutes/2021/31-august-2021/3.3-report-council-meeting-31-august-2021.pdf>

- Aged & Disability;
- Childcare;
- Maternal & Child Health; and
- Youth & Family

Some services such as Public Libraries and Cultural services are only included at a 50% allocation². This generally equates to approximately 50% of total Council expenditure being applicable to the land; and

1.1. The amount of the “Community Benefit provided by the land”.

Council has identified ten potential community benefits:

- Social interaction;
- Sporting programs;
- Coaching opportunities;
- Cultural promotion;
- Environmental benefits;
- Provision of Uniforms;
- Subsidised entry fees;
- Provision of premises;
- Employment opportunities; and
- Community Development/Meeting Places.

This generally results in a 20% reduction of the amount payable applied to each property in consideration of the benefit each provides to the community.

DISCUSSION

The Minister has recently provided her determination in this matter (Attachment 1)

The Minister has determined;

- *the use of land value by the City of Monash as the starting point for calculating rates for recreational lands is reasonable;*
- *the City of Monash must incorporate in its calculation of the Cultural and Recreational Land Charge for recreational lands appropriate discounts for community benefits from the land and the actual level of services provided to the land; and*
- *the Cultural and Recreational Land Charge for 2020-21 under section 4(1) of the Cultural and Recreational Lands Act 1963 should be \$68,106.60, noting this does not include the Fire Services Property Levy or Waste Charges, which is the same amount as the previous year. Please revise the City of Monash’s assessment of the 2020-21 rates for the Riversdale Golf Club accordingly.*

² The above “rules” have been determined by analysis of Council services provided and have also been the outcome of negotiations with Metropolitan and Huntingdale Golf Clubs when setting the 2004 and 2006 charges and further endorsed following the review of the CRLA Policy in May 2018.

The Minister further encourages, the City of Monash to consider whether the council's policy would be determining an amount that is reasonable if this degree of annual variability in land valuation of the Riversdale Golf Club continues. This is not an option currently available to any other ratepayer. Prior to the Club's appeal the Club were advised that a discussion (with the valuers) and potential objection regarding the valuation of the site could be an option for seeking relief. However, the Club maintained that the valuation, as a base for determining the charge, was inappropriate.

The August 2021 Council report where Council resolved to advise the Minister that the 2020/21 would "stand".

Council has received further correspondence from Riversdale Golf Club (attached):

- Seeking the discounted payment/refund for 2020/21 (adjustment of \$9,548.65 – *this has been actioned by Council officers*),
- Requesting that Council reassess the CRLA charge for both 2021/22 (\$95,586) and 2022/23 (\$89,857) financial years,
- Advising that they will (reserve their right) to appeal to the Minister in accordance with the CRLA Act, and
- Maintaining their objection to Council's methodology for calculating the CRLA charge and not taking into account the criteria in the CRLA Act. In particular where there have been no measurable increases in services from Council.

POLICY IMPLICATIONS

The CRLA charges are set annually in accordance with Council policy (based on the CRLA). Any change to that charge would need to be accepted and approved by Council (effectively a waiver of part of the set charge).

Council's policy was adopted in 2018 and has not been formally reviewed due to the State's Rating Review Panel and the ongoing appeal from the Club to the Minister. The Rating Review Panel was to consider the CRLA provisions however could not come to any proposal or recommendations to change. There has been no sector guidance on this matter and therefore no external trigger to review the policy.

CONSULTATION

Prior to adopting the CRL policy (2018) all of the affected properties were advised of the review; and seven of the CRL recipients were interviewed by the consultants that conducted the review. Members of the public were also provided an opportunity to comment through the "Have your Say" portal (4 responses).

GENDER EQUITY ASSESSMENT

A gender impact assessment was not undertaken on this policy at that time. When this policy is up for review, Council will reconsider whether or not a gender impact assessment is required.

FINANCIAL IMPLICATIONS

A refund has been organised for the Club of \$9,548.65 against the 2020/21 charge.

CONCLUSION

Council notes the letter received from the Minister and the direction to reduce the 2020/21 rates to the same as 2019/20, which is \$68,106.60 (from \$77,655).

The determination only applies to the 2020/21 charge (also notes Minister does not have any retrospective powers to change earlier charges).

The Minister is not required to provide any reasons for her decision; however, she does concede that using the land value as the starting point is reasonable (which counteracts the Club's argument that using the land value is invalid).

The Club will likely appeal again to the Minister for relief on the 21/22 (\$95,586) and the 22/23 charges (\$89,857) – Assuming they can (as there has been a live appeal for nearly 18 months the Minister may accept further appeal applications from the Club).



Hon Lily D'Ambrosio MP

Minister for Energy, Environment and Climate Change
Minister for Solar Homes

8 Nicholson Street
East Melbourne, Victoria 3002
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Dr Andi Diamond
Chief Executive Officer
City of Monash
PO Box 1
GLEN WAVERLEY VIC 3150
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Ref: MBR046390



Dear Dr Diamond

CULTURAL AND RECREATIONAL LANDS ACT APPEAL - RIVERSDALE GOLF CLUB

I am writing regarding the appeal by the Riversdale Golf Club under section 4(2) of the *Cultural and Recreational Lands Act 1963* against the amount of the 2020-21 Cultural and Recreational Land Charge.

Thank you for providing a submission regarding the appeal and agreeing to the Riversdale Golf Club and the City of Monash being able to review each other's submissions. I note the City of Monash was not willing to work together with the Riversdale Golf Club to resolve this matter independently and advised me that it is satisfied that the Cultural and Recreational Land Charge for 2020-21 should stand as is.

The Cultural and Recreational Land Charge calculated by the City of Monash under section 4(1) of the *Cultural and Recreational Lands Act 1963* for 2020-2021 was based on the maximum discount allowed under the Cultural and Recreational Lands Act Policy. The 60 per cent discount was determined by the City of Monash taking into consideration two factors:

- the amount of the charge having regard to the services provided (either directly or indirectly) to the recreational lands in the municipality, which generally equates to approximately 50 per cent of total council expenditure being applicable to the land; and
- the amount of the community benefit provided by the land - the council has identified 10 potential community benefits which generally result in a further 20 per cent reduction of the residual amount payable, which collectively is effectively a 60 per cent discount.

I note that Riversdale Golf Club considers the land value is irrelevant to the determination of the Cultural and Recreational Land Charge based on section 4(1) of the *Cultural and Recreational Lands Act 1963* that only refers to councils needing to have regard to the services provided by the council and the benefit to the community derived from the recreational land.

Riversdale Golf Club also submitted that unless a decrease in benefit and/or an increase in services is demonstrable, there would be no reasonable basis for the council to increase the Cultural and Recreational Land Charge.

Riversdale Golf Club requested that I determine that the Cultural and Recreational Land Charge in lieu of municipal rates payable to the council for 2020-21 should be set at no more than \$10,000 based on the limited provision of services by the council to the club in relation to the land and the extensive benefits to the community of the club's occupation and use of the land for cultural and recreational purposes.



OFFICIAL

I have determined in this instance:

- the use of land value by the City of Monash as the starting point for calculating rates for recreational lands is reasonable;
- the City of Monash must incorporate in its calculation of the Cultural and Recreational Land Charge for recreational lands appropriate discounts for community benefits from the land and the actual level of services provided to the land; and
- the Cultural and Recreational Land Charge for 2020-21 under section 4(1) of the *Cultural and Recreational Lands Act 1963* should be \$68,106.60, noting this does not include the Fire Services Property Levy or Waste Charges, which is the same amount as the previous year. Please revise the City of Monash's assessment of the 2020-21 rates for the Riversdale Golf Club accordingly.

I have been advised that the City of Monash determined the Cultural and Recreational Land Charge for the Riversdale Golf Club in 2021-22 at \$95,586 based on the increased land value. I encourage the City of Monash to consider whether the council's policy would be determining an amount that is reasonable if this degree of annual variability in land valuation of the Riversdale Golf Club continues.

This determination only applies to 2020-21, being the financial year at the time the Riversdale Golf Club lodged the appeal. The *Cultural and Recreational Lands Act 1963* does not allow me to make a determination retrospectively, nor does my determination set subsequent Cultural and Recreational Land Charges.

I have written to the Riversdale Golf Club outlining this determination.

If you would like more information about this matter, please contact Will Guthrie, Director Land Policy, Department of Environment, Land, Water and Planning on 0439 398 628 or email will.guthrie@delwp.vic.gov.au.

Yours sincerely



Hon Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change
Minister for Solar Homes

31 / 10 / 2022



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**RIVERSDALE
GOLF CLUB**

17 November 2022

Dr A Diamond

Chief Executive Officer

City of Monash

P O Box 1

GLEN WAVERLEY VIC 3150

Dear Dr Diamond,

CULTURAL AND RECREATIONAL LANDS ACT DETERMINATION – RIVERSDALE GOLF CLUB (THE CLUB)

I refer to the recent correspondence from The Hon Lily D'Ambrosio MP outlining a determination in relation to the abovementioned matter. We note that the Minister has determined that the Cultural and Recreational land charge for the period 1 July 2020 to 30 June 2021 should be \$68,106. We therefore ask that you please remit payment for the reduction in the Cultural and Recreational Land Charge for 2020-21 from \$77,655.25 to \$68,106.60. We can provide our bank account details for your convenience.

The Minister has also been advised that the City of Monash determined the Cultural and Recreational Land Charge for the Riversdale Golf Club in 2021-22 at \$95,586 based on the increased land value. We note that the Minister has advised that she has encouraged the City of Monash to consider whether the Council's Policy would be determining an amount that is reasonable if this degree of annual variability in land valuation of the Riversdale Golf Club continues.

We request that Monash Council reassess the CRLC for both 2021/22 and 2022/23 having regard to the specific request from Minister in handing down the determination.

The Club otherwise reserves its right to appeal to the Minister in accordance with the CLR Act.

As per our letter to you dated 19 May 2021, The Club maintains its objection to the methodology employed by Monash Council as inappropriate for not taking into proper consideration the requirements of the Cultural and Recreational Lands Act (CRL Act).

The Club is a not-for-profit golf club which has provided recreational land at the current site since 1927. The criteria in the CRL Act are clearly intended to protect not-for-profit entities, providing cultural or sporting recreational facilities, against levies being charged on the basis of increases in CIV. This is not what is, in fact, occurring as clearly exemplified by the increase of the Club's CRLC in 2020/21 of 14%, and the 2021/22 increase of 23%.

As set out in our letter, there is no reasonable basis of the calculation of the CLRC for 2021/22, on the basis that no consideration has been given to the criteria in the CRL Act. In particular, the Club submits that there can be no reasonable basis for any increase in the CRLC in circumstances where there have been no measurable increases in services provided by Monash Council and where the benefit derived by the community from the Club's land has continued the same (if not, increased).

For the same reasons outlined above, there is no reasonable basis of the calculation of the CLRC of \$89,857 for 2022/23, on the basis that no consideration has been given to the criteria in the CRL Act.

Yours sincerely,



CHRISTIAN TANNER

GENERAL MANAGER