

CORRECTED VERSION

SUB-COMMITTEE OF SELECT COMMITTEE ON PUBLIC LAND DEVELOPMENT

Caulfield — 13 February 2008

Members

Mr D. Davis
Ms S. Pennicuik
Mr E. Thornley

Other Committee Members Present

Mr E. O'Donohue

Chair: Mr D. Davis

Staff

Secretary: Mr R. Willis
Research Officer: Ms C. Williams

Witnesses

Mr T. Reynolds,

Mr G. Sword, and

Mr P. Le Grand, Caulfield Racecourse Reserve Trustees.

The CHAIR — I welcome the Caulfield Racecourse Reserve Trustees. I think we have three: Mr Greg Sword, Mr Peter Le Grand; and the Honourable Tom Reynolds, a former racing minister. Could you provide an introduction, and then we will ask a few questions.

Mr REYNOLDS — We are all here, as I understand it, to be questioned as apart from making submissions to the — —

The CHAIR — Do you seek to make any introductory statement?

Mr REYNOLDS — Not really.

The CHAIR — In which case I will ask some questions, and start with the obvious two, I guess. The first is given the, I think, strong evidence that the land on which the racing club exists has a dual use as a public park, perhaps you could outline how the trustees have undertaken their duties, as it were, under the trust deed to ensure that there is public access to that area and that the role as a public park, and perhaps you might want to also address the legal issue on which we have had to go and froing earlier in the day about whether it is a recreation area as well?

Mr SWORD — For a start, there is a lack of an ‘and’ between some of those purposes. There is a range of views about whether there are three purposes or two purposes and whether it was originally set up to be a racecourse recreation reserve.

The CHAIR — But no doubt about the public park.

Mr SWORD — No, no doubt about the public park or racecourse, recreation reserve. I think it is hard to know what people had in their mind in the 1850s. This is my own perspective. I think probably the place was started because people who were really interested in racing were able to get the government to provide a grant of land, but under certain conditions.

So, from our point of view, what we try to do is respect the purposes for which the grant was given, which is to operate a racecourse and at the same time provide public access and parkland and recreation opportunities for the general public, and that is how we try and handle it at all times.

The CHAIR — How have you practically gone around that task?

Mr SWORD — There is a list. There is a whole range of activities for which the racecourse is open for public usage. There are some constraints, because the racecourse is used on every day of the week for the training and for other activities, so there are some restrictions with respect to that access. I can give you a list, but there is a significant list of activities and access, which is probably council.

Mr REYNOLDS — I think, Chair, we provide a balance between the original intent of the grant, which was, as previously said, a racecourse, and remembering that a lot of the area surrounding it is not Crown land — it is owned by the Melbourne Racing Club itself — so that is another issue. With 65 meetings a year — and around half that are held in the metropolitan area are held by this club, most of them at Caulfield — and over 500 horses in work around there at some stage, there is also a safety aspect that we have to balance in the use of that land. It is not an easy job, juggling all those balls, I can tell you.

The CHAIR — One point that has been put to us is the risk, in a sense, of mixing the public park purposes with the racing purposes. We have heard from the club itself about risk analysis. Has the trust done any of that sort of work, or is it, as it were, subcontracted back to — —

Mr SWORD — The trustee — —

The CHAIR — For want of a better word.

Mr SWORD — The trustee itself has not done that, but it has received reports. The contemporary major issue for us to consider was the request of council to have a sportsground located in the middle for junior sports. I think the trust was favourably disposed towards doing that, but as time went on it became very difficult to see how that would operate, given the risks that there would be with training on every day of the week and racecourse activities most of the week. So it has been more difficult to agree on doing something of that nature, although — —

The CHAIR — There was some formal analysis of that, or — —

Mr SWORD — We have not done formal risk analysis on that.

The CHAIR — The second point I was interested to know about is the perimeter. I accept Tom's point that part of that is MRC land as opposed to the grant, but some of it is the grant, and I am interested, aside from the legalistic aspect of any of this as a corporate or as a citizen of the Glen Eira community, perhaps, what steps are in mind by the trust to actually open up the vista to provide access, both visual and actual, to some of the grounds. I know that as a local member in fact and regular visitor, if you drive around the racecourse there are some areas where beautification would not be a bad thing, and it may be possible to open up part of the perimeter?

Mr SWORD — The trust has not made any decision about doing that. The matter has been discussed, but there has no decision been made about opening up, because there are a range of difficulties to take the fences down and a range of expenses — —

The CHAIR — Or even the type of fencing. Certainly there is a question — —

Mr SWORD — Yes, and there is significant expense. The trust would incur significant expense if that was to be done, so the matter is still under consideration, but no decision has been made.

The CHAIR — Would a cautious opening up of the perimeter with appropriate fencing be consistent with the public park aspect of the trust deed?

Mr SWORD — Nor would it be inconsistent to leave it, because it is a matter of allowing people use of the premises and not necessarily saying it must be open. As long as people are able to use it and the public has access to it, it does not necessarily mean that there should be no fences around it, because having no fences around it — —

The CHAIR — I am not suggesting none.

Mr SWORD — No, I know, but having no fences would cause some considerable difficulty.

The CHAIR — It might be a different type of fence.

Mr SWORD — If it boils down to the argument about what sort of fencing, that is a different argument. It is a question of how you want to view it and the aesthetic appeal of the fence, but fundamentally we have not resolved that yet. The matter has been on the agenda at a couple of meetings, but it has not been resolved.

Mr REYNOLDS — A lot of the fencing is permanent brick at any rate, or some of it is.

Mr SWORD — But you are talking about fencing around the side.

Mr REYNOLDS — Down the railway side.

The CHAIR — It is pretty shabby.

Mr SWORD — And it does not look well.

The CHAIR — It seems to me it would not be inconsistent with the public park purposes to see some of that opened up.

Mr SWORD — It may not be.

The CHAIR — Even to a different sort of fencing that — —

Mr LE GRAND — That can be looked at, I think, and I think the only thing you have got to be careful of there is to make sure from a safety aspect when there is racing that the horses are not distracted and do not shy because there is a truck or something going along. I am not saying it is impossible, but I think that would have to be taken into careful account, too, because of the safety aspect. The horses do shy sometimes from different things.

Mr SWORD — And that has been the argument.

Mr LE GRAND — Certainly. There is no problem with that.

Ms PENNICUIK — I have got some other questions, but just carrying on with the fencing issue, usually a public park is not fenced, or, if it is fenced, it is fenced in such a way that it is pretty easy to get over or under the fence and there are lots of access points. My question may be better answered by the club rather than you, but you can give it a go. Which parts of that whole area actually need to be fenced?

Mr SWORD — It is more of a question that the club could answer. When we have considered the issue, the issues raised against taking down fences or making fences which you can see through have been the issues of horses shying at cars going past and those sorts of issues.

Ms PENNICUIK — Yes. There are no horses at the Station Street end, for example.

Mr SWORD — No, but this issue has been raised in more locations than just one. I agree with you that normally a public park is not fenced in, but this is not a normal public park, it is also a racecourse, and there are other considerations and, as I said, you have to try and balance all of those.

Ms PENNICUIK — I suppose the question I am asking is: at the moment it is fenced in, and a fence, you would agree, is a barrier — it is a psychological barrier as well as a physical barrier for people — so if they see a fence they think, ‘I’m not supposed to go in there’; you would agree with that?

Mr SWORD — Not necessarily. As I said, I do not — —

Ms PENNICUIK — So if you see a fence, Mr Sword, you think, ‘That’s fine. I can get in’?

Mr SWORD — I understand that; that is fine. What I am saying is that our responsibility as trustee is to make sure that people have access to it.

Ms PENNICUIK — That is what we are getting to. Fencing is a way of — —

Mr SWORD — Yes, I know, but at the same time you have to balance also the requirement to comply a facility for racing, and that provides some constraints. As I said, you have to balance those, that is all.

Ms PENNICUIK — I think the public submissions and my observations with my own eyes would be that the balance is very much towards that piece of land being operated as a racecourse, and it is very difficult to see by looking — or from anything we have heard from the racing club and anything I am even hearing from you as trustees today — the other side of the balance. I do not accept necessarily the two-way thing, but for argument’s sake let us say that I accept that it is for a racecourse and a public park, so you have to say that at least 50 per cent of the use, 50 per cent of the resources and 50 per cent of the activity of the trustees would have to be directed towards actively providing a public park. So my question is: over the 130 years — you probably cannot answer for previous generations, which is probably an apt analogy for today, but you can certainly answer for the time in the recent past where you have been trustees — how much of your revenue that has come from the Melbourne Racing Club’s activities, how much of the activity and how much of the resources held in trust by the trustees have been put into actively maintaining that area as a public park?

Mr REYNOLDS — Probably all of it — the centre of the course and other visual aspects.

Ms PENNICUIK — Could you give me some examples of that? What money has been spent?

Mr REYNOLDS — The beautification in the centre and the running track. Joggers and walkers use that racetrack every day.

Ms PENNICUIK — About 10, we are told.

Mr LE GRAND — No. Can I just interrupt, Tom, if I may?

Mr REYNOLDS — Yes.

Mr LE GRAND — I grew up in Caulfield on Neerim Road behind the racecourse. I am very familiar with it and very familiar with the area, and it has always been open space during the week except for race days. I played there as a kid myself. In terms of access, there was never any problem getting access into the place. The

gates were always open, and you could wander through the place any time you liked. The only time was when there was training on, as it exists now, or when there was racing on. I was never pulled up, and no-one is now.

In terms of people, if you were to sit in one of the rooms there and watch during the day, you would see the number of people who run around that track. Obviously you are going to have peak periods — you are not going to run when there are horses training — but a lot of people use that for walking, running and activity. There is one old guy I know who is 84 who walks around that track every Friday. There is a lot of access by people. You might want more access — that is fine; I respect that — but there is certainly a great deal of public access, and I think there is too much talk about there not being access. It is open. If you live in the area and you know the area — you might say if you come from another area you would not know, and that might be a fair comment — but as a resident I knew that I could go there at any time except for when there was racing.

Mr REYNOLDS — If I could just add to that too, if I may? In the 1960s the south-western corner was excised from the Crown land to provide the Glenhuntly or Caulfield Reserve or whatever it is called down in that bottom corner.

Mr LE GRAND — The old Glenhuntly footy ground.

Mr REYNOLDS — Yes, the Glenhuntly footy ground. I was there today, and you can still walk on it. The people from the school next door, they park on the parking reserve, but that was excised from that Crown grant in the 1960s for public use.

Mr LE GRAND — And so was the school.

Ms PENNICUIK — Yes, I am hearing all that, and I think we have all heard that, but I am saying back to you that looking at that facility, looking at that Crown land, it does not look like there is a balance of activities there, so I am just putting that back to you. But perhaps if I could ask the question in a different way. There are a couple of questions.

We have heard that the trustees only meet once a year; is there any reason why you would only meet once a year, particularly when at the moment there is a development plan of the Melbourne Racing Club? Do you not feel that you would need to meet more than once a year?

Mr SWORD — I think the trustee meets as it needs to. At the moment that has been once a year. We have had a meeting that has dealt with the development proposal, and I am sure that if the chairman of the trustees felt that there were other issues arising out of the discussions with council and other groups and there was a requirement for the trust to meet — and we stay in contact — then we would meet again.

Mr REYNOLDS — Yes.

Mr SWORD — We do not specifically say we will only meet once a year.

Mr REYNOLDS — And we have not only met once a year.

Mr LE GRAND — That is a minimum required.

Mr REYNOLDS — I think in the last year or two it has actually been once or twice a year.

Ms PENNICUIK — If I could maybe get to the answer to my question: how much of your meeting time would you devote to discussing how you are going to improve the public park aspects of the land?

Mr SWORD — The meetings consist of talking about what we do with the land, and so all of the meeting essentially is about what we do with the public space, what the racecourse wants to do and how we manage it. As you know, we have an agreement with the club so that it actually manages it during the year, but all of the time of the trustees' meeting is essential taken up with considerations about what will be done.

Ms PENNICUIK — Do those meetings have minutes that are publicly available?

Mr SWORD — We have minutes. I am sure that the trustee would be happy to make them available to you.

Ms PENNICUIK — There is just one more quick question: I know there are six nominees to the trustees that are from the Melbourne Racing Club. Are there additional members of the board of trustees who have a background in racing?

Mr REYNOLDS — I speak for myself — —

Ms PENNICUIK — It is a question of fact.

Mr REYNOLDS — I am one of the six, and I was racing minister for seven years; and I owned racehorses and gallopers, and raced dogs, trotters, the whole bit — and lost money!

Ms PENNICUIK — So how many of the current trustees would have a background in racing or something to do with racing?

Mr LE GRAND — Obviously the six on the committee of the racing club.

Mr SWORD — There are six on the committee. I cannot speak for all of them, but in my own case, apart from being a punter, I have not had anything to do with racing.

Mr REYNOLDS — I do not think that would necessarily be an issue. I have been an administrator and a trustee of a public park, too, as well as three or four other buildings on crown land in my time. In all of that, all you ever try to do is preserve the land for the use of the public, whatever that might be.

The CHAIR — There are six who are members of the racing club board, there are another six who are —

Mr SWORD — Appointed by the government.

The CHAIR — Appointed by the Minister for Planning or the environment minister?

Mr LE GRAND — Environment, I think it is.

The CHAIR — The environment minister, and then there are council — —

Mr SWORD — Sorry, there are three.

The CHAIR — Who are they?

Mr LE GRAND — Three are nominated by the council.

The CHAIR — Just excuse me diverting proceedings a little bit: how are they appointed — by a vote of council?

Mr SWORD — I think they are nominated by the council, and I think they have to be actually appointed by the government.

Mr LE GRAND — Correct, yes.

The CHAIR — Appointed by the minister but nominated by council?

Mr LE GRAND — Correct.

Mr SWORD — And I think that is the same with the club. The club normally would nominate a range of people. It might nominate six people, and government might appoint three.

Mr LE GRAND — We do. Can I just come in there? We had recent nominations with some changes on the committee. Four nominations have been forwarded — the minister asked for four nominations — and two were elected because of other experience, not just racing experience. From my on aspect, I was in local government et cetera for 12 years, and that probably helped.

The CHAIR — And appointed on — —

Mr LE GRAND — Yes, appointed by the Governor in Council.

The CHAIR — Thank you.

Mr THORNLEY — I am keen to understand the broad terms of the tenancy — the length of time, what payments are made by the club to the trustee, what the basic conditions are, and all of that. I just want to understand the sort of commercial relationship, if you will, between the trustee and the club.

Mr SWORD — I can go back a few years. There is an agreement in place between the trustee and the club to manage the premises — in other words, to do all the things which need to be done to develop it, because if you are going to keep a racecourse reserve and you are going to keep a public park, a lot of money needs to be spent on keeping it up to scratch.

The rental is set in that agreement, and that agreement was made some time ago, maybe 10 or so years ago — sorry, in 1997 — and it set a rental which was indexed. That was approved by the minister at that time, so there was an agreement in place that is still in force. That means the amount of rent that the trustee gets from the club for its activities is not great; it is probably about \$70 000 a year. In addition to that, in the maintenance and development agreement the club undertakes to do work on the premises to the extent that there is a ceiling figure, and I think that is currently around the \$200 000 mark. In addition to the \$70 000, they actually have to do work up to that sort of value, so in total, I suppose, you could consider that would come to \$250 000 to \$270 000, which is a cost to the club.

Mr LE GRAND — Basically the club does the majority of maintenance on the whole course.

Mr SWORD — So the building of jogging tracks and walking tracks, the development of the lakes so that the premises can be drought-proofed — all of that work is done under that agreement, and that money is expended by the club to do all of that work.

In addition to all of that they pay \$70 000. From the trustees point of view, that is not a lot of money. We do not actually have a lot of money to spend, but we have spent some of that money assisting with the drought-proofing, and we have spent some of that money, I think, on ramps for disabled people.

Mr THORNLEY — If I can just continue to understand this; the buildings and so on — a lot of those are paid for by the club. Who owns them? How does that fit in?

Mr SWORD — It is on Crown land. I think the terms of the leasehold are that they become the property of the trustee. In terms of the actual detail I think what happens is that they become the property of the trustee, but in terms of the lease, the racing club have them while they occupy them.

Mr LE GRAND — Correct.

Mr SWORD — But it all becomes Crown property.

Mr THORNLEY — Right.

Mr REYNOLDS — If the racing club folds, they then become owned by the government, in effect.

Mr THORNLEY — Thank you. If I think about something like the Tabaret, for example, the racing club would pay to build it. If the race club folded, it would revert in ownership back to the trustee. For as long as they are around, they get to use it. Do they pay anything in addition to that?

Mr LE GRAND — That is all on club land.

Mr SWORD — It is not on Crown land. The other thing to say about the racing club is that it is a not-for-profit organisation as well, so it is a private concern. All of the money that it raises goes into administering the club itself, maintaining the course and the park, and in doing all the things which are necessary to have a successful race club.

Mr LE GRAND — The vast majority of buildings are on club land.

Mr SWORD — With the exception of the grandstand.

Mr THORNLEY — I have been to a range of corporation functions up in the grandstand rooms.

Mr SWORD — The grandstands are on public land but the — —

Mr THORNLEY — Peripheral buildings.

Mr SWORD — The Tabaret is as well, I think, So the answer to that is yes. It is a commercial activity, but it is still on Crown land. If and when the club folded, that would become the property of the Crown.

Mr THORNLEY — But it is indifferent to your commercial relationship with the club whether they make a pile of dough or nothing out of those activities; that is really, kind of, in their gift.

Mr SWORD — No. The arrangement the trustee has, the contract it has with the club is covered by that agreement, which has got a rental figure that is indexed to the amount of money they spend on the upkeep of the property.

Mr THORNLEY — Thank you.

Mr REYNOLDS — Can I just go back to Ms Pennicuik's comment about people's racing experience. I have just been through the names, trying to remember them. Mr Sword and Justice Shane Marshall from recent appointments. Mr Tanner would have little racing experience. Mr Granter is from Bendigo; he was president of the Bendigo Jockey Club for some years and a committee member for about 30 years, so he would know a little bit about. The last member, who died last year and who has not been replaced, was the Honourable Neil Trezise, who was racing minister prior to me. Given the government appointments there are legal people, others with political experience as well as people with experience in managing other things and people with racing experience there too.

Ms PENNICUIK — So there is a fair bit of racing experience on the board of trustees?

Mr REYNOLDS — I think if it is mainly used a racecourse, that is probably a good thing.

Ms PENNICUIK — It is mainly used as a racecourse. That is the problem, isn't it?

Mr REYNOLDS — It has got to be unless you want the horses to gallop all over people.

Ms PENNICUIK — I think that is the issue I was trying to point to. The community's view is that racing has the majority of the focus — by a long way — and public use has by far the minority.

Mr REYNOLDS — The bit of land that was excised is not used by horses.

Ms PENNICUIK — It is very minimal in the grand scheme of things, but I will not take up any of your time. I am sure Mr O'Donohue has a question.

Mr REYNOLDS — The public does use the grandstands for examinations during the week. There are other uses — community uses.

Mr SWORD — I am not sure what has been reported to you as being the trustees' decision in respect of this development and the decision and the resolution it took when the development proposal came before it.

The CHAIR — What was the resolution?

Mr SWORD — I think the important part is that most of the development which is proposed by the club is on club land; it is not on public land. The trustee resolved to approve the development to the extent that it affects the Crown land, but it did so subject to a couple of provisos. One was that with respect to the part of Crown land which forms that triangular car park, which currently is not used as parkland or public recreation at all — it is very difficult to see that that would be used for anything — the resolution to approve the development from the trustees point of view was done provided that there could be an exchange of club land for that Crown land, and that is an important proviso.

Our view was if what would happen in this development is that some of the club land — an equal amount — was exchanged for that Crown land then it could probably be better used in terms of our overall mandate about public

access. The other proviso was to the extent that there were still differences between the club and the local council, those discussions should be continued.

The major issue which has been reported to us, which has been ongoing for some significant amount of time, was the issue of the development of the sports oval. We understood that most of the other issues had been resolved.

The CHAIR — In terms of the swap — the small triangle of land and so forth — and the PDP looking at this, was the trust consulted by the PDP? Did you make a formal submission to the PDP?

Mr SWORD — I do not think we have been consulted at this stage of the proceedings.

The CHAIR — So the PDP has proceeded without any formal contact with the trust?

Mr LE GRAND — The PDP has not formally gone to that stage yet. You are looking at the submission from the racing club.

The CHAIR — And other submissions we have had this morning?

Mr LE GRAND — And other submissions as well; that is correct.

The CHAIR — But there has been no formal approach by the PDP to the trust and no formal approach by the trust to the PDP?

Mr SWORD — No. As I said, we clearly approved the proposal on the basis that there would be an exchange between the club's land and the public land. We felt it would not be appropriate for the trustees of public land to be agreeing to the alienation of any land.

The CHAIR — PDP should consult with stakeholders, and I would have thought that the trust is a clear stakeholder on behalf of the community?

Mr REYNOLDS — To our knowledge, as yet we have not been in contact, I think is probably the answer to the question.

Mr O'DONOHUE — I think most of my questions have been answered, but just to round out the commercial aspect of it: how much longer does your agreement have to run with the club?

Mr SWORD — That is 2018, roughly another 10 years.

Mr O'DONOHUE — Given that the master plan would envisage changes to land use that go beyond that, is that a concern to the trustees?

Mr SWORD — What the maintenance and development agreement says is that as the club maintains the area it also should bring forward a plan that talks about how we develop it. Each year, before that can be done, the trustee has to tick off on that. At this point what this plan involves is some significant changes to the centre and, in our view, some additional public use being available once this development takes place. I think our view is that each year the proposal comes forward, there is further opportunity for the trustees to further develop the park and recreational facility.

Ms PENNICUIK — I was wondering whether the board of trustees has had a meeting at which the council attorneys were present?

Mr SWORD — At the meeting at which the trustees approved the plan, subject to those provisos, there were no council trustees appointed by the government at the time. We did not want to proceed without having a view expressed, so I asked the club to invite somebody from council to put the council's point of view, which they did strongly. We heard what they had to say, and we made our decision with the two provisos: one particularly about the public land and the other one about continuing discussions. In our mind that really meant continuing discussions about the possibility of how we use the centre for junior sporting activity.

Mr LE GRAND — The process of appointment of trustees is fairly long-winded when you have a change of council representatives, racing club representatives, it takes six to nine months to go through the process, police checks and everything else, and that is the reason why it is a long process.

Ms PENNICUIK — How many trustees were present at that meeting when the development plan was discussed?

Mr SWORD — I do not have the minutes but I think probably nearly all of them. There were a couple on telephone hook up.

Mr REYNOLDS — Two on the telephone.

Mr SWORD — We tend to always get a reasonable turn-up but as I said, we can make the minutes available to you so that you can check.

Ms PENNICUIK — Did the trustees feel as if there was a time pressure in which they could not wait for the full complement of trustees to be present?

Mr REYNOLDS — The council's view — there was an officer invited, Greg, wasn't there?

Mr SWORD — There was an officer who came and gave very strongly the council's point of view, which was strong, but again, it went mainly to the issues. There was a list of issues and the main one was still the centre square which we were not going to be able to resolve in any event because of concerns about safety factors.

I cannot say no, that we probably did think there might have been some time constraints, but I think we understood what the issues were and we understood the position of the council. That is why it was important to make sure that someone came and put their view. I do not think it would have made a difference to the outcome of the meeting.

Ms PENNICUIK — Thank you.

The CHAIR — Thank you for your evidence today. We greatly appreciate it. We will have the staff follow up with a couple of those matters.

Mr SWORD — As I said, if there is anything else you need from us — documentation or anything similar — we are only too happy to provide it to you.

The CHAIR — We appreciate that, thank you.

Witnesses withdrew.