

CAULFIELD RACECOURSE RESERVE

MINUTES OF A MEETING OF TRUSTEES

DATE	Monday, 13 October 2014 at 1.35pm
VENUE	Trustees Room, Caulfield Racecourse Reserve, Caulfield, Melbourne
PRESENT	G Sword (Chairman) M Cain Cr M Esakoff R Fenwick P Le Grand Cr J Hyams R Kennedy M Lau Cr M Lipshutz P McCarthy I J MacDonald Justice S Marshall N Staikos M J Symons E M P Tanner
IN ATTENDANCE	J L Page (Secretary)

1: WELCOME

The Chairman opened the meeting and welcomed all Trustees.

2: APOLOGIES

No apologies had been received in advance.

3: ACKNOWLEDGEMENT

The Chairman delivered the acknowledgement to country:

'I would like to acknowledge the Wurundjeri people, the Traditional Owners of the land on which we are gathered and pay my respects to their Elders both past and present'.

4: CONFLICTS OF INTEREST

The Chairman reminded Trustees of their requirement for disclosure of Conflicts of Interest in relation to items listed for consideration in the Agenda.

No conflicts were recorded.

The Chairman reminded All Trustees that the Trust had adopted a Conflict of Interest Policy in 2009 and that in the absence of any other Governance Documentation this was the policy regarding Conflict of Interest by which Trustees should be bound.

The chairman then sought clarification from Trustee MJ Symons as to whether he had a pecuniary interest In Aquanita Racing – a tenant and trainer located within one of the stable complexes situated within the Caulfield Racecourse Reserve.

MJ Symons confirmed that he was a Director of Aquanita Racing; however declared that he did not have a conflict of interest by being present and participating in the meeting.

The chairman raised the matter that whether the conflict was real or perceived under the policy the Trustee should not be present or take part in any decisions unless the Trust otherwise determined.

MJ Symons reiterated that he did not have a conflict.

Trustee M Lau moved a motion that MJ Symons remain until such time as the deliberations and discussions in relation to the Lease & Licence negotiations commence and then at that time seek the view of the meeting [Trust] as to whether MJ Symons should remain.

Proposed: M Lau
Seconded: R Fenwick

This motion was unanimously carried.

5: TRUSTEE NOMINEES UPDATE

It was noted that no vacancies for Trustee Nominees exist at this time.

6: MINUTES

Minutes of the Last Meeting – The meeting was reminded that the Minutes of the meeting held on Thursday, 7 August 2014 had been accepted as an accurate record of the meeting via circulated resolution on 22 August 2014 to facilitate their posting [in a timely fashion] onto the CRRT.org.au website.

The minutes were **CONFIRMED**.

Proposed: R Kennedy
Seconded: R Fenwick

This motion was unanimously carried.

Outstanding Items from previous meetings

The report was noted.

The matter of suitable Trustee insurance was raised and Trustee Peter McCarthy advised the meeting that a quotation from JLTA had been received for \$20M cover for premium of \$578.60.

It was resolved to secure this cover immediately.

Proposed: P McCarthy
Seconded: M Lipshutz

This motion was unanimously carried.

Correspondence

The meeting was advised that a large volume of correspondence had been received since the last meeting and a list of this was tabled for noting.

It was also noted that copies of all correspondence were available at the meeting for review.

It was RESOLVED that the above report be **NOTED**.

Proposed: P Le Grand
Seconded: M Lipshutz

8: PROPOSAL FOR LEASE & LICENCE AGREEMENT WITH MRC

The chairman tabled a motion to proposal [known as Proposal A] for Trustees consideration in relation to the Lease & Licence negotiations between the Trustees & the MRC.

Proposed: G Sword
Seconded: M Lipshutz

Rod Fenwick then tabled an amendment to proposal [known as the Amendment and later as Proposal B] for Trustees consideration in relation to the Lease & Licence negotiations between the Trustees & the MRC

Proposed: R Fenwick
Seconded: Peter Le Grand

R Kennedy requested an update from the working group

It was agreed that the chairman would provide an update in relation to the recent deliberations between the working group and the members of the executive of the Melbourne Racing Club ahead of discussing the tabled Proposal A and Amendment named above; to provide some context as to how they came to be prepared.

The chairman then spoke to the content of the Proposal A namely that a Lease and Licence consistent with the following principles should be offered to the MRC:

Period of Lease and Licence – 2 years

The Licence agreement is to be based upon the current document that has been the basis of mediation and discussion between the parties. The most current draft has been forwarded to the Club on Friday 10 October.

The Lease should be based on the current draft Lease document covering a new lease including all of the area covered by the Grandstand Lease and also incorporate a new lease for the stables, alternatively, the Lease can be based on the current lease.

Maintenance and Development Agreement is to be terminated by agreement.

Strategic Land Management Plan an agreement to be reached with the MRC that ensures the areas licensed for racing and training will remain substantially unchanged over the life of the Lease and Licence, but can be varied by agreement, and the MRC are to acknowledge their acceptance that the SLMP may materially change the current racing/training infrastructure situated in the centre of the course.

Rental to be determined by the Valuer General.

The Working Group to report back to all Trustees on the progress of negotiations.

Discussion ensued and a number of points were made in support of the Proposal A; including a suggestion that with an amendment to the term increasing from 2-5years would be more practical??

R Fenwick then spoke to the content of the Amendment namely that a Lease and Licence be offered to the MRC under the following conditions:

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*
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.*
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.*

Continued...

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 CRR, 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.
 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

Discussion ensued and a number of points were made raising serious concerns about the content of the Amendment and whether items contained within it, were even lawful.

The chairman then sought an adjournment of 15mins to speak with the non MRC nominated Trustees to see if they could reach agreement on a compromise of the tabled Proposal A that would be agreeable to all Trustees.

A motion for an adjournment was put to a vote:

Proposed: G Sword

Seconded: M Lipshutz

For the adjournment: 7 votes Against the adjournment: 8 votes

The motion was denied.

The chairman then sought to exercise his right to reply and reiterated the following points:

- (i) If the same rental was agreed to, the Trust would be condemned for its actions;
- (ii) If the Amendment was voted in the affirmative, Trustees would be agreeing to not only the same rental but this could be for a period of up to 26years;
- (iii) Binding the Trust to whatever successor or deemed owner/landlord of these conditions for 26yrs would be inappropriate;
- (iv) a stay in rental would prevent the Trust from delivering its obligations in the Recreation and Parkland areas of the Crown Grant by limiting what it could develop in the centre of the Reserve;
- (v) retaining the Dead of Maintenance & development permits the MRC to decide what it will maintain and develop and takes the rights and obligations out of the hands of the Trustees - the major criticism of the VAGO report;

Peter Le Grand called for a vote on the Amendment.

J Hyams reminded the meeting that there was still the matter of deciding if M Symons should remain in the meeting.

The chairman revisited the matter and M Symons reiterated that he did not have a pecuniary interest and wished to stay in the room.

A motion was moved that M Symons remain in the meeting.

Proposed: R Fenwick

Seconded: P Le Grand

The chairman called for a show of hands:

For the motion: 7 votes Against the motion: 7 votes

The Chairman declared the resolution lost.

A number of Trustees called for a recount. The chairman called again for a show of hands:

For the motion: 8 votes [including M Symons] Against the motion: 7 votes [Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and Greg Sword].

The motion that M Symons remain in the meeting was carried.

Peter Le Grand called again for a vote on the Amendment.

The chairman called for a show of hands:

For the motion: 8 votes. Against the motion: 7 votes [Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and Greg Sword].

The motion that the Amendment become the Proposal was carried.

Rod Fenwick tabled his Proposal [known as the Proposal B] for Trustees consideration in relation to the Lease & Licence negotiations between the Trustees & the MRC

Proposed: R Fenwick
Seconded: Peter Le Grand

The chairman called for a show of hands:

For the motion: 8 votes. Against the motion: 7 votes [Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and Greg Sword].

The motion that Proposal B form the basis of the Lease & Licence negotiations between the Trustees & the MRC was carried.

Trustees Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and Greg Sword wished it noted that they would not support the signing of any Lease & Licence on this basis.

A motion was put that a proposal be prepared detailing the basis of the Lease & Licence negotiations between the Trustees & the MRC and that this be presented to Minister Ryan Smith.

Proposed: M Lau
Seconded: Peter Le Grand

For the motion: 8 votes. Against the motion: 7 votes [Cr Michael Lipshutz, Cr Jamie Hyams, Cr Margaret Esakoff, Justice Shane Marshall, Nick Staikos, Ross Kennedy and Greg Sword].

9: RESOLUTIONS CIRCULATED BY TRUSTEE ROD FENWICK

The circulated resolutions dated 29 September 2014 were noted.

10: REPORTS FROM COMMITTEES

FINANCIALS

(i) Trust Funds

The Secretary tabled advice as to the current position of the Trust Operating Account and Funds on Deposit for noting.

(ii) MRC Rental

The secretary advised that the MRC Rental of \$23,658+GST [23 July – 22 October] for 2014 from MRC to Trustees was now due.

The above reports were **NOTED**.

MJ Symons sought advice from the secretary as to any outstanding costs associated with the Lease & Licence negotiations.

The secretary advised that two cheques had been issued pertaining to works sought to be

undertaken by: (i) The Valuer-General– Victoria & (ii) Hellier McFarland (Surveyors) had not yet been presented and that these equated to approx. \$31K.

11: GENERAL BUSINESS

There were no items of general business.

12: DATE OF NEXT MEETING(S)

In light of the decisions reached in relation to the Lease & Licence negotiations the chairman advised that it was not appropriate, at this time, to schedule another meeting.

The secretary would be asked to canvass potential dates at a later date.

The Trustees Meeting closed at 3.25pm.


Signed by the Chairman:

Dated: