

The Secretary  
Legislative Council Select Committee on Public Land Development  
Parliament of Victoria  
Spring Street  
Melbourne 3002.

24th September 2007

Dear Members,

Re: Submission to the Legislative Council Select Committee  
on Public Land Development

The Caulfield Racecourse Reserve is crown land. This land should be equitably used for three substantial purposes consistent with its crown grant. The reserve should also be visible

I believe that trustees of this reserve and, any crown land, should be required to report and account to parliament annually as to how the crown land is used to meet and appropriately balance all its intended purposes. Trustees should also be required to produce, on a regular basis, a plan showing how they will cater for intended uses to meet all three core purposes.

Also any revenue from non-core activities, including commercial activities on crown land or crown land used to support non-core activities, should be based on commercial rents and then be applied by the Trustees to meet core activities.

No part of crown land should be alienated and infrastructure including buildings on crown land should be available and subsequently designed to equitably meet all core purposes.

Existing buildings should be equitably made available for core uses in priority to commercial uses.

Where appropriate, and subject to appropriate review, crown land could be equitably swapped for private sector land where a significant public benefit can be established before a public tribunal.

Responsibility for planning, development and revenue raising from crown land should not be allowed to be delegated by trustees.

Councils should be required to regularly report to a relevant Minister to ensure that crown land within its municipality is effectively used to benefit the community.

Existing building on crown land should be modified using revenue from the crown land to meet all core purposes.

Where a "not for profit" organisation includes non-core commercial activities then those activities should be allowed to take place on crown land on the basis that the cost or rental of land is included and charged at commercial equivalence.

Cost recovery for use of crown land should exclude the value of the crown land when the land is used for core activities.

Attached are copies of some relevant documents, and would appreciate the opportunity to personally address the Committee regarding matters raised by me.

Yours sincerely

Peter Brohier

Attachments

29th May 2007.

Peter Lawrence

Chairman

Trustees of the Caulfield Racecourse Reserve

Dear Peter

Just a few points as requested.

I have copied to the relevant minister's, the Mayor of Glen Eira and the Chairman of the MRC.

The Trustees of the reserve have a special opportunity, and we believe, responsibility, to balance equitably the interest of racing with those of a public park and recreational facility. Presumably that is why the Trustees have been entrusted to administer this very valuable public crown land reserve.

This reserve therefore should be open to the maximum public use and view, consistent with its three designated uses.

The experience at Randwick and elsewhere indicates that open visibility of the track can be safely achieved. Land rising near the existing Queens Road fence provides an unrivalled opportunity to showcase the reserve. Public reserves are usually clearly visible from outside — if it can be done at Randwick, it can be done at Caulfield.

As racecourse attendances drop it is more critical that this “front window” be properly “dressed” to attract attention. It is a free advertisement for the sport of kings.

As the MRC moves towards non-core racing (but income generating) activities it is reasonable to expect that the Trustees levy commercial rents on those using the reserve. We have no doubt that the MRC's commercial activities enhance the use of the reserve — but the revenue should be utilized to enhance the reserve's other two purposes, as contained in the crown grant. For over 100 years it seems the Reserve has been allocated to only one of the beneficiaries of the crown grant. This could be immediately rectified, and compensated for.

If a minimal 1% return was obtained the revenue would be \$10 million a year. By borrowing against this guaranteed income the reserve could immediately spend some \$100 million on recreational facilities.

We believe such a development is both practical, and inevitable.

Council is presently debating its capacity to finance, inter alia, new swimming pools for the city. By utilizing the resources at their disposal the Trustees would reduce the burden on ratepayers and better balance the distribution of the assets under their jurisdiction. Council

would be well justified in requesting such an equitable distribution from the Trustees, especially if the funds are specified for sporting facilities that would be shared by a wider community than just Glen Eira.

By following this course the Trustees would develop facilities that would enhance the reserve for the purposes specified in the crown grant, including commercial activities, and help ameliorate the dearth of sporting facilities in this area. (You may have noticed the publicity surrounding the illegal use of the adjacent East Caulfield Reserve by some Jewish youths last week – Progress Press and A Current Affair.) This conglomeration of sporting facilities would be advantaged by its excellent location, its proximity to a public transport hub and the prime dormitory suburbs of South Eastern Metropolitan Melbourne. Many facilities are close to the racecourse, Monash University and a number of public and private schools.

The MRC plan is one view. It is up to the Council, who have unanimously voted in favour of balancing the interests, and the wider community to put an alternative plan.

The Trustees' obligation is to balance the interests of all of the parties.

We also remind you of our alternative proposal, involving the equitable swapping of MRC land at the western side of the reserve for the Northern Crown Land. By leaving the eastern and southern ends for community recreation purposes (funded by the Trustees) the MRC would be free to develop shared commercial/racing activities to the north, including car-parking and direct underground access to the Caulfield Station. The centre of the course could become a low-rise botanical garden designed for co-use by racing and the community — similar to, but less intense than, Happy Valley.

Peter, I hope this will allow you and the MRC to more fully understand the big vision of these plans, and to examine ways that the MRC plan may be applied consistent with equal sharing of the reserve. The MRC, in partnership with the community. It has a great ring to it!

We look forward to our meeting with you and the MRC Chairman,

Sincerely,

Peter Brohier and Frank Penhalluriack.  
Peter B. Lawrence  
Chairman of Trustees  
Caulfield Racecourse Reserve Trustees

12th July 2007

Dear Peter

Thank you for your letter of the 19th June 2007 and the copy of the crown grant sent to us, as requested.

As Frank is undergoing a minor medical procedure I have not been able to show this letter to him. Can you regard this letter as solely comprising some interim views.

The planning and consultative process engaged in by the MRC described by you seems to us appropriate, including public and council consultation, to develop the interests of the club.

But there are another two primary interests of equal significance, that of, the development of public recreation facilities and a public park. The same level of involvement in planning and consultation seems to us to be required for each of these purposes, not just for racing.

We assume that the Trustees did not delegate their function to the MRC in this regard. If they did so, and could do so, is it desirable that the planning for the needs of all stakeholders be delegated to only one of the stakeholders, and if so, under what parameters? It would seem reasonable to us that the racing industry would maintain, and have an obligation to maintain, as paramount, the interests of their members.

The Trustees would not have a similar obligation. It seems to us that the trustees would need to actively continue, collectively, as representatives of the wider community to directly balance the use of the reserve for the three purposes outlined in the crown grant. This seems even more important when one of the stakeholders may increase commercialised activity that seems to be peripheral to core racing activities, given the specified uses described in the crown grant. The task of the Trustees is very important.

Assuming no delegation, we ask that the Trustees now fund and commence a similar process to that conducted by the MRC in respect of the other two purposes outlined in the crown grant and then reconsider their decision as to how this significant reserve is used.

We have looked at the copy of the grant that you have kindly provided and have found another paragraph that seems to help clarification of three uses for the reserve, rather than just two.

[IMAGE]

From the deed and the other documents we are unable to understand why one purpose, namely "racing" should remain paramount. We personally would like to see the Caulfield Racecourse be the best in the Southern Hemisphere but it seems that it can be so if the whole of the Reserve is carefully planned in a way to reflect multiple uses.

Our past political leaders have demonstrated significant foresight by planning both a public park, recreation reserve and racecourse in a location where its use and revenue could be maximised. Each on-going regular activity would benefit the other.

A strong focus of the Trustees on the three uses could see potential opportunities for the relocation of say the flower show to the reserve actively considered and the establishment of significant recreational activities.

At this stage this very valuable reserve cannot be even seen as is the case with most other parks. The opening up of visibility of the reserve at the Station Street side to which you refer as a positive outcome of the master plan will, in the main, allow just visibility of the rear of two new multi-story car parks proposed for the Reserve.

The open vista, as a result of our lobbying on a previous occasion, will be then be severely reduced.

If the opening of the "front window" is necessary why is it not in respect of the remaining 75% or so of the perimeter fence. We were told that Randwick received nothing but praise when they opened up a significant part of their perimeter fencing.

We have no objection to discussions between the MRC and the Council officers to improve the Queens Avenue embankment and footpath, but in the end, visibility over the Reserve at the Queens Avenue end and the Neerim Road side is a matter for the Trustees. About \$1billion of public reserve land should, in our view, not be hidden by corrugated iron. This barrier will to act against the interests of all three purposes outlined in the grant.

Peter, your response does not deal with the equitable land swap proposal and the need to an adequate financial return from commercial activities being shared between the three purposes designated.

These seem to us important matters that have the capacity to have positive benefits to all stakeholders and the wider community. It may also allow the MRC to have undivided use of the improvements on the Reserve made by the MRC but which now, being on crown land, may need to be shared.

This reserve is a very sizable public asset. Any reasonable doubt about its use and or other matters should be promptly resolved.

May we suggest that the Trustees or other authority, to which this letter is copied, may wish to consider seeking a declaration from the appropriate tribunal regarding the planning role of the Trustees, their revenue earning capacity and application of such revenue, interpretation of the crown grant regarding the number of uses of the Reserve, co-use of racing facilities with other recreation services, commercial uses and visibility of the reserve.

We reconfirm our previous request to meet you and the Chairman of the MRC to further our endeavours.

Yours sincerely

Peter Brohier

10th September 2007.

Mr Peter Lawrence  
Chairman  
Caulfield Racecourse Reserve Trustees  
Bell Potter  
Collins Street  
Melbourne 3000. By  
email:plawrence@bellpotter.com.au

Dear Peter,

Re: Caulfield Racecourse Reserve

Thank you for your letter of the 30th August 2007.

In our last letter to you we said, "The planning and consultative process engaged in by the MRC described by you seems to us appropriate, including public and council consultation, to develop the interests of the club.

"But there are another two primary interests of equal significance, that of, the development of public recreation facilities and a public park. The same level of involvement in planning and consultation seems to us to be required for each of these purposes, not just for racing."

We had no idea that the MRC was acting as the delegate of the Trustees in developing the Reserve. If we had known this important material fact we would have taken a far different approach to this process.

To now deal with the other matters in your letter:

#### Purpose of the Grant

Glen Eira Council papers, released a few days ago, refer to senior counsel's view that the deed refers to three uses and not two. It seems open to speculation whether this makes significant material difference to the intended purpose of the grant. What remains highly relevant is the allocation of available resources to meet parkland and recreational purposes.

#### Planning and Development of the Reserve

The role of the Trustees is one of balancing the interests of the beneficiaries of the Crown Grant. We were not aware of the deed, or the fact that the MRC, in its consultative role, held and acted with delegated authority from the Trustees.

- Can you please send us a copy of this deed?
- During the master plan's developmental stage when was the MRC acting as your delegate and when it was acting in its own right?
- On what specific directions from the Trustees?
- What conditions regarding revenue raising, and its distribution, are in place under this delegation to meet the needs of each of the three purposes?

- Was the Glen Eira Council or its predecessor also a contender for this delegation?
- Was any non-stakeholder considered for this delegation?
- Was any fee involved; and
- Why was the MRC chosen?

Without knowledge of the contents of the deed this delegation would seem to place the MRC in a very difficult position to balance competing interests.

We said in our previous letter that:

"We assume that the Trustees did not delegate their function to the MRC in this regard. If they did so, and could do so, is it desirable that the planning for the needs of all stakeholders be delegated to only one of the stakeholders, and if so, under what parameters? It would seem reasonable to us that the racing industry would maintain, and have an obligation to maintain, as paramount, the interests of their members.

"The Trustees would not have a similar obligation. It seems to us that the trustees would need to actively continue, collectively, as representatives of the wider community to directly balance the use of the reserve for the three purposes outlined in the crown grant. This seems even more important when one of the stakeholders may increase commercialised activity that seems to be peripheral to core racing activities, given the specified uses described in the crown grant. The task of the Trustees is very important."

The proposed division of the reserve referred to in your letter, and endorsed by the trustees, also seems to act against the undivided whole of the reserve being allocated for multiple purposes under the grant.

We have found nothing in the grant that would make racing a "paramount" purpose with other purposes "secondary", as suggested in your letter. Can you confirm where this view comes from and are we to assume that all relevant racing purposes will need to be met before any revenue is to be made available for the other purposes?

Also, who will make this revenue allocation — the trustees directly, or the MRC as delegate? It remains our view that the role placed on the MRC, despite their best endeavours, cannot effectively allow for the advancement of sufficient, well funded and developed independent, contrary views to be presented directly to the Trustees. It is therefore unlikely that the Reserve will be developed for all three purposes,

We regard the MRC's proposed use of a small section of the Reserve for a passive public park as totally inadequate, and not in keeping with the intention of the grant nor use of a valuable public resource, possibly now worth about \$2 billion. Without any revenue allocation even this token area may never be developed — other than possibly to provide overflow car parking for the MRC's various functions and activities. The opportunity for three significant complementary uses will be forever lost.

#### Visibility

We await the final outcome of deliberations regarding the Queens Avenue fence. The southern fence adjoining the Glen Huntly Park is also important and should also be replaced by open railings. (The vista from Neerim Road would be spectacular — across almost one kilometre of open space to the spectacular Caulfield Racecourse's grandstand. Where else in inner metropolitan Melbourne could one find such a view? Yet, at present, it is blanked-off

by a corrugated iron fence. Peter, can you name us one other park that would hide its beauty behind such a barrier?

No park, in this day and age, would continue with corrugated iron fencing, frequently covered with graffiti and topped with rusted barbed wire.

We said in our last letter:

"If the opening of the 'front window' is necessary why is it not in respect of the remaining 75% or so of the perimeter fence. We were told that Randwick received nothing but praise when they opened up a significant part of their perimeter fencing."

As for the northern boundary, the opening up of the "front window" will result in a very limited view — virtually none of the open-space in Reserve. Principally the public will glimpse the rear of two multi-story carparks and, after relocation of the stables, also the rear of the grandstands. This seems to us ineffective visibility of "143 acres 3 roods and 22 perches" (58.25616 hectares) of open parkland. The opportunity for a substantial park, focussing on all three uses, and forming a multi-functional sporting and recreational haven for inner South East Melbourne, will be lost.

The land swap proposal; Non-racing commercial uses of the Reserve; Use of existing facilities for all three beneficiaries of the Crown Grant, including the fair distribution of the proper revenue generated from those facilities.

These matters have been overlooked in your response. Subject to our examination of the deed, would the trustees now consider a review of the existing delegation? As already canvassed, it seems very difficult to expect one stakeholder to fairly address these issues, as a delegate of the Trustees, and on behalf of all of the intended beneficiaries.

We await receipt from you of a copy of the deed before forming a final view as to whether one of the stakeholders should be placed in a position to effectively be delegated the planning of non-racing uses.

We again suggest that the Trustees, or other authority to which this letter is copied,

"may wish to consider seeking a declaration from the appropriate tribunal regarding the planning role of the Trustees, their revenue earning capacity and application of such revenue, interpretation of the crown grant regarding the number of uses of the Reserve, co-use of racing facilities with other recreation services, commercial uses and visibility of the reserve."

We would also add to this list a request that the Tribunal be asked to consider the appropriateness of any existing delegation of the trustee's powers.

Peter as discussed a few days ago, we are happy to meet with you and the Chairman of the MRC to discuss these important matters

Yours sincerely,

Peter Brohier

Frank Penhalluriack

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