

# Bi-partisan Working Group Report of the Caulfield Racecourse Reserve



© The State of Victoria 2016



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning (DELWP) logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

#### **Disclaimer**

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

#### **Accessibility**

If you would like to receive this publication in an alternative format, please telephone DELWP Customer Service Centre 136 186, email [customer.service@delwp.vic.gov.au](mailto:customer.service@delwp.vic.gov.au), via the National Relay Service on 133 677 [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.delwp.vic.gov.au](http://www.delwp.vic.gov.au)

# Contents

<b>1 Bi-partisan Working Group</b>	<b>3</b>
1.1 Establishment and Terms of Reference	3
1.2 Composition	3
<b>2 Background</b>	<b>3</b>
2.1 The Caulfield Racecourse Reserve	3
2.2 Victorian Auditor-General's Report	5
2.3 Community concerns	5
<b>3 Bi-partisan Working Group Approach</b>	<b>6</b>
3.1 Consultation	6
3.2 Review	6
<b>4 Findings</b>	<b>7</b>
4.1 General	7
4.2 Terms of Reference 1- Implementation to date of VAGO recommendations	8
4.3 Terms of Reference 2 - Identify options for accelerating implementation	8
4.3.1 The department as interim land manager	9
4.4 Terms of Reference 3 - Identify alternative management arrangements	9
4.4.1 Preferred option for the Minister to consider	10
4.4.2 Other options considered	11
<b>5 Observations</b>	<b>13</b>
<b>Appendix 1</b>	<b>14</b>
Implementation of VAGO recommendations	14
<b>Appendix 2</b>	<b>18</b>
Reporting Framework - Summary Chart of action items for the TRUSTEES	18

# 1 Bi-partisan Working Group

## 1.1 Establishment and Terms of Reference

In March 2016, The Hon Lisa Neville MP, the then Minister for Environment, Climate Change and Water established a bi-partisan working group to provide an independent report:

1. On implementation to date against recommendations 1-14 of the Victorian Auditor-General's Office (VAGO) report, 'Management and Oversight of the Caulfield Racecourse Reserve';
2. To identify options for accelerating implementation, where necessary; and
3. To identify alternative management arrangements based on the arrangements in place for other similar mixed-purpose facilities and provide the Minister with options to progress.

Governance and operational issues in relation to the Caulfield Racecourse Reserve have been raised over several years by the local member of Parliament Mr David Southwick MP – Member for Caulfield, local community, City of Glen Eira, the Caulfield Racecourse Reserve Trust itself as well as the Melbourne Racing Club and these will be canvassed later in the report.

Minister responsible for the Crown land to which this report is provided is now the Hon Lily D'Ambrosio MP, Minister for Energy, Environment and Climate Change (as of 23 May 2016).

## 1.2 Composition

The bi-partisan working group consists of:

- Mr Ken Ryan - Independent Chair
- David Southwick MP, Member for Caulfield
- Steve Dimopoulos MP, Member for Oakleigh

# 2 Background

## 2.1 The Caulfield Racecourse Reserve

The Caulfield Racecourse Reserve (the Reserve) is a 54 hectare parcel of Crown land located eight kilometres south east of Melbourne, permanently reserved for three purposes; racing, public park and recreation.

The governance arrangements for the Reserve are provided for in the consolidated restricted Crown grant issued on 7 July 1949, which replaces two earlier grants issued in the late 1800s. The restricted Crown grant originally vested management of the Reserve in 19 trustees; eight representatives of the Board of Land and Works (now Minister for Energy, Environment and Climate Change as successor in law), seven representatives of the Victorian Amateur Turf Club (now trading as the Melbourne Racing Club), and four representatives of the City of Caulfield (now City of Glen Eira as successor in law).

Trustees are appointed by the Governor in Council on the recommendation of the Minister, under the provisions of the restricted Crown grant. Once a trustee has been appointed, the Minister has no ability to revoke the appointment, and the appointment is for life or until resignation. The trustees are appointed as individual trustees, rather than as members of the board of an entity. There is not a trust body, only a collection of natural persons. This current management arrangement is referred to in this document as the Caulfield Racecourse Reserve Trust (CRRT).

The restricted Crown Grant provides for a minimum number of trustees: longstanding convention has kept the number of trustees as:

- 6 representatives of the Minister;
- 6 representatives of the Melbourne Racing Club (MRC); and
- 3 representatives of the City of Glen Eira.

Whilst under this composition no single representative group has a majority in decision-making, concerns with governance arrangements and conflicts of interest continue to be raised.

The restricted Crown grant is an anachronism developed from the English Common Law trustee concept and provided for in the early Land Act as a method of delegated management. Delegated management is now most commonly achieved by the appointment of committees of management under the *Crown Land (Reserves) Act 1978* (CLRA) or by the establishment of a trust with specific enabling legislation to meet particular circumstances.

The legal framework governing CRRT (the restricted Crown Grant) specifies only a small number of land management functions that are CRRT's responsibility, namely the granting of leases and licences, and the creation of regulations. It does not specify any contemporary management responsibilities, such as the requirement to prepare a business plan or financial statements that are available for public scrutiny, or the requirement to meet modern standards of good public sector governance practice, such as the duties of a public entity under the *Public Administration Act 2004*. There has been little, if any, update to CRRT's responsibilities since the restricted Crown Grant was established.

The restricted Crown Grant does set out aspects of management and the relationship between CRRT and MRC in holding race meetings, particularly, that on occasions that race meetings are held on the Reserve by MRC, the control and management of the Reserve is vested in the committee for the time being of MRC. It also provides that in the event that the occupancy of MRC is terminated and any or all of such improvements being taken over by CRRT or any other authority, the said club shall be entitled to be reimbursed as deemed reasonable by the Governor in Council having regard to the value of the improvement to an incoming occupant.

Whilst CRRT has recently agreed to operate on a majority rules basis this may not be enforceable, which would mean that any trustee could opt out of the arrangement at any time. If this were to be the case, decisions of the trustees would need to be unanimous.

Additionally, CRRT has been negotiating with MRC to renew its lease, which expired some four to five years ago, to no avail. Negotiations have completely broken down and CRRT has advised that there is no reasonable prospect of agreement.

Under the current legal framework, the Minister does not have the ability to issue directions to CRRT in relation to the carrying out of its functions.



## 2.2 Victorian Auditor-General's Report

In September 2014, VAGO reviewed the management of the Reserve and concluded that CRRT has not been effective in its management of the Reserve. Fifteen recommendations were made regarding modernising governance arrangements and management practices for the Reserve. The recommendations, including six that are the responsibility of the Department of Environment, Land, Water, and Planning, are detailed in **Appendix 1**.

The Auditor-General highlighted in the report that CRRT has not:

- developed a suitable governance framework;
- developed an appropriate land management plan;
- developed a business plan; or
- outlined a process for public reporting on CRRT's activities or financial performance.

CRRT's inability to agree on a suitable governance framework (or on a range of other matters) led the Auditor General to recommend that the department explore alternative management arrangements for the Reserve so that it would be better placed to meet the racing and community (i.e. public park and recreation) purposes of the restricted Crown grant.

Following the tabling in Parliament of the VAGO report 'Management and Oversight of the Caulfield Racecourse Reserve' in September 2014, Adam Fennessy, Secretary, Department of Environment, Land, Water and Planning, wrote to the Victorian Auditor General accepting all 15 recommendations.

## 2.3 Community concerns

In addition to the Victorian Auditor-General's Office (VAGO) report, representations from the community and the City of Glen Eira concerning public access to the Reserve continue to be raised with government, the department, and local members of parliament.

Many community residents believe that access has been restricted to the Reserve and that there has been an unfair focus on racing. Feedback received from local residents and community groups included concerns with the amount of space available for non-racing public recreation use, the fencing, restriction in the times of public use, limited signage, and the gates being locked when they should be open.

The City of Glen Eira has the least amount of public open space of any municipality in Victoria, and as a result many Glen Eira sporting clubs are forced to play outside of the city and are eager to look at ways in which the Reserve could become home to some teams. This would require upgrades and development of sporting facilities within the Reserve.

## 3 Bi-partisan Working Group Approach

### 3.1 Consultation

In addition to reviewing the VAGO Report, the working group adopted a consultative approach and conducted a series of meetings with interested parties, many of whom have been active in the debates that have surrounded the management of the Reserve.

Key stakeholders consulted by the working group in the preparation of this report are as follows:

- The Hon Martin Pakula MP, Minister for Racing;
- Mr Tim Bull MP, Shadow Minister for Racing;
- Mr Brad Battin MP, Shadow Minister for Environment;
- Trustees appointed to manage the Caulfield Racecourse Reserve;
- Melbourne Racing Club;
- Cr. Jim Magee, City of Glen Eira
- The City of Glen Eira;
- Glen Eira Residents Association;
- Glen Eira Environment Group;
- Friends of Caulfield Park;
- Racing Victoria; and
- Department of Environment, Land, Water and Planning (Land, Planning and Approvals branch within the Port Phillip Region and the Legislative Unit).

The working group also completed an early morning tour of the Reserve to observe how horse training is conducted and what impact this has against the other Reserve purposes, specifically public recreational access.

### 3.2 Review

The working group was asked to review the department's and CRRT's progress to date against recommendations 1 – 14 of the VAGO report, detailed at **Appendix 1**.

The working group reviewed relevant submissions that had been provided to the department in the past, and any presentation material provided to the working group during the consultation phase.

The working group also examined governance structures such as the State Sports Centre Trust, the Melbourne and Olympic Parks Trust, and the MCG Trust. In addition, the Chairman also met with the Hon Steve Bracks, who is chairing the newly established Kardinia Park Reserve Trust.

The working group does not reflect on the professionalism of individual trustees. Instead, this report presents the findings of a review of the structure of CRRT and the management of the Reserve under this current arrangement.

## 4 Findings

### 4.1 General

The Caulfield Racetrack is a pillar of the horse racing industry in Victoria. As such, it plays a major role in the Victorian economy and provides a legitimate form of sport, recreation, and employment to thousands of Victorians and visitors. Horse racing has existed at the Reserve for over 130 years. It is important that horse racing continues to flourish at the Reserve. It is also important that community use of the Reserve for public park and recreation purposes is maintained and improved.

It became obvious during the review that the effectiveness of CRRT had been severely limited by the lack of definition around the responsibilities and accountabilities, the representative nature of the majority of the trustee appointments, and a legal view that to be binding, decisions of CRRT must be unanimous. These factors when combined with the current environment have effectively made CRRT unworkable. These circumstances may have contributed to the perceived poor performance of the CRRT.

CRRT is perceived, by many of the key stakeholders the working group heard from, to have managed public access poorly and to have allowed the “acquisition” of public land for training purposes to the detriment of the public park and recreation uses provided for under the restricted Crown grant. Community groups felt that they had poor access to the trustees, were not listened to and their views were ignored. They also commented on the lack of transparency surrounding CRRT’s decision-making, including no publishing of accounts or business plan and no public access to meetings.

The MRC has developed a master plan for the Caulfield Racecourse Reserve. Whilst this is not, in itself, relevant to the working group, it is informative as it provides for the removal of training activities at the venue. The existence of training at Caulfield is authorised by current leasing agreements with CRRT as landlord, for both the Neerim Road stables in the south-east corner and the Western stables in the south-west of the reserve. Training activities limit public access to the Reserve and occupy space that could otherwise be used for community purposes. This is a major cause of the concern that exists within the community.

CRRT and MRC have reached an impasse on the renegotiation of their principal lease covering amongst other things the main grandstand complex. Both parties acknowledged, when they met the working group, that there was no prospect of agreement being reached. It is untenable for one of the showcase race tracks of Victoria to be operating on Crown Land without a current lease. There is little doubt that the failure to execute a new lease is a fundamental issue and underlines the difficulties inherent in the existing land management structure.

Without exception, all stakeholders agreed that the current structure based on representative appointments does not work and creates potential and real conflicts of interest. All stakeholders were open to the concept of a new independent structure which conforms to modern governance standards and accountabilities.

Concerns have also been raised regarding the current land management arrangements, which are not seen to meet present day expected standards of corporate governance. This view is supported by policy advice from the Victorian Public Sector Commission (formerly the State Services Authority) and the Victorian Government Solicitor’s Office to the trustees, particularly in relation to representative appointments and associated conflict of interests.



## 4.2 Terms of Reference 1- Implementation to date of VAGO recommendations

Following consultation with a variety of key stakeholders, the working group finds that CRRT has not taken sufficient action to address VAGO's recommendations.

Of the nine recommendations assigned to CRRT, the working group has determined that CRRT has only partially completed four recommendations (2, 4, 5, and 6), despite repeated requests from the department to focus on the VAGO actions as a priority.

In regard to the remaining recommendations (1, 3, 7, 8, and 9), CRRT has advised the department that due to the ongoing challenges that exist in relation to its governance structure and effectiveness, and the likelihood that the trustees may be removed or CRRT restructured following this review, it has made a decision not to action these recommendations.

The *Reporting Framework* (see **Appendix 2**) which the department first provided to CRRT in May 2015 is designed to assist CRRT to implement VAGO's recommendations and to ensure that the department meets its commitment to introduce more rigorous oversight of the management of the Reserve and set a comprehensive reporting framework. The *Reporting Framework* lists each of the elements required to satisfy VAGO recommendations 1 to 9.

To date, CRRT has not utilised the reporting framework provided by the department, despite continued requests by the department.

Whilst there has been some progress, including the recent implementation of appropriate signage encouraging public access to the reserve whilst this review occurred, CRRT has not taken sufficient action to address VAGO's recommendations.

The working group finds that the department has successfully completed four of the six recommendations assigned to it by VAGO. The work done by this working group will address an additional recommendation assigned to the department (15); however the department is unable to complete recommendation 14 without CRRT completing recommendation 7.

Further detail regarding the status of VAGO recommendations is outlined in **Appendix 1**.

## 4.3 Terms of Reference 2 - Identify options for accelerating implementation

As indicated above, there is little progress on a number of issues and little prospect that further action will be taken by CRRT.

Due to the limitations imposed by the restricted Crown grant, neither the Minister nor the department can issue directions to CRRT to address any particular issue. The department has written requesting action on items but, other than the progress shown in **Appendix 1**, these requests have not been actioned.

It is open to the Minister to request the resignations of the trustees. If the trustees refuse to resign the Minister cannot remove the trustees except by an Act of the Victorian Parliament which revokes the restricted Crown grant.

If all the trustees agreed to surrender the restricted Crown grant and then resign this would resolve the fundamental issues plaguing the current land management structure and enable the establishment of a new, independent land manager with a modern governance structure and accountabilities (e.g. a legislation-specific trust).

Whilst the working group only met with three members of the CRRT including Greg Sword (Chair), Peter LeGrand (MRC) and Michael Lipshutz (City of Glen Eira), **it was felt that the trustees resigning may be a viable option if it helped resolve fundamental issues and acted as a precursor to a new, independent, properly constituted organisation appointed to manage the reserve.**

The trustees' resignations would avoid the need for legislation to revoke the restricted Crown grant.

#### **4.3.1 The department as interim land manager**

As per **4.3** above, in view of the breakdown in CRRT's ability to operate and effectively manage the Reserve, a possible option for the Minister to consider is to ask the trustees for their resignations.

The working group understands that if all the trustees agreed to surrender the restricted Crown grant and then resign, the Department of Environment, Land, Water and Planning would be the default land manager. **The department, as land manager, would be an interim arrangement as precursor to the establishment of a new independent trust or similar organisation as outlined in section 4.4.**

The department, as interim land manager, has significant advantages. It would enable discussions and negotiations with MRC to settle the lease and licence arrangements. **The Working Group understands that the department has a well-established lease determination process that involves the Valuer General Victoria. This matter could be resolved prior to handing the management of the Reserve to an appropriate independent organisation.**

Under the CLRA, any leases or licences finalised by the department during this time would need to be approved by the Minister and the Secretary. As the reservation purpose includes public park, the lease would also be required to undergo a parliamentary approval process under the provisions of section 17DA.

The working group felt that the history, complexity and volatility surrounding the Reserve make the department the most appropriate interim manager, as a first step to appointing a new body. It is considered unlikely that capable, well credentialed and independent people would accept appointment to a new body without these significant longstanding structural issues being first resolved.

### **4.4 Terms of Reference 3 - Identify alternative management arrangements**

**As stated earlier, there appears to be universal agreement that the current, anachronistic governance structure, which is representative in nature and has very limited, unclear accountabilities is no longer appropriate. There is strong support for an independent body with clear functions, accountabilities, transparency and governance to replace the restricted Crown grant.**

Over recent years, the City of Glen Eira, community groups and other stakeholders have raised concerns about a range of issues related to access and management of the Reserve, including the use of the Reserve predominantly for racing purposes to the detriment of community use and public access to the Reserve. **The creation of an independent body would provide the local community with confidence that the historical dominance of racing and training at the Reserve has been addressed by government.**

The new independent body could be:

- a separately legislated trust (the preferred option of the working group); or
- another legitimate option, such as a Committee of Management appointed under the CLRA.

Whether the new independent body be a separately constituted trust or a committee of management appointed under the CLRA, the same principles should be applied to the appointment of members i.e. that

they need to be independent and have the skills necessary to manage the Reserve in the interests of all stakeholders.

It is also considered that the ideal number of appointees is no more than seven.

#### 4.4.1 Preferred option for the Minister to consider

The working group considers that the most appropriate new land manager would be a separately legislated trust with specific accountabilities and functions.

This preference is driven by the advantages of a modern legislated trust and the view that a separately legislated trust would have the standing essential to attract people capable of managing one of Victoria's prime assets, in the balanced interests of all parties.

The working group therefore recommends the commencement of a legislative process that will:

- revoke the restricted Crown grant by Act of the Victorian Parliament (if the trustees have not already resigned and surrendered the Crown grant voluntarily); and
- introduce new legislation that establishes an independent trust, with a contemporary governance framework, for the management of the Reserve.

The structure of the new trust could be based on, or indeed mirror, that of some of the well regarded governing bodies that currently exist; State Sports Centre Trust, Melbourne and Olympic Parks Trust, MCG Trust and the newly established Kardinia Park Trust.

New site-specific legislation may, amongst other things, provide for:

- the establishment of the new trust;
- the appointment, remuneration, suspension, and removal of members of the new trust;
- addressing real or potential conflicts of interest of new trustees and the application of relevant parts of the *Public Administration Act 2004*;
- the functions, powers and duties of the new trust, including specific leasing and licensing powers;
- the Minister to make directions to the new trustees on their functions, duties and powers;
- appropriate financial management arrangements, including providing monies that are retained by the new trust (rather than going to the consolidated fund) and spent on the management and maintenance of the Reserve, and annual reporting under the *Financial Management Act 1994*;
- clear head of power to collect fees and charges;
- clarity and transparency on the use of the land for the three different purposes; and
- the inclusion of obligations of the new trust to manage defined parts of the land for the purposes of public park and recreation, including obligations regarding opening hours and ease of public access.

One option to delineate the different uses of the Reserve is to include a plan within the Act that defines the land that may be leased and licenced, and that land which is to be used for public park and recreation purposes. The detail of such a plan would reflect the negotiations with MRC and consultation with the community. Alternatively, the Act could provide a mechanism for a plan to be developed by the new trust and approved by the Minister.

Whilst specific establishing legislation would be required (as opposed to establishing a committee of management under the existing CLRA), the working group is of the view that this would be the most precise method of ensuring that the new land manager has the structure required to meet the challenges of the future and enable VAGO's recommendations to be implemented.

## **4.4.2 Other options considered**

### **4.4.2.1 General**

Should the trustees agree to surrender the restricted Crown grant and resign from their positions, or the Parliament passes legislation revoking the Crown grant, the Minister could appoint a committee of management under the CLRA. This could consist of newly appointed independent members or a currently existing organisation.

If the Minister wished to appoint a committee of management rather than a newly established independent trust, the working group would recommend that this be constituted along the same principles as outlined earlier in the preferred option (4.4.1).

### **4.4.2.2 Appoint an independent skills-based committee of management under the CLRA**

A skills-based committee of management would be subject to a three-yearly appointments process and would likely require Cabinet approval of appointments. Further, to ensure proper financial accountability for the Reserve, it would be important for the *Financial Management Act 1994* and related Standing Directions issued by the Minister for Finance to apply. This would require Instruction 1.2(b) to the Standing Directions to be amended to apply to the committee.

Whilst the working group acknowledges that independent, skills-based committees of management operate effectively throughout the State, the working group is of the view that a specifically legislated trust would be preferable, for the reasons set out in 4.4.1.

The working group considers the challenges and the opportunities presented at the Reserve to be unique and would be better addressed via site specific legislation, as opposed to the CLRA however, the working group acknowledges that a committee of management arrangement under the CLRA is a legitimate option.

### **4.4.2.3 Appoint the City of Glen Eira as committee of management under the CLRA**

The Minister is responsible for administering the CLRA and has a range of powers to assist in overseeing and influencing those appointed to manage Crown land on behalf of the state. Appointing a committee of management under the CLRA is a well-established delegated land management practice.

Whilst the working group acknowledges that Councils are established open space management bodies, and that the City of Glen Eira currently manages 11 Crown land reserves on behalf of the State, the working group notes that the City of Glen Eira has no racecourse management experience and has a strained relationship with MRC.

In addition, the working group considers the challenges and the opportunities presented at the Reserve to be unique and would be better addressed via site specific legislation, as opposed to the CLRA. As such, the working group does not recommend the appointment of the City of Glen Eira as land manager.

### **4.4.2.4 Appoint Parks Victoria as committee of management under the CLRA.**

Whilst the working group acknowledges that Parks Victoria has a proven record of engaging with the community on a range of matters and manages multi-use facilities such as Albert Park, the working group notes that Parks Victoria has no racecourse management experience and predominantly manages Crown land reserves that are Regional or State significant areas of high environmental value.

In addition, the working group considers the challenges and the opportunities presented at the Reserve to be unique, and would be better addressed via site specific legislation, as opposed to the CLRA. As such, the working group does not recommend the appointment of Parks Victoria as land manager.

#### **4.4.2.5 Amend the State Sports Centre Trust Act 1994 to appoint the State Sports Centre Trust as land manager.**

Whilst the working group acknowledges that the State Sports Centre Trust (SSCT) already manages significant sporting facilities (e.g. Melbourne Sports and Aquatic Centre and Lakeside Stadium), that the powers and functions of the SSCT are clearly stated in the *State Sport Centres Trust Act 1994*, and the Minister for Sport has the ability to direct SSCT to carry out its functions under legislation, the working group considers that the SSCT does not have experience managing a Reserve that is both a sporting facility (racetrack) and a community use reserve.

In addition, the working group considers the challenges and the opportunities presented at the Reserve to be unique, and would be better addressed via site specific legislation, as opposed to the *State Sport Centres trust Act 1994*. As such, the working group does not recommend the appointment of the SSCT as land manager.

#### **4.4.2.6 Appoint a representative community based committee of management for the Reserve under the CLRA.**

Whilst the working group acknowledges that representative community-based committees of management operate effectively throughout the State, the working group is of the view that, given the dynamics, history and unresolved issues at the Reserve, a specifically-legislated trust would be preferable.

A representative based committee of management may be at risk of similar issues to those facing the current trustees, in particular conflicts of interest due to the representation of interest groups.

In addition, the working group considers the challenges and the opportunities presented at the Reserve to be unique, and would be better addressed via site specific legislation, as opposed to the CLRA. As such, the working group does not recommend the appointment of a community based committee of management as land manager.

#### **4.4.2.7 Appoint the MRC as committee of management under the CLRA**

The Minister could appoint the MRC as the land manager of the Reserve. Whilst the working group acknowledges that the MRC has the expertise to undertake such a task, it does not consider this to be a viable option. There is a strong perception amongst the community that racing already dominates the use of the Reserve to the detriment of its other proclaimed purposes and such an appointment would accentuate those perceptions and not be accepted by the community.

In addition, such an arrangement would place the MRC in a position where it was conflicted in virtually every decision it made as the appointed land manager.

#### **4.4.2.8 Introduce new legislation to appoint the MRC as land manager, under arrangements similar to those in place at Flemington Racecourse**

The *Victorian Racing Club Act 2006*, administered by the Minister for Racing, sets out the arrangements for the Victorian Racing Club's (VRC) lease of the Crown land at Flemington, including maintenance requirements and ministerial power to make regulations.

The land at Flemington is expressly reserved for the purpose of a public racecourse and other purposes connected with and for the benefit of horse racing in Victoria, whereas the Crown land at Caulfield is reserved for the purpose of a racecourse and other purposes.

The *Victorian Racing Club Act 2006* has provision for the State to enter into a lease up to 99 years with the VRC.

Whilst the working group acknowledges the arrangements in place for Flemington Racecourse, the working group does not consider this to be a good outcome, as providing the MRC with a 99 year lease and

amending the reservation status to give horse racing greater prominence may exacerbate the real and perceived perception that racing dominates the Reserve over community uses.

## 5 Observations

The working group considers that there are a number of issues that need to be addressed at the Reserve in addition to the appointment of a new land manager.

The following are observations made by the working group that do not specifically relate to its terms of reference but are worthy of comment:

- MRC should have a lease of sufficient length to give it certainty and surety for its planning. Currently it does not have a lease in place for the grandstand area and this needs to be rectified.
- Training facilities currently exist that have never been licensed or under lease. Leases issued under the provisions of section 22 of the CLRA currently exist for the Western Stables and the Neerim Road Stables and expire on 31 March 2019 and 22 April 2029 respectively.
- Where training activities are conducted on unleased or unlicensed Crown land, investigation should be undertaken to ensure adequate insurance coverage is in place.
- Areas that are occupied but not under existing (or previous) lease or licence arrangements should be leased or licensed to avoid doubt and to enhance transparency. However, leases or licences should not be issued that would interfere with the cessation of training at the reserve and the return of the land to community use within a relatively short timeframe.
- MRC has indicated that it wants to remove training from Caulfield within five years of signing a new long term lease. In the event that training is removed there needs to be a requirement on MRC to reinstate these untenured areas for use as public open space.
- The Minister could consider making a condition of any new lease or licensing arrangement that the training be removed from the Reserve within five years of signing of the new lease or licence.
- As part of any lease negotiation, consideration should be given as to whether MRC should make a capital commitment to the development of community sporting and recreation facilities inside the Reserve, once training has been removed.
- MRC has developed quite a comprehensive master plan and CRRT has also commenced such a task. The Minister should consider making the development of such a plan, which takes into account interests of all stakeholders, an urgent priority for the new land manager.



# Appendix 1

## Implementation of VAGO recommendations

Recommendation	Progress to Date
That as a priority, the trustees, in consultation with the department:	
1. Determine the trustees' functions, roles, responsibilities, powers and obligations through an analysis of the existing legal framework and apply this to the management of the Reserve.	CRRT has made a decision not to action this recommendation.
2. Develop and adopt a governance framework, consistent with contemporary standards, that includes the following key elements: <ul style="list-style-type: none"> <li>a statement of duties and obligations of trustees, management plans, a mission statement, business plan and a comprehensive conflict of interest policy</li> <li>business rules for administering the trust and making decisions</li> <li>an induction program for new trustees</li> <li>public reporting on the trust activities including financial performance</li> </ul>	<p>The working group considers that CRRT has successfully:</p> <ul style="list-style-type: none"> <li>adopted a set of business rules for administering the restricted Crown grant and making decisions;</li> <li>developed a conflict of interest register; and</li> <li>developed a statement of duties and obligations of trustees.</li> </ul> <p>CRRT is to be commended for developing a comprehensive set of business rules, with the support of the department and the Victorian Government Solicitor's Office, that reflect good modern governance standards, which the working group understands was a very challenging task given the divisions that exist within CRRT.</p> <p>The working group considers that CRRT <u>have not</u>:</p> <ul style="list-style-type: none"> <li>developed a management plan;</li> <li>developed a business plan;</li> <li>developed an induction program for new trustees; and</li> <li>outlined a process for public reporting on CRRT's activities including financial performance.</li> </ul>
3. Develop an agreed comprehensive action plan to implement the above governance framework that: <ul style="list-style-type: none"> <li>outlines responsibilities and milestones</li> <li>identifies adequate resources for completion</li> </ul>	CRRT has made a decision not to action this recommendation.
4. Identify public safety risks and develop strategies to manage those risks	The working group considers that CRRT <u>has not</u> identified public safety risks and developed strategies to manage those risks.

That the trustees of the Caulfield Racecourse Reserve also:	
<p>5. Implement a land management strategic plan that contains clear and measurable objectives that define future land use and development consistent with the purposes in the Crown grant.</p>	<p>CRRT engaged landscape architects John Patrick Pty Ltd to prepare a Strategic Land Management Plan (SLMP). The working group has reviewed two draft SLMPs, and understands that the SLMP process is well advanced with public consultation taking place during 2015, and further community consultation expected to occur in 2016.</p> <p>The working group considers this pleasing news as it will assist to improve public access to the Reserve and to ensure that the Reserve is managed in accordance with all of its purposes. It will also assist to identify which areas of the land are to be utilised as public open space and which the land are to be leased/licensed to MRC in the future.</p>
<p>6. Upgrade public access and improve signage at all entry access points and within the Reserve to a standard that improves safety and encourages increased community use</p>	<p>CRRT has obtained the views of a number of community stakeholders on the potential land use, development priorities and alternative public access points to the reserve via the community consultation process for the SLMP.</p> <p>CRRT has also implemented vastly improved signage at access points promoting the permitted activities within the reserve and the opening times. This is welcome news, since ongoing representations continue to be made to the department from the community and the City of Glen Eira concerning lack of public access to the Reserve.</p> <p>The working group considered the installation of new signs promoting access to the Reserve to be a high priority for the local community and commends the CRRT for implementing the signs.</p>
<p>7. Develop a comprehensive community engagement strategy to identify community needs and the community's views on potential future land use and development priorities</p>	<p>CRRT has made a decision not to action this recommendation.</p> <p>CRRT has not developed a comprehensive community engagement strategy as outlined in the VAGO recommendation.</p> <p>The consultation undertaken thus far by CRRT has been ad hoc, and not part of a comprehensive community engagement strategy.</p>
<p>8. Finalise and seek approval to amend regulations governing land use at the Reserve to ensure they are an effective tool for the care, protection and management of the Reserve</p>	<p>CRRT has made a decision not to action this recommendation.</p> <p>CRRT advises the working group that it has been unable to reach an agreement with MRC whereby either party can agree on the areas that should be maintained, at what frequency and at what cost.</p>
<p>9. Develop and enforce a maintenance and new works program consistent with the proposed land management strategic plan</p>	<p>CRRT has made a decision not to action this recommendation.</p>

to:

- identify and quantify work to be undertaken
- specify standards to be met
- detail frequency and location of works
- acquit work undertaken and costs incurred
- implement regular reporting against progress.

That as a priority, the department:

10. Introduces more rigorous oversight of the Caulfield Racecourse Reserve

The department has:

- established a detailed reporting framework, as set out in recommendation 11;
- provided a letter from the Secretary of the department to CRRT, which explains the purpose of the reporting framework and sets oversight expectations regarding written progress reports from CRRT;
- attended all CRRT meetings to observe CRRT's operation and performance; and
- met regularly with the Chair and Secretary of CRRT to discuss current and emerging issues.

11. Establishes a comprehensive reporting framework including:

- reports on progress on achieving land use and development priorities
- reports on progress against the business plan
- financial statements prepared in accordance with Australian Accounting Standards

The department has developed a 'Reporting Framework' (**Appendix 2**) and provided it to CRRT. The framework, which forms the basis of the department's increased oversight of the management of the Reserve, does the following:

- itemises the actions to be taken by CRRT to satisfy recommendations 1 to 9 and, in future, to ensure that the Reserve is managed in accordance with modern standards of good public sector governance; and
- specifies quarterly written progress reports by CRRT. It also includes quarterly discussions between representatives of the department and the Chairperson and Secretary of CRRT, and an annual meeting between senior departmental executives and CRRT.

The framework establishes a performance monitoring and reporting regime for the management of the Reserve. The reporting framework enables both CRRT and the department to more clearly gauge CRRT's progress in implementing each of the elements in recommendations 1 to 9.

Its purpose is to ensure that:

- appropriate action is taken by CRRT to satisfy the recommendations; and
- in future, the Reserve is managed in accordance with modern standards of good public sector governance, consistent with the principles and obligations in the *Public Administration Act 2004*.

The framework sets out:

- reporting arrangements, in the form of written reports and meetings; and
- reporting elements, which focus on recommendations 1 to 9 and related requirements.

	Despite repeated requests, the working group notes that CRRT has not adopted the reporting framework for its use, and has only provided brief ad hoc updates regarding the VAGO actions to the department.
12. Works with the trust to secure the commitment of all trustees to comply with a set of governance standards that reflect contemporary practice.	The department worked with CRRT to secure its commitment to develop and comply with modern governance standards. The department has also been meeting regularly with representatives of CRRT to discuss progress towards implementation of the recommendations.
That the department also:	
13. Closely monitors the trust's progress in implementing its governance framework and actively supports the trust in the development process	<p>The department provided a range of guidance materials to CRRT that it has developed to assist portfolio agencies to meet their legal and good practice obligations. The guidance materials included:</p> <ul style="list-style-type: none"> <li>• Gifts, benefits and hospitality Model Policy;</li> <li>• Code of conduct Model Policy;</li> <li>• Guidance Note – Code of Conduct</li> <li>• Dispute Resolution Model Policy;</li> <li>• Meetings and Decisions Model Policy;</li> <li>• Conflict of interest Model policy;</li> <li>• Guidance Note – Conflict of Interest (about the model policy);</li> <li>• Guidance Note – Conflict of Interest (An overview);</li> </ul> <p>To further assist CRRT in its development of governance documentation, the department encouraged CRRT to obtain additional governance resources from On Board, the department's governance website for portfolio agencies. The department also provided feedback to CRRT on its SLMP and the set of business rules it adopted, including advising CRRT to obtain its own independent legal advice regarding decision making of CRRT.</p>
14. Ensures the trustees' revision and update of regulations for the Caulfield Racecourse Reserve are undertaken in accordance with the appropriate administrative procedures so that the regulations are valid and enforceable	<p>The department advised the working group that it has not completed this action, as it is dependent on CRRT completing recommendation 7, which CRRT has indicated that it will not be completing at this time.</p> <p>With the inability of the department or the Minister to instruct CRRT to complete recommendation 7, there is little the department can do.</p> <p>The department have indicated its intention to complete this action in partnership with a new land manager.</p>
15. Explores alternative management arrangements for the Caulfield Racecourse Reserve so that it is better placed to meet the racing and community purposes of the Crown grant.	Not considered by the working group, the working group notes that its report will enable the department to complete recommendation 15.

## Appendix 2

### VAGO recommendations: Management and Oversight of Caulfield Racecourse Reserve

#### Reporting Framework - Summary Chart of action items for the TRUSTEES

##### **Background**

This *Reporting Framework* is provided by the Secretary of the Department of Environment, Land, Water and Planning (**DELWP**) to the Trustees of the Caulfield Racecourse Reserve in accordance with **recommendation 10** ('introduce more rigorous oversight') and **recommendation 11** ('establish a comprehensive reporting framework') of the September 2014 report of the Office of the Victorian Auditor-General (**VAGO**) into the 'Management and Oversight of the Caulfield Racecourse Reserve'.

##### **Purpose**

The purpose of this *Reporting Framework* is to ensure that:

- appropriate action is taken by the Trustees to satisfy **recommendations 1 to 9** of the VAGO report (and related requirements); and
- moving forward, the Caulfield Racecourse Reserve is managed in accordance with modern standards of good public sector governance, consistent with the principles and obligations in the *Public Administration Act 2004*.

##### **Reporting arrangements**

The reporting arrangements are as follows:

###### **Written reports**

- (a) On a quarterly basis, the Trustees will provide the Secretary of DELWP with a detailed, written report on their progress in achieving each of the 'reporting elements' listed below.
- (b) To ensure the successful implementation of this *Reporting Framework*, the Secretary (or his/her representative) may from time-to-time advise the Trustees of the need to provide an additional written report in relation to some or all of the 'reporting elements'.

###### **Meetings**

Meetings will occur between representatives of DELWP and the Trustees and/or their representatives to discuss the Trustee's progress in implementing the *Reporting Framework* and other matters relating to the good governance of the reserve, as follows:

- (c) A meeting will occur on at least quarterly between DELWP governance officers and the Trustee's Chairperson and Secretary. The corresponding written report (see above) will be provided to the Secretary of DELWP at least 10 business days prior to the scheduled date of the meeting (unless a shorter timeframe is otherwise agreed).
- (d) A meeting will occur at least annually between senior DELWP executives and the Trustees.
- (e) To ensure the successful implementation of this *Reporting Framework*, the Secretary (or his/her representative) may from time-to-time advise of the need for additional meetings to occur in relation to some or all of the 'reporting elements' and other matters relating to the good governance of the reserve.

###### **Updating of Reporting Framework**

From time-to-time the Secretary may update this *Reporting Framework* to ensure that it continues to best meet its purpose.

## Reporting elements

The reporting elements, which focus on VAGO's **recommendations 1 to 9** and related requirements, are as follows:

Rec.	VAGO recommendation	REPORTING ELEMENT	Timeframe	PROGRESS
That as a priority, the <b>Trustees</b> of the Caulfield Racecourse Reserve, in consultation with the Department:				
1.	<b>Legal framework</b> <b>Determine</b> the trust's functions, roles, responsibilities, powers and obligations through an analysis of the existing legal framework and <b>apply</b> this to the management of the reserve.			
		1(a) Determine functions		
		1(b) Determine roles		
		1(c) Determine responsibilities		
		1(d) Determine powers		
		1(e) Determine obligations		
		1(f) <b>Apply</b> above legal framework.		
2.	<b>Governance framework</b> <b>Develop</b> and <b>adopt</b> a governance framework, consistent with contemporary standards, that includes the following key elements:			
	<ul style="list-style-type: none"> <li>a statement of duties and obligations of trustees, management plans, a mission statement, business plan and a comprehensive conflict of interest policy</li> </ul>	2(a) Statement of duties and obligations of trustees		
		2(b) Management plans		
		2(c) Mission statement		
		2(d) Business plan, including (as per recommendation 11, Reporting Framework):		



<i>Rec.</i>	<i>VAGO recommendation</i>	<i>REPORTING ELEMENT</i>	<i>Timeframe</i>	<i>PROGRESS</i>
		<ul style="list-style-type: none"> <li>Strategic plan</li> </ul>		
		<ul style="list-style-type: none"> <li>Annual business plan</li> </ul>		
		2(e) Comprehensive conflict of interest policy		
	<ul style="list-style-type: none"> <li>business rules for administering the trust and making decisions</li> </ul>	2(f) Business rules for administering the trust and decision-making, including (but not limited to) board policies on:		
		<ul style="list-style-type: none"> <li>board meetings and decision-making</li> </ul>		
		<ul style="list-style-type: none"> <li>code of conduct</li> </ul>		
		<ul style="list-style-type: none"> <li>gifts, benefits and hospitality (responding to / making offers of gifts, benefits or hospitality, internal or external)</li> </ul>		
		<ul style="list-style-type: none"> <li>dispute resolution</li> </ul>		
		<ul style="list-style-type: none"> <li>performance assessment.</li> </ul>		
		<ul style="list-style-type: none"> <li>conflict of interest policy, as listed above in 2(e).</li> </ul>		
	<ul style="list-style-type: none"> <li>an induction program for new trustees</li> </ul>	2(g) Induction program including: <ul style="list-style-type: none"> <li>induction program session(s)</li> <li>induction package</li> <li>one on one introductory session with chair</li> <li>mentoring arrangement.</li> </ul>		
	<ul style="list-style-type: none"> <li>public reporting on trust activities including financial performance</li> </ul>	2(h) Public reporting on trust activities, including: <ul style="list-style-type: none"> <li><b>Annual report to be provided to the Minister and subsequently published on the Trustees website. (Report to cover the matters specified by DELWP, based on items in the model report issued by the</b></li> </ul>		

<i>Rec.</i>	<i>VAGO recommendation</i>	<i>REPORTING ELEMENT</i>	<i>Timeframe</i>	<i>PROGRESS</i>
		Department of Premier and Cabinet) <ul style="list-style-type: none"> <li>other public reporting as advised by DELWP.</li> </ul>		
		2(i) Public reporting on financial performance: <ul style="list-style-type: none"> <li>as advised by DELWP, to be included in annual report (above)</li> <li>also note requirements in relation to financial statements (next below).</li> </ul>		
	<ul style="list-style-type: none"> <li>PLUS (as per recommendation 11, Reporting Framework):</li> </ul>	2(j) <b>Financial statements</b> prepared in accordance with Australian Accounting Standards (as per recommendation 11), including: <ul style="list-style-type: none"> <li>Annual statements</li> <li>Other statements as advised by DELWP.</li> </ul>		
	<ul style="list-style-type: none"> <li>PLUS (as per recommendation 11, Reporting Framework):</li> </ul>	2(k) <b>Annual audit</b> by VAGO.		
	<ul style="list-style-type: none"> <li>PLUS (as per recommendation 11, Reporting Framework):</li> </ul>	2(l) Other performance and/or financial reports, as advised by DELWP.		
	<ul style="list-style-type: none"> <li>PLUS (as per recommendation 11, Reporting Framework):</li> </ul>	2(m) Compliance with any Ministerial statement of expectations, directions, guidelines, etc. issued by the Minister for Environment, Climate Change, and Water.		
<b>3.</b>	<b>Action plan (governance framework)</b> Develop an agreed comprehensive <b>action plan</b> to implement the above governance framework that:			
	<ul style="list-style-type: none"> <li>outlines responsibilities and milestones</li> </ul>	3(a) Agreed action plan with responsibilities and milestone		
	<ul style="list-style-type: none"> <li>identifies <b>adequate resources</b> for completion</li> </ul>	3(b) Adequate resources for completion of action plan		

<i>Rec.</i>	<i>VAGO recommendation</i>	<i>REPORTING ELEMENT</i>	<i>Timeframe</i>	<i>PROGRESS</i>
	<b>Land management strategic plan</b> Implement a <b>land management strategic plan</b> that contains clear and measurable objectives that define future land use and development consistent with the purposes in the Crown grant.			
		5(a) Develop a land management strategic plan with clear and measurable objectives		
		5(b) <b>Implement</b> land management strategic plan		
	<b>That the <u>Trustees</u> of the Caulfield Racecourse Reserve also:</b>			
<b>4.</b>	<b>Public safety</b> Identify <b>public safety risks</b> and develop strategies to manage those risks			
		4(a) Identify public safety risks		
		4(b) Develop strategies to manage public safety risks identified		
<b>5</b>	<b>Land management strategic plan</b> Implement a <b>land management strategic plan</b> that contains clear and measurable objectives that define future land use and development consistent with the purposes in the Crown grant.			
		5(a) Develop a land management strategic plan with clear and measurable objectives		
		5(b) Implement land management strategic plan		
<b>6.</b>	<b>Community use</b> Upgrade <b>public access</b> and improve <b>signage</b> at all entry access points and within the reserve to a standard that improves safety and encourages increased community use.			
		6(a) Upgrade public access		

<i>Rec.</i>	<i>VAGO recommendation</i>	<i>REPORTING ELEMENT</i>	<i>Timeframe</i>	<i>PROGRESS</i>
		6(b) Improve signage to encourage community access/use and improve safety		
<b>7.</b>	<b>Community engagement strategy</b> Develop a comprehensive <b>community engagement strategy</b> to identify community needs and the community's views on potential future land use and development priorities.			
		7(a) Community engagement strategy that identifies community needs/ views on future land use & priorities		
<b>8.</b>	<b>Regulations</b> Finalise and seek approval to amend <b>regulations</b> governing land use at the reserve to ensure they are an effective tool for the care, protection and management of the reserve.			
		8(a) Finalise proposed amendment to regulations		
		8(b) Seek approval for amendment		
	<ul style="list-style-type: none"> <li>PLUS (as per recommendation 14)</li> </ul>	8(c) Liaise with DELWP to ensure that the revision and updating of the regulations is undertaken in accordance with the appropriate administrative procedures, so that the recommendations are valid and enforceable.		

<i>Rec.</i>	<i>VAGO recommendation</i>	<i>REPORTING ELEMENT</i>	<i>Timeframe</i>	<i>PROGRESS</i>
<b>9.</b>	<b><i>Works program</i></b> Develop and enforce a <b>maintenance and new works program</b> consistent with the proposed land management strategic plan to: <ul style="list-style-type: none"> <li>• identify and quantify work to be undertaken</li> <li>• specify standards to be met</li> <li>• detail frequency and location of works</li> <li>• acquit work undertaken and costs incurred</li> <li>• implement regular reporting against progress.</li> </ul>			
		9(a) Develop works program consistent with proposed land management strategic plan		
		9(b) Enforce works program		

