

CAULFIELD RACECOURSE RESERVE

15 October 2014

The Hon Ryan Smith MP
Minister for Environment & Climate Change
Level 17
8 Nicholson Street
Melbourne VIC 3002

Dear Minister

Caulfield Racecourse Reserve

I write to you as Chairman of the Caulfield Racecourse Reserve Trustees to advise you of the outcome of the meeting of Trustees held on **Monday, 13th October 2014.**

I have major concerns about the outcome of the meeting which was **determined by a split vote of the Trustees.** I think it is important that I appraise you of all facts in consideration of your approval or otherwise of a new lease.

As you will be aware, the Trustees and the Melbourne Racing Club (MRC) have been negotiating a renewal of the Clubs lease for a prolonged period, in excess of 3 years. **This has in large part been due to the MRC's refusal to agree to an independent valuation of the proposed renewal leased area and a refusal to, in my view, acknowledge the Trust have a responsibility to meet all of the purposes of the Crown Grant including Public Park and Recreation.**

At the meeting held on the 13th October 2014, the **Trustees voted by a small margin of 8 votes to 7 to adopt the attached resolution. The majority vote of eight was made up of 6 votes exercised by the MRC nominated Trustees (5 of whom are current members of the MRC committee including the Chairman, Vice Chairman and Treasurer).**

The effect of the resolution if implemented would be as follows:

1. ***"The current Grandstand Lease with the MRC is renewed for a further period of up to and including 5 years on the same terms. The Lease can be terminated earlier by agreement between the parties and replaced with a lease for up to and including 21 years pending the resolution of a Land Management Plan"***

If a new lease is offered on the same terms as the current lease it means the current rental (negotiated over 20 years ago) of approximately \$93K pa would be continued for another 5 years.

The MRC committee members who are Trustees have promoted this resolution despite a Trust commissioned independent valuation of the lease by Charter Keck Kramer that puts the value of the Lease at \$1.05M pa.

Such an outcome would seriously compromise the Trustees capacity to develop facilities for the Recreation and Park purposes of the Crown Grant and to effectively resource the responsibilities of the Trust set out in the Auditor General's report.

At a mediation process that you requested the Trustees and the MRC to participate in; both the Trust and the MRC agreed to have the rental determined by the Valuer General - Victoria consistent with current government policy.

Were a new lease to go forward on this basis then there would be serious governance and conflict of interest issues delivering this outcome.

2. *"The Parties enter into a 5 year licence for the areas the Club does not hold exclusive use, which reflects the current Permitted Uses the area can be used for by the Club. The Licence can be terminated earlier by agreement between the parties and replaced with a 21 year licence pending the resolution of a Land Management Plan."*

and

3. *"The current Deed of Maintenance and Development is extended to the same termination date as the Grandstand Lease and Licence and the Club remains responsible for all maintenance and development at the Caulfield reserve, during this period."*

Taken together, if implemented, these provisions would prevent the Trustees from acting to implement the recommendations made by the recent Auditor General's report presented recently to the Parliament and would perpetuate many of the problems identified in that report.

The Auditor General said in his report:

"There has been a predisposition to concentrate on racing interests and not to pay sufficient attention to meeting the needs of the community."

In the absence of a land management plan, development of the reserve over the past 10 years has, and continues to, driven largely by the MRC's priorities. This is reflected on the (Fig A) below.

Of the approximate 54 hectares of land at the reserve:

- 11 hectares – approximately 20 per cent - is under lease to the MRC;
- 37 hectares – approximately 69 per cent - is used by the MRC without any clear legal entitlement or payment arrangement; &
- The remaining 6 hectares – approximately 11 per cent – is open space for the potential use by the community during prescribed hours."

If the provisions sought by the MRC Trustees sponsored resolution were implemented, the Trust could not prioritise development of important works such as opening up the course to the public and developing facilities for the public for both recreation and park purposes without the approval of the MRC.

This would be a reversal of the roles contemplated by the Crown Grant and the Auditor General and would continue the dominance of the agenda by the MRC.

4. *"The following guarantee is provided by the Trustees in both the extension of the Grandstand Lease and the Licence:*
 1. *The Trustees (and any successor and deemed owner/landlord of the Caulfield Racecourse Reserve ('CCR') Trust) hereby agree and acknowledge that racing and training is integral to the activities that occur at the CRRT, and is consistent with the uses of the CRR as established in the Crown Grant;*
 2. *The Trustees (and any successor and deemed owner/landlord of the Caulfield Racecourse Reserve ('CCR') Trust) hereby warrants and guarantee that:*
 - a. *Racing and training will continue materially in the same form and with the same infrastructure as it does at the date of this agreement for the duration of any further agreement regarding the tenancy of the Melbourne Racing Club at the CRR.*
 - b. *The Melbourne Racing Club will be granted a lease for exclusive use over materially the same area that it currently occupies in accordance with the leases known as the "Grandstand Lease", "Western Stables Lease" and the Neerim Road Lease" for the duration of any further agreement regarding the tenancy of the Melbourne Racing Club at the CRR.*
 - c. *The principles outlined in clauses 2a and 2b. Will form part of any scope provided to consultants engaged to conduct a Land Management Plan for the CRR and any recommendations implemented by the Trustees will not conflict with the terms of clauses 2a and 2b.*

Clause 4 of the resolution would commit the current Trustees and any successor to the restrictive arrangements for the next 26 years.

Such an arrangement would, in my view, be both unlawful and a fundamental rejection of the findings of the Auditor General's report and would lock in place the MRC control of close to 90% of the Reserve for the next quarter of a century on the same terms as currently exist.

5. *Following completion of a Land Management Plan, the Trustees will negotiate in good faith with the Club to enter into a Lease and Licence for a period of up to and including 21 years during the entire occupancy of the CRR*

The effect of this clause will be to prejudice the rights of the Trust going forward.

Governance Standards and a Failure to manage conflicts of Interest

In addition to the issues raised by the Auditor General in his report in relation to the fundamental conflict of duty that arises for Trustees who are also Directors of the MRC (particularly during lease negotiations), the Trustees have adopted a Conflict of Interest policy introduced in 2009 that deals with the disclosure of Pecuniary Interests and how the Trustees must deal with this conflict. A copy of the policy is attached.

On questioning from me, Trustee Mike Symons disclosed that he was a Director of, and has an ownership interest in, Aquanita Racing, a company that leases stables from the MRC under sub-lease from the Trustees.

In lease negotiations over the past 3 years Trustees have also sought to bring into line all leases and to have the value of those leases independently valued by the Valuer General - Victoria. The current lease payments by the MRC to the Trustees for the Stable areas are currently \$27,333. The independent valuation provided by Charter Keck Kramer puts the rental at \$328,000. A copy of the valuation is attached.

The current policy on Pecuniary Interests requires that a Trustee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered must not be present during any deliberation of the Trust with respect to the matter and take no part in any decision of the Trust with respect to the matter – unless the Trustee otherwise determines.

MRC nominated Trustees proposed a resolution to allow Trustee Mike Symons to participate in and vote on the resolutions before the Trustees. This resolution to allow Mike Symons to participate and vote was carried by 8 votes to 7 with Mike Symons voting despite the Chairman and other Trustees objecting.

This failure of the Trustees to observe the policy and generally to disregard accepted practice in relation to conflict of interest ensured the MRC nominated Trustees had a majority vote at the meeting.

If the Trustees had observed the Pecuniary Interests policy and Mike Symons was not permitted to vote on the resolution that was to allow him to participate in the meeting, the resolution would have been lost 7 votes to 7 votes and Mike Symons would not have been permitted to participate in any further deliberations on the lease.

This event would have resulted in the Lease and Licence resolutions failing to be carried by a majority.

All votes were by a show of hands and the 7 Trustees voting against the resolutions asked to have their names recorded in opposition.

Those voting against the resolution were Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and myself.

In all of these circumstances I ask the Minister not to approve any Lease or Licence arrangements based on the principles contained in the resolution sponsored by the MRC nominated Trustees and that you assist the Trust to come to a resolution of these matters that is consistent with its responsibilities.

I propose to take no further action to progress the Licence and Lease negotiations until I receive your advice or advice from DEPI.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Sword', followed by a period.

Greg Sword AM
Chairman
Caulfield Racecourse Reserve

cc Hon Denis Napthine MP, Premier and Minister for Racing

Mr David Southwick, MP, Member for Caulfield

Hon Lisa Neville MP, Shadow Minister for Environment and Climate Change

Hon Martin Pakula, Shadow Minister for Racing and Gaming

Mr Dallas Mischkulnig, Office of Auditor General – Victoria

Mr Brendon Earle, Herbert Smith Freehills

Mr Chris Padovani, Department of Environment and Primary Industries

All Caulfield Racecourse Reserve Trustees