

Management and Oversight of the Caulfield Racecourse Reserve



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Management and Oversight of the Caulfield Racecourse Reserve

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The Hon. Bruce Atkinson MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Christine Fyffe MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my report on the audit *Management and Oversight of the Caulfield Racecourse Reserve*.

This audit examined the effectiveness of the management of the Caulfield Racecourse Reserve by trustees appointed for this purpose and the oversight provided by the Department of Environment and Primary Industries (DEPI). It assessed whether the trustees have applied sound management principles in their decision-making and adhered to good governance arrangements.

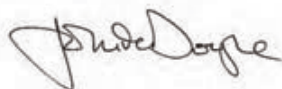
I found that the trustees have not been effective in their overall management of the reserve. Historically, their decisions have disproportionately favoured racing interests with insufficient attention paid to fulfilling the community-related purposes of the reserve.

DEPI has not effectively overseen the trustees' management of the reserve. It has not worked proactively with the trustees to assist them to resolve significant governance and management issues when these matters have been brought to its attention in recent years. As there has been no framework established for trustees to report to DEPI and in turn to the Minister for Environment and Climate Change on their management of the reserve, there is no accountability over the trust's performance. DEPI has acknowledged these weaknesses and has committed to improving its oversight of and support for the trust.

DEPI's increased engagement with the trust is an important step in improving the standard of governance over the trust and should lead to improved outcomes for the community.

I have made 15 recommendations aimed to address those issues that require immediate attention and for the future management of the reserve. Five recommendations apply directly to the Trustees of the Caulfield Racecourse Reserve, six to DEPI and four require joint action by the trustees and the department.

Yours faithfully



John Doyle
Auditor-General

17 September 2014

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Auditor-General's comments



John Doyle
Auditor-General

During the 1870s the land now known as the Caulfield Racecourse Reserve was permanently reserved for three purposes—a racecourse, public recreation ground and public park. The management of the reserve was vested in a group of trustees who represented the government, the Melbourne Racing Club (MRC) and the local municipality—Glen Eira City Council. There were no particular objectives set for the trustees and no clear directive about how to prioritise or balance each purpose for which the land was reserved.

There is no doubt that the reserve is a significant public asset and one of Australia's premier racing tracks, hosting high-profile races such as the Caulfield Cup and bringing in significant revenue for the state. However, it is not clear that the needs of the community have been appropriately balanced against the needs of racing.

I visited the reserve myself to better understand the issues raised by community groups and other stakeholders about the extent to which the reserve is available for the community's use and enjoyment. I noticed that public access areas were not welcoming or easily accessed, with poor signage both at entrances and within the reserve. Despite a reported \$1.8 million upgrade to the centre of the reserve, public space within the reserve is not easy to reach and the recreational facilities are limited. The extent to which these facilities are used is not clear.

During this audit I looked closely at the governance arrangements in place and how the trustees approached the management of this important piece of Crown land. I found significant deficiencies.

The trustees do not have a mission statement or charter, statement of roles, business plan or performance monitoring and reporting framework. Conflicts of interest and duty are currently not effectively identified or controlled.

The trustees have not established a long-term plan for current and future land use and development at the reserve. Instead, the development of the reserve has been driven by MRC's interest in establishing a world class racecourse and training facilities. Today, over two-thirds of the reserve is used by MRC for these activities without clear legal entitlement or transparent arrangements in place that recognise the financial benefit to the club.

The Department of Environment and Primary Industries' oversight and follow-up of significant issues affecting the management of the reserve has been ineffective. Issues such as the lack of suitable governance arrangements, the absence of any financial or performance reporting, trustees inability to manage actual or perceived conflicts of interest, and the stalled lease negotiations with MRC have, until recently, received scant attention from the department.

Audit team

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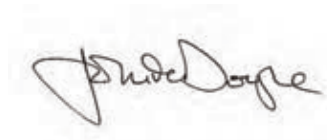
Renée Cassidy
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Many of the issues identified in my report cannot be effectively remedied until governance practices are brought into alignment with contemporary public sector standards. The current legal framework for the establishment and management of the reserve is dated and does not clearly identify the trustee's functions, responsibilities or accountabilities. By comparison, the Melbourne Cricket Ground Trust and the Melbourne and Olympic Parks Trust have enabling legislation that clearly articulates these critical aspects of governance for the respective trusts. A similar approach could be used to make the Caulfield trust subject to the same contemporary standards of governance and reporting.

During the course of the audit, I was encouraged that the Department of Environment and Primary Industries acknowledged it had to improve its oversight, and it has made a commitment to work with the trustees to address the issues raised in my report. I also acknowledge that the trustees have recently recognised the need to address deficiencies in governance and management practices and have taken steps to improve engagement and interaction with the community. But more clearly needs to be done to make the arrangements effective and bring them into line with contemporary best practice.

I intend to revisit the issues that my office has identified in this report to ensure they are being appropriately addressed.

Finally, I wish to acknowledge and thank the trustees of the Caulfield Racecourse Reserve, particularly the chair and the trust secretary, and the staff of the Department of Environment and Primary Industries for their assistance and cooperation during this audit.

A handwritten signature in dark ink, appearing to read 'John Doyle', is centered on the page. The signature is fluid and cursive, with the first name 'John' and last name 'Doyle' clearly distinguishable.

John Doyle
Auditor-General
September 2014

Audit summary

The Caulfield Racecourse Reserve (the reserve) is a 54 hectare parcel of Crown land located eight kilometres south east of Melbourne. It has predominantly been used and developed as a venue for training and racing horses. It is also used to host a variety of festivals and commercial events. The centre of the reserve—which includes a picnic area, walking tracks and some open spaces for recreational activities—is available for public use from 9.45 am to dusk.



Aerial photo of Caulfield Racecourse Reserve. Photo courtesy of Nils B Versemann/Shutterstock.

The land was permanently reserved during the 19th century for three purposes—a racecourse, public recreation ground and public park. The principal elements of the current legal framework can be found in a 1949 Crown grant and the *Crown Land (Reserves) Act 1978* (CLRA).

Under the Crown grant, 15 trustees are appointed by the Governor in Council to manage the reserve—six each representing government and the Melbourne Racing Club (MRC) and three representing Glen Eira City Council.

The minister responsible for the CLRA is the Minister for Environment and Climate Change, who is supported in his role by the Department of Environment and Primary Industries (DEPI). DEPI also has a role in overseeing the performance of Crown land managers appointed by, or on the advice of, the minister. This includes providing advice and assistance to help them understand their roles and responsibilities, identifying applicable government policies and legislation, and establishing appropriate performance reporting to the minister.

Over recent years, community groups and other stakeholders have raised concerns about a range of issues related to the use and management of the reserve. Their concerns include the use of the reserve predominantly for racing purposes to the detriment of community use, a lack of suitable public access to the reserve, and the lack of transparency and accountability of the trust.

This audit examined the effectiveness of the trust's management of the reserve and DEPI's oversight of the trust's management of the reserve. It assessed whether the trust applied sound management principles in its decision-making and adhered to good governance arrangements.

Conclusions

The trust has not been effective in its overall management of the reserve.

Historically, the trust's decisions have disproportionately favoured racing interests with insufficient attention paid to fulfilling the community-related purposes of the reserve. Consequently, the trust could not demonstrate that it had been effective in fulfilling all of its obligations under the Crown grant.

The trust has not articulated its purpose, priorities and vision for the reserve. This, along with a lack of adequate management systems and processes, and the absence of a formal governance framework reflecting contemporary better practice have all compromised its ability to effectively manage the reserve.

The trust has not been able to address the conflicts of interest inherent in the make-up of its membership and competing responsibilities as set out in the Crown grant. Its composition—where trustees' personal and professional interests compete with their obligations as Crown land managers—makes decision-making intrinsically difficult. More recently, the current and former chairs of the trust have recognised the need to address this issue and to introduce better standards of governance.

The Caulfield Racecourse is regarded as one of Australia's best racecourses, with world class training facilities. However, this has not been the result of the trust's stewardship of the reserve but rather reflects the success of MRC in driving its vision and plans to develop the reserve as a racing precinct.

As a result, the amount of space available for the community is limited and does not equitably meet the community-related purposes in the Crown grant. The public space is not easily accessible, entry points and signage are inadequate, and although the facilities within the reserve have recently been upgraded, they do not address the community desire for more recreational facilities within the City of Glen Eira. The trust is currently working with MRC to improve signage and access to the reserve.

DEPI has not effectively overseen the trust's management of the reserve. It has not worked proactively with the trustees to assist them to resolve significant governance and management issues when these matters have been brought to its attention in recent years. As there has been no regime established for trustees to report to DEPI and in turn to the minister on their management of the reserve, there is no accountability for the trust's performance. Until recently, there has also been no publicly available information on the trust's activities.

DEPI has acknowledged these weaknesses and has committed to improving its oversight and support for the trust. Its increased engagement is an important step towards improving the standard of governance over the trust and in turn should lead to improved outcomes for the community.

Unless the above concerns can be addressed, however, the current Crown land management arrangements over the reserve are untenable from a public interest perspective and alternative management options should be considered.

Findings

Legal framework is neither clear nor comprehensive

Unlike other Crown land reserves—such as the Melbourne Cricket Ground and the Melbourne and Olympic Parks precinct—the legal framework governing the trust specifies only a small number of land management functions, such as granting leases and licences and making regulations. It does not, however, specify contemporary management responsibilities such as the requirement to annually prepare a business plan, including financial statements.

Neither DEPI nor the trust have considered or addressed this issue. As a consequence, there is no sound foundation on which the trust can base its short- and long-term plans for future land use and development, or establish an appropriate governance framework to guide the way it operates.

It is unclear whether common law trust principles apply to Crown land managers. If they do, the challenge is to identify the beneficiaries or classes of beneficiaries on whose behalf the trustees are acting, and trustees would have an obligation to act in the best interests of those beneficiaries. The potential application of common law obligations for trustees is a risk that needs an effective management response.

As DEPI does not consider the trust to be a public entity as defined in the *Public Administration Act 2004* and it is not subject to the *Financial Management Act 1994*, the respective governance provisions and financial reporting requirements in these acts do not apply. These acts have been applied to the Melbourne and Olympic Parks Trust through its enabling legislation. A similar approach could be used to make the trust subject to the same contemporary standards of governance and reporting.

Governance arrangements do not reflect contemporary practice

Recent attempts to establish governance arrangements that reflect current accepted standards have not succeeded due to the lack of support from all trustees. Consequently, none of the elements that constitute an effective governance framework are in place.

More recently, the government and Glen Eira council trustee representatives have recognised that governance standards in line with contemporary practice should be introduced. The trust has commissioned a draft governance policy, which is a major first step, but the policy's coverage should be increased to include a mission statement, a statement of trustee roles and responsibilities, community engagement strategies and performance reporting. The challenge for trustees is to ensure that effective policies and procedures are agreed, put in place and complied with by all trustees.

Conflicts of interest are not well managed

The composition of the trust creates inherent difficulties where its members represent different interests that have competing views and priorities. For example, MRC representatives have an interest in promoting the reserve as a racecourse, but need to balance this with their role as a trustee appointed to give effect to managing the reserve in accordance with the Crown grant.

This is one of the primary sources of tensions between government and council representatives on one hand and MRC representatives on the other. It is exemplified in the trustees' protracted negotiations with MRC over the value of the grandstand lease, which has dominated trustee time and resources for nearly four years and has required the intervention of the minister.

The trust's 2009 policy on Declaration of Pecuniary Interests is inadequate and does not address the conflict of interest issues that have adversely affected its decision-making ability. Trustees have been unable to agree on an appropriate procedure to deal with actual or perceived conflicts of interest. While adopting the draft governance policy would contribute to the trustees developing a more stringent approach to managing this issue, more work needs to be done to make sure it is properly managed.

Management of the reserve is inadequate

There is no land management plan for the reserve

The trust does not have a land management plan that designates which areas of the reserve are to be used for racing, community and public space purposes—the three purposes set out in the Crown grant. The trust has been inclined to concentrate on racing interests and not pay sufficient attention to meeting the needs of the community.

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

Figure A
Use of the reserve

Of the approximate 54 hectares of land at the reserve:

- 11 hectares—approximately 20 per cent—is under lease to MRC—the grandstand, Neerim Road Stables and Western Stables
- 37 hectares—approximately 69 per cent—is used by MRC without any clear legal entitlement or payment arrangement
- the remaining 6 hectares—approximately 11 per cent—is open space for the potential use by the community during prescribed hours.

Note: The 54 hectares referred to above does not include approximately 3.9 hectares which was excised from the reserve in 1967 for recreation and community use purposes to form Glen Huntly Park under the management of Glen Eira City Council.

Source: Victorian Auditor-General's Office.

MRC is currently negotiating with the trustees for a licence to formalise access to areas not covered through any formal legal arrangement. It is critical that an agreed long-term plan that includes clearly defined objectives and priorities for the use, access and development of the reserve is in place at the outset so that the outcome of negotiations with MRC over licence conditions is consistent with the intent of the plan.

Community engagement is of particular importance in developing an effective plan for future land use. However, community views on the management of the reserve are only indirectly represented through the council trust representatives. Trustees should take steps to more formally consider community views. Community concerns over the need for improved public access and signage at the entrances, and within the reserve, have not been addressed despite recent developments to improve the public amenities at the reserve.

Maintenance and development of the reserve is not adequately controlled by the trust

Day-to-day maintenance of the reserve has been assigned to MRC via a formal Deed of Maintenance and Development agreed in February 1997. The deed requires MRC to maintain and develop the reserve at MRC's expense and to standards established by the trust.

However, there is a lack of clarity around the extent, frequency and location of maintenance work to be undertaken under the deed. The trust has no assurance that the provisions in the deed are discharged adequately. The trust has not identified maintenance priorities nor established effective acquittal processes for works carried out at the reserve.

Over recent years, reporting on works at the reserve has been variable and falls short of the agreed requirements in the deed. For example, MRC has not yet provided the trustees with a report on its activities and expenditure under the deed, which was due in February 2014.

There is no effective oversight by the trust of land use at the reserve

The absence of a long-term plan for the use of the reserve has made effective oversight by the trust of land use developments at the reserve more difficult to manage. This has been compounded by the trust's lack of organisational and executive management capacity and particularly its lack of presence at the reserve.

This lack of control over the reserve has resulted in:

- A lack of enforcement by the trust of agreed processes contained in the deed. As a consequence, the trust's control over land use at the reserve has been limited. For example, developments at the reserve have occurred, such as installing additional training fences in the centre of the reserve, without the trust's prior knowledge or consent.
- The failure by the trust to adequately monitor the progress of discussions between MRC and DEPI about MRC's proposal to exchange some of its land for Crown land. In 2006, the trust gave in-principle approval to MRC to start this process. However, it was not until late 2011, almost a year after the minister approved the land exchange, that the trustees became aware that the exchanged land would not be incorporated back into the reserve.
- Reserve regulations that are out of date and do not reflect current land use, and therefore are not an effective tool to enforce land use provisions.

Departmental oversight

DEPI has not actively monitored or overseen the management of the reserve by the trust on behalf of the minister. It has not intervened in significant issues that adversely affect the trust even when the trust has welcomed its involvement.

We observed that DEPI has:

- not come to agreement on any reporting requirements with the trust to account to the minister for how the trust manages the reserve
- not capitalised on opportunities to work with trustees where they have flagged an interest in addressing longstanding issues, such as establishing a sound governance framework
- not engaged with the trust on their intentions to develop a master plan over future land use and development at the reserve
- not acknowledged that conflict of interest issues at the trust require attention when briefing the minister on correspondence from the trust raising concerns on this issue
- not followed up with trustees or briefed the minister after trustees' rejected adopting a conflict of interest policy that had been referred by the minister
- declined a request from the trust in April 2013 to become actively involved in assisting in resolving stalled negotiations, which had commenced in October 2010, over the valuation of the grandstand lease
- not sought to clarify under which legal instrument the trust regulations have been made and whether they are in the scope of that instrument.

DEPI has embarked on a number of major Crown land reforms aimed at improving its level of oversight and support based on risk and material considerations. These initiatives are also aimed at introducing the most appropriate management arrangements over Crown land and improving governance.

In July 2014, DEPI formally acknowledged that, due to the historic nature of trusts, its oversight and management has not kept up with accepted contemporary standards. DEPI noted that VAGO's February 2014 performance audit *Oversight and Accountability of Committees of Management* provided recommendations that were also applicable to the trust. DEPI has committed to work with the trust to introduce:

- a strategic plan for the reserve that will provide for future land use and development
- engagement and communication guidelines between the trust and the department
- key elements of a governance policy covering the trust's constitution, conflict of interest policy and standards covering code of conduct.

In relation to the last point, DEPI acknowledged the efforts of the trust in the past three years to improve governance in a difficult environment.

Future management arrangements for the reserve

Contemporary governance standards need to be urgently introduced over the management of the trust to ensure it complies with the intentions of the Crown grant. The trust should be given the opportunity to introduce these. However, its progress should be monitored and supported by DEPI and reported to the minister.

If trustees fail or are unable to agree to implement and abide by contemporary governance standards, DEPI should consider other management arrangements over the Caulfield Racecourse Reserve such as a committee of management or a new trust under its own legislation.

Recommendations

Number	Recommendation	Page
That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries:		
1.	determine the trust's functions, roles, responsibilities, powers and obligations through an analysis of the existing legal framework and apply this to the management of the reserve	23
2.	develop and adopt a governance framework, consistent with contemporary standards, that includes the following key elements: - a statement of duties and obligations of trustees, management plans, a mission statement, business plan and a comprehensive conflict of interest policy - business rules for administering the trust and making decisions - an induction program for new trustees - public reporting on trust activities including financial performance	23
3.	develop an agreed comprehensive action plan to implement the above governance framework that: - outlines responsibilities and milestones - identifies adequate resources for completion	23
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.	39
That the Trustees of the Caulfield Racecourse Reserve also:		
4.	identify public safety risks and develop strategies to manage those risks	23
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	39
7.	develop a comprehensive community engagement strategy to identify community needs and the community's views on potential future land use and development priorities	39
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	39
9.	develop and enforce a maintenance and new works program consistent with the proposed land management strategic plan 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.	39

Recommendations – *continued*

Number	Recommendation	Page
That as a priority, the Department of Environment and Primary Industries:		
10.	introduces more rigorous oversight of the Caulfield Racecourse Reserve	51
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	51
12.	works with the trust to secure the commitment of all trustees to comply with a set of governance standards that reflect contemporary practice.	51
That the Department of Environment and Primary Industries also:		
13.	closely monitors the trust's progress in implementing its governance framework and actively supports the trust in the development process	51
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	51
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.	51

Submissions and comments received

In addition to progressive engagement during the course of the audit, in accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or part of this report, was provided to the Department of Environment and Primary Industries and the Caulfield Racecourse Reserve Trust with a request for submissions or comments.

Agency views have been considered in reaching our audit conclusions and are represented to the extent relevant and warranted in preparing this report. Their full section 16(3) submissions and comments are included in Appendix B.

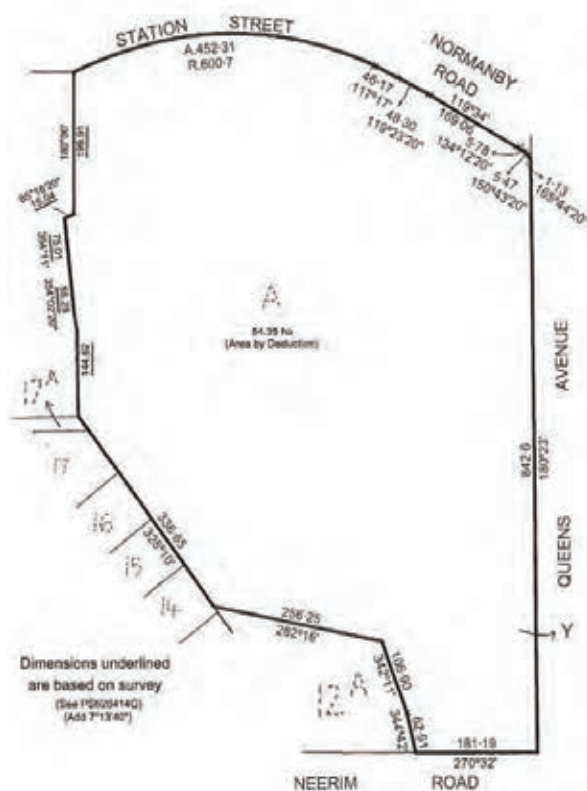
Background

1.1 Caulfield Racecourse Reserve

The Caulfield Racecourse Reserve (the reserve) is a 54 hectare parcel of Crown land located 8 kilometres south east of Melbourne. It is currently valued at \$145 million for the purposes of the state's Annual Financial Report.

The land was permanently reserved in the 19th century for three purposes—a racecourse, public recreation ground and public park. Management of the reserve is vested in 15 trustees—six government nominees, six Melbourne Racing Club (MRC) nominees and three council nominees representing the local municipality, Glen Eira City Council. Appendix A details the current membership of the Trustees of the Caulfield Racecourse Reserve.

This plan shows the geographical boundaries of the entire reserve.



Title plan of the Caulfield Racecourse Reserve. Copyright State of Victoria

The following map shows:

- reserve—yellow boundary
- MRC commercial development—areas within pink boundary
- MRC properties—green and blue areas.



Aerial photograph of Caulfield Racecourse Reserve boundaries and relationship to Melbourne Racing Club land. Photo courtesy of the Department of Environment and Primary Industries.

1.1.1 Uses

For most of its history the reserve has been predominantly used and developed as a racecourse. Today it is one of Australia's best known racecourses hosting some of Australia's leading races including the Caulfield Cup, Blue Diamond Stakes and Caulfield Guineas.

Part of the reserve has also been used to host a variety of non-racing events, including festivals and exhibitions such as the Melbourne Truffle Festival, the Melbourne Retirement, Lifestyle and Travel Expo and the Stitches and Craft Show.

Other parts of the reserve are accessible for public use from 9.45am to sunset on days other than race days. The public area is in the centre of the reserve and provides a picnic area, walking tracks and some open spaces for recreational activities.



Boardwalk in centre of reserve.

The reserve was temporarily used by the army during World War II to assist the war effort. The army used Caulfield Racecourse as a recruiting depot and barracks, but its primary function was as a 'clearing house' for recruits who were put through a medical examination before serving their country.

In the 1950s the trustees set aside an area of land at the southern end of the reserve to be used specifically for a public park and sporting oval. In 1967 this area, comprising around 3.9 hectares and known as Glen Huntly Park, was excised from the Crown grant and permanently reserved for recreation and community use under the management of Glen Eira City Council.

1.1.2 Trust representatives

Melbourne Racing Club

The Victoria Amateur Turf Club (VATC) set up its Melbourne headquarters in Caulfield in the 1870s. MRC was originally constituted in 1956 under the *Melbourne Racing Club Act 1956*. During 1963 MRC merged with VATC, but it was not until 2002 that VATC started to trade as the Melbourne Racing Club.

MRC's 2012–13 annual report describes the club as a 'not-for-profit' organisation. As a result, the club's income can only be applied towards its objectives and not paid to its members.

MRC's annual report also describes MRC as a diversified business with an income of over \$120 million for the 2012–13 financial year. One of its commercial activities is its Caulfield Village project—denoted by the pink areas at the top of the aerial photograph on page 2. The final development will comprise a low–medium density residential zone, a mixed-use retail precinct, and an area set aside for commercial and residential accommodation purposes.

Glen Eira City Council

Glen Eira is a densely populated and culturally diverse residential area in the inner south-east of Melbourne. The municipality covers approximately 38 square kilometres and is home to more than 137 000 people.

According to the August 2011 Victorian Environmental Assessment Council's *Metropolitan Melbourne Investigation—Final Report*, Glen Eira's proportion of public open space is the lowest of all Victorian municipalities.

State government

State government representatives are nominated by the Minister for Racing. These people are drawn from a range of backgrounds from within both the public and private sectors.

All trustees are appointed by the Governor in Council on the recommendation of the Minister for Environment and Climate Change. The Department of Environment and Primary Industries (DEPI) briefs the minister on the suitability of nominated trustees for appointment in terms of background checks and career history.

1.2 Legal framework

The principal elements of the current legal framework for the establishment and management of the reserve are derived from a 1949 Crown grant and the *Crown Land (Reserves) Act 1978* (CLRA).

1.2.1 Crown grant

The original Crown grant of 1859 temporarily reserved the site for a racecourse. In 1879 a permanent order was made under the *Land Act 1869*—the predecessor of the CLRA—for the land to be reserved for a racecourse, public recreation ground and public park. After it was reserved, the *Land Act 1869* enabled the management of the site to be delegated under a Crown grant. This occurred in 1888 when a Crown grant was used to vest management of the reserve in up to 19 trustees. Over the following 80 years, various orders and grants were made, resulting in minor changes to the boundaries and size of the reserve.

In 1949, the previous iterations were brought together in what is now understood to be the definitive text for the grant. The Crown grant:

- empowers the trustees to grant leases and licences, and to make regulations for the preservation of good order and decency and for the collection of fees and charges for entering the reserve
- allows MRC to hold race meetings, and provides for control and management of the whole reserve to be vested in MRC on race days.

Under the Crown grant, the government does not have any direct role in the management or oversight of the reserve other than protecting the residual rights of the Crown and the state—such as the right to any gold, silver or other minerals subsequently found on the site—or to use parts of the land for railways, sewers, channels and drains.

Although the group of trustees appointed under this grant are referred to as the 'Caulfield Racecourse Reserve Trust' by the department and others, there is no specific trust deed establishing a trust of this name. For convenience we have also chosen to use the term 'trust' in this report when we make reference to the trustees as a group.

1.2.2 *Crown Land (Reserves) Act 1978*

The CLRA provides legislative powers to the trustees and also to the Minister for Environment and Climate Change, who is responsible for administering the Act. For example:

- section 12 provides that the minister recommends to Governor in Council the appointment of trustees to vacancies
- section 13 provides trustees, or the Minister and trustees, with powers to make regulations with the approval of Governor in Council
- sections 17B and 17D provide the trustees, with the approval of the minister, with the power to grant licences/leases, enter into tenancy arrangements, and to reach agreement to operate services and facilities
- section 17E enables the Secretary of the Department of Environment and Primary Industries, with the authority of the minister, to use any part of reserved land for a car park
- section 22 relates specifically to horse racing and related purposes such as stabling and training of race horses—it provides the trustees with the power to grant licences or leases not exceeding 21 years, and that monies received by way of rent under lease or licence shall be used by the trustees to maintain and improve the reserve land.

1.2.3 Regulations over the reserve

The Crown grant empowers the trustees to establish regulations over the reserve for the preservation of good order and decency, and the collection and receipt of fees for admission into the reserve. The CLRA also provides an avenue for the creation of regulations. It states that 'where any land has been reserved under this Act... the trustees thereof or the Minister and the trustees (as the case may be) with the approval of the Governor in Council... may make regulations'.

The current regulations have been approved by the minister and Governor in Council. The most recent amendment to the regulations was in July 2007. This amendment provided for increased admission charges to the Caulfield Racecourse Reserve on race days.

1.2.4 Leases and licences

MRC has three leases with the trustees for parts of the Caulfield Racecourse Reserve. However, current negotiations propose to roll all three leases into one. Details of the leases are:

- **The grandstand**—located on the north side of the racetrack. The grandstand head lease includes the administration and Tabaret buildings, the grandstand complex and the Guineas car park. Lease areas A to E in the map below highlight these areas. The original grandstand lease was granted in October 1991 and expired on 22 October 2012. Negotiations are continuing on a new lease. In the interim, a short-term lease arrangement has been agreed between the trustees and MRC. The current annual rental on this lease is \$57 300.
- **The Neerim Road Stables**—located on Neerim Road next to Glen Huntly Park. The trustees granted a 21-year lease to MRC in April 2008. It provides for sub-licences to be issued to individual horse trainers. The current annual rental is \$18 900.
- **The Western Stables**—located on Booran Road on the west side of the racetrack. The trustees granted a 21-year lease to MRC in January 1998. The current annual rental is \$7 700.

There are currently no licences granted over the reserve.



*Leased areas at the Caulfield Racecourse Reserve.
Map courtesy of the Caulfield Racecourse Reserve Trust.*

1.3 Role of the Department of Environment and Primary Industries

From 1 July 2013 the then departments of Sustainability and Environment and Primary Industries were merged to form DEPI.

DEPI has overarching management responsibility for Victoria's four million hectares of Crown land. This includes parks and reserves, alpine resorts, coastal land and water catchments. DEPI manages some land directly but most Crown land reserves are managed by an array of boards, management committees, trustees, panels and councils, under various legislative and administrative arrangements.

The minister also has a range of powers and responsibilities under the CLRA, such as approving leases, granting licences, authorising the use of reserved land for car parks, or entering into management agreements with any person. DEPI therefore has a role to:

- perform functions and approvals as delegated by the minister from time to time in the minister's carrying out of his or her functions under the CLRA
- on behalf of the minister, support and oversee agencies that are responsible for the management of Crown land—this includes guidance to agencies about their roles and responsibilities, applicable government policies and legislation, and reporting requirements
- monitor conformity with relevant legal requirements and policies, and facilitate reporting of the agency's performance to the minister.

1.4 Community concerns over the use of the reserve

Over recent years, community groups and other stakeholders, including local councillors, have expressed concerns about a range of issues pertaining to the use and management of the reserve. These concerns include:

- the use of the reserve predominantly for horse racing to the detriment of the community using the reserve for recreation or public park purposes
- public access being impeded by the training of horses on the reserve
- a lack of suitable access to the reserve for the general public, compounded by inadequate signage and entry points
- a lack of transparency and accountability of the trust—specifically these concerns relate to:
 - actual or perceived conflicts of interest over leasing arrangements
 - trustee meetings not being open to the public
 - the trust not publishing reports on its operations or any financial details
 - a lack of community representation on the trust.

1.5 Public inquiry on public land development

In 2007, the Victorian Legislative Council appointed a Select Committee on Public Land Development. The committee's inquiry into the use and development of public land in Victoria received public submissions raising concerns around the management of the reserve. In its 2008 final report the committee recommended among other things that:

- 'the government investigate the history, membership structure, responsibilities and current arrangement of the Caulfield Racecourse Reserve Board of Trustees, particularly in relation to its duty to uphold not just horse racing, but all the purposes of the reserve in the original grant'
- 'the day-to-day management of the Caulfield Racecourse Reserve, by delegation from the trustees to the Melbourne Racing Club, be reconsidered'.

There was no formal response by the government or the trustees to the report, although the then Minister for Environment and Climate Change indicated in Parliament that the government did not support the report's findings and recommendations.

1.6 Previous VAGO audit

Oversight and Accountability of Committees of Management, February 2014

This audit examined the management of Crown land reserves by volunteer committees. The focus was on the support provided by DEPI to these committees and whether this enabled them to carry out their functions effectively and efficiently. The audit found that DEPI had not:

- taken a strategic approach to providing support and guidance to committees—it had neither targeted support and oversight to committees who manage higher-risk reserves, nor to areas where committees require further guidance
- effectively used the information it collected about committees—this was compounded by gaps in DEPI's internal coordination and communication about committees, which reduced the effectiveness of its support and impacted on committees' ability to manage reserves effectively
- applied consistent and tailored governance arrangements in accordance with their risk profile.

DEPI agreed to take action to address the issues identified by the audit. This included:

- development of DEPI's Committees of Management (CoMs) Categorisation Framework by October 2014
- update and completion of the good practice guidelines by June 2014
- improvement of online guidance, information and useful links for CoMs by March 2014
- assigning public land to the most appropriate manager by December 2014.

DEPI released a new version of its good practice guidelines in May 2014 and has updated its CoMs web pages. The Categorisation Framework is now based on an analysis of financial, social and environmental risks.

1.7 Audit objective and scope

The objective of this audit was to examine the effectiveness of the management and oversight of the Caulfield Racecourse Reserve. Specifically whether:

- the trust made decisions in relation to the reserve in line with its responsibilities under the Crown grant, relevant legislation and sound management principles
- the trust established and adhered to good governance arrangements
- DEPI provided effective oversight of the trust's management of the reserve.

The audit examined the management of the Caulfield Racecourse Reserve by the trustees and the oversight provided by DEPI of the trustees' stewardship.

1.8 Audit method and cost

The audit used DEPI's good governance guide and other relevant good practice guidelines to assess the trust's governance arrangements for the past 10 years.

The audit was conducted in accordance with section 15 of the *Audit Act 1994* and Australian Auditing and Assurance Standards. Pursuant to section 20(3) of the *Audit Act 1994*, unless otherwise indicated, any persons named in this report are not the subject of adverse comment or opinion.

The cost of this audit was \$370 000.

1.9 Structure of the report

The report is structured as follows:

- Part 2 examines the legislative and governance framework over the trust
 - Part 3 examines the management of the reserve by the trust
 - Part 4 examines DEPI's role in assisting the minister through its oversight of the trust's stewardship over the reserve.
-

2 Legislative and governance framework

At a glance

Background

The key elements of the legal framework for the Caulfield Racecourse Reserve (the reserve) can be found in a 1949 Crown grant and the *Crown Land (Reserves) Act 1978*. These two legal instruments identify the powers and obligations of the trustees and when they need to engage with the Minister for Environment and Climate Change and/or the Governor in making management decisions relating to this piece of Crown land.

Conclusion

The legislative framework over the trust is unclear and the powers contained in the framework are not comprehensive. No steps have been taken to address this and the framework compares unfavourably to legislative frameworks over other major Crown land venues. This has compromised the development of an effective governance framework.

Findings

- Trust functions, responsibilities and accountabilities are not clearly specified in legislation, significantly reducing clarity around the trust's duties and obligations.
- There is an absence of governance arrangements and management tools to effectively guide and inform administration and management of the trust.

Recommendations

That the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries:

- determine the trust's functions, roles, responsibilities, powers and obligations through an analysis of the existing legal framework and apply this to the management of the reserve
- develop and adopt a governance framework consistent with contemporary standards and an action plan for implementing the framework.

2.1 Introduction

There are two main legal instruments governing the responsibilities and powers of trustees appointed to manage the Caulfield Racecourse Reserve (the reserve):

- a consolidated 1949 Crown grant
- the *Crown Land (Reserves) Act 1978* (CLRA).

The Minister for Environment and Climate Change 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.

Under the Crown grant, the trustees are required to manage the reserve to provide a site for a racecourse, public recreation ground and public park. Along with the grant, the CLRA provides the trustees with powers to grant leases and licences and make regulations. The CLRA also places restrictions on what trustees can do with the land.

As Crown land managers, trustees need to be cognisant of other legislation and government policy requirements that may affect how they perform their duties and fulfil their obligations.

To be effective the trustees need a governance framework based on contemporary better practice principles and standards.

This part of the report assesses the:

- level of clarity contained in the legislative framework over the powers and obligations of the trust
- extent to which the trust has established and adhered to standards of good governance.

2.2 Conclusion

The current legislative framework does not clearly identify the trust's functions, responsibilities and accountabilities. The CLRA and the Crown grant contain only limited powers for the trustees to manage the reserve. No attempts have been made by the trust or the Department of Environment and Primary Industries (DEPI) to provide greater certainty regarding what constitutes effective management of the reserve. As a result, there is no foundation for the development of sound governance arrangements.

The failure to articulate the functions and responsibilities of the trust, the absence of any effective oversight and accountability mechanisms, and the lack of governance arrangements to guide and inform the decision-making process, have all adversely affected the management of the reserve. In particular, the failure to resolve conflicts of interest among trustees has impeded timely and effective decision-making.

There have been attempts by the trust over the past two years to address the lack of governance arrangements. However, these have failed because of the lack of agreement among trustees about rectifying the above shortcomings. Some members of the trust are renewing efforts to introduce suitable arrangements.

2.3 Clarity of the legislative framework

The CLRA and the Crown grant provide the trustees with limited powers such as granting leases and licences, and making regulations. The legislative framework does not include requirements for the management and use of the reserve or expected planning and reporting obligations. Neither DEPI nor the trust has addressed this.

The original orders made under the *Land Act 1869*—the predecessor of the CLRA—and the Crown grant, require the reserve to be available for use as a racecourse, a public recreation ground and a public park. There are no particular objectives set for the trustees and no clear directive about whether one use is the dominant purpose for the land reserved. Over time, the land has become known as the Caulfield Racecourse Reserve, the implication being that its dominant use was always intended to be a racecourse. However, this has resulted from the trustees' management of the reserve rather than the provisions of relevant legal instruments.

In contrast, the Melbourne Cricket Ground Trust and the Melbourne and Olympic Parks Trust have their functions, responsibilities and accountabilities enshrined in the *Melbourne Cricket Ground Act 2009* and the *Melbourne and Olympic Parks Act 1985* respectively. These identify a range of contemporary management and reporting responsibilities.

For example, the Melbourne and Olympic Parks Trust is required each year to prepare a business plan for approval by the minister, which must include:

- a statement of corporate intent, as well as providing information about objectives, main undertakings, activities, accounting policies and performance measures of the trust
- financial statements containing information requested by the minister.

The Melbourne and Olympic Parks Trust is also subject to the *Financial Management Act 1994* (FMA) and its members have been brought within the operation of the *Public Administration Act 2004* (PAA).

2.3.1 Applicability of other legislation and common law

As discussed in Part 4, it is DEPI's overall responsibility to ensure there is an appropriate legislative, governance and reporting framework in place. In the absence of a clear framework, it is up to the trust to determine its governance arrangements and the type and scope of financial reporting to internal and external stakeholders.

Public Administration Act 2004

The PAA enables the Governor in Council to declare a public entity to be subject to specified provisions of that Act. During early 2013, DEPI considered making the trustees subject to divisions 2 and 3 of part 5 of the PAA. These divisions deal with the operations of public entities, specifically governance principles, and the removal or suspension of directors and would have imposed contemporary standards of governance on the trust. DEPI formed a view based on legal advice that the trust was not a public entity as defined in part 5 of the PAA. DEPI advised VAGO that the implications of this are that:

‘... the requirements in section 81 of the PAA for policies and procedures in relation to conflict of interest, gifts, performance assessment, dispute resolution, meeting procedures, code of conduct, etc., do not apply, nor do the conduct requirements in section 79 of the PAA—which are similar to those in the Director’s Code’.

As the trust had indicated its willingness to adopt an appropriate governance framework in discussions with DEPI in July 2013, any lack of applicability of the PAA should not have been an impediment to DEPI working with the trustees to help them address acknowledged weaknesses in their current arrangements.

Financial Management Act 1994

The trust prepares and has audited an annual special purpose financial report for use by the trustees, but this is not publicly reported—VAGO is not the auditor of the trust. For 2012–13. The trust reported:

- receipts—lease rentals and interest received—\$98 500
- administrative expenditure—\$44 400.

The reserve land has a fair value of \$144.8 million. This is reported in DEPI’s financial statements but not separately disclosed. This again reduces transparency of public reporting.

Consequently, a full picture of the financial affairs of the reserve is difficult to determine. In exploring what is the most appropriate legislative framework for the trust—see Part 4 of this report—the department should consider whether the trust should be made subject to the FMA. The FMA requires particular entities to prepare, and have audited general-purpose financial statements in accordance with applicable Australian Accounting Standards. These financial statements provide an acquittal of an entity’s stewardship of its finances and are public reports.

Both the FMA and PAA have been applied to the Melbourne and Olympic Parks Trust through its enabling legislation. A similar approach could be used to make the trust subject to the same contemporary standards of governance and reporting.

Obligations under common law

The grant confers on the trustees a legal responsibility to manage the reserve. There is no specific trust deed establishing the Caulfield Racecourse Reserve Trust. However, DEPI uses this title when referring to the trustees as a group. Most notably this occurs in the formal gazetted notices announcing the appointment of new trustees.

It is unclear whether common law principles apply. If they do apply, the challenge is to identify the beneficiaries or classes of beneficiaries on whose behalf the trustees are acting. Trustees would have an obligation to act in the best interests of those beneficiaries. The resultant fiduciary duties would include:

- becoming familiar with the requirements set out in the grant
- strictly adhering to the terms of the grant
- acting impartially—that is, not using their position to profit or benefit, either personally or by facilitating benefits accruing to a third person or party
- preserving the assets vested in the trustees and investing in the assets appropriately
- keeping proper accounts and providing them where necessary to beneficiaries
- acting with reasonable care and skill to the standard that ‘an ordinary prudent man of business’ would exercise.

The potential common law obligations of trustees represent a risk that needs an effective management response.

2.4 Public safety obligations

For the trustees, a claim in public liability would arise from personal injury or property damage as a consequence of a breach in the trustees' duty of care to any third party. A trust that has care, control and management of the reserve is regarded as an occupier of the land, and thus has a number of key responsibilities and potential liabilities under relevant legislations.

The Deed of Maintenance and Development (the deed) executed between the trustees and the Melbourne Racing Club (MRC) includes the MRC indemnifying the trustees against all actions, claims and demands for personal injury or property loss by any person caused by maintenance and development works for which the trustees may become liable. However, legal advice indicates that the validity of the current deed is questionable as it exceeds the three-year period specified in legislation. The trust needs to seek legal advice in the event that the deed is invalid to determine if trustees are indemnified.



Public reserve—condition of the track from Glen Eira Road tunnel to car park.

The current grandstand and stable leases include similar clauses which require MRC to maintain public liability policies to protect the trustees should a case of civil liability arise from an incident taking place at the leased premises. The trustees hold certificates of currency for public, product and management liability insurance over the leased premises until 30 June 2015.

However, it appears that the trustees are still exposed to liabilities for losses, injury or damage arising outside of the leased premises but within the reserve.

Recent legal advice sought by the trustees also indicates that 'the trustees are exposed to personal liability for a breach of legal obligations they owe'. Recent advice from DEPI to the trust confirms that the trust has not been covered by DEPI's public liability insurance and should take out its own cover.

An appropriate risk management strategy is needed to determine the risks that are to be borne by the trust and which of those risks need to be insured against to reduce trustees' exposure to potential public liabilities. It is also important for the trust to ensure that the terms of the long-term lease and licence currently under negotiation with MRC are consistent with the risk management strategy to be adopted by the trust.

2.5 Governance arrangements

The Victorian Public Sector Commission defines governance as:

‘processes by which organisations are directed, controlled and held to account. That is, the processes whereby decisions important to the future of an organisation are taken, communicated, monitored and assessed. It refers to the authority, accountability, stewardship, leadership, direction and control exercised in the organisation’.

2.5.1 Better practice governance principles and standards

We would expect the trust to adopt better practice principles and standards in developing and implementing its governance framework and policy.

The document *DSE's Guide to Good Governance – board members: An introduction to duties and standards of conduct* forms the basis of our assessment of the trust's draft governance policy. The guide indicates it can be applied to a range of public entities and agencies with similar functions. Accordingly, the principles and key elements can be applied to the trust, as the oversight and decision-making body for the reserve.

The guide is comprehensive and was developed with the support of the Victorian Public Sector Commission. The guide sets out governance elements relating to:

- relevant laws, government policies and other obligations
- strategic and business planning, performance monitoring and reporting, risk management and stewardship
- the roles, responsibilities and accountabilities of the board chair as well as standards of team performance and conduct.

2.5.2 The trust's draft governance policy

Currently the trust does not have a governance framework or policy.

Over the past few years, the trust, through the efforts of its government and council representatives, has attempted to address issues of governance and in particular, conflict of interest.

From September 2012 through to mid-2013, the trust has considered adopting a range of existing governance guidelines and practices, including the:

- former Department of Sustainability and Environment's (DSE) *Committee of Management—Responsibilities and Good Practice Guidelines* of 2011
- principle-based guidance from the Australian Institute of Company Directors *Good Governance Principles and Guidance for Not-for-Profit Organisations*.

The trust has been unable to gain agreement among its membership on the adoption of these or any other governance guidelines or policies.

In the latter half of 2013, the trust sought legal advice in developing a governance policy. A draft policy was provided to the trust in April 2014 and was considered at its August meeting. The drafting of procedures was referred to a sub-committee and the trustees indicated they may seek the assistance of DEPI.

2.5.3 Assessing the draft governance policy

We have assessed the draft policy against DSE's good governance guide. Figure 2A provides an overview of that assessment.

Figure 2A
VAGO's assessment of the trust's draft governance policy

Governance elements and requirements	Contained in draft governance policy (April 2014)	Expand further or develop
Foundation elements of a governance framework		
• Governing laws, government policies, Ministerial directions, guidelines and other obligations	P	Yes
Roles and responsibilities		
• Functions/objectives of the trust	P	Yes
• Duties and obligations of trustees	P	Yes
• Role of the chair	P	Yes
• Board charter/statement of roles	✗	Yes
Planning, implementing, monitoring and reporting		
• Vision/mission statement	✗	Yes
• Strategic/corporate plan	P	Yes
• Annual/business plan	P	Yes
• Performance monitoring and reporting	✗	Yes
• Risk management	P	Yes
• Stakeholder engagement	✗	Yes
Procedural requirements – meetings		
• Trust rules and responsibilities	P	Yes
• Accountability for decisions	✗	Yes
• Subcommittees	✓	No
Appointment and performance of trustees		
• Members of the trust/trust composition	P	Yes
• Appointment and tenure—trustees and chair	P	Yes
• Performance requirements and assessments	P	Yes
• Induction	✗	Yes
Standards of conduct		
• Values and principles	✓	No
• Code of conduct	P	Yes
• Conflict of interest	P	Yes

Note: ✓ = met, P = partially met, ✗ = not met/not included in the draft policy.

Source: Victorian Auditor-General's Office based on DSE's *Guide to Good Governance – board members: An introduction to duties and standards of conduct* of the former Department of Sustainability and Environment, now the Department of Environment and Primary Industries.

Developing the draft governance policy is a positive step—but long overdue. The challenge for the trust will be not only to reach agreement with all trustees on the policy, but to resource, manage and develop the various elements so that they form a sound, comprehensive and integrated governance approach.

This is likely to be beyond the trust's current administrative capacity, with only one part-time officer appointed to provide secretariat support to the chair and trust. The trust will need additional resources, particularly in the development phase, to oversee and drive this important piece of work.

Areas for expansion and further development

The following areas need further development and are discussed below as they are considered the most relevant and applicable to the issues confronting the trust:

- trust functions
- duties and obligations of trustees
- trust rules and responsibilities
- management planning and reporting
- induction of new trustees.

Section 2.5.4 covers conflict of interest separately and in more detail due to its significance to the effective operation of the trust.

Trust functions

As noted in Section 2.3 the functions, responsibilities and accountabilities for the Melbourne Cricket Ground Trust and the Melbourne and Olympic Parks Trust are enshrined in legislation. This is not the case for trustees appointed to manage the reserve.

The trustees' functions are inferred and drawn from the Crown grant. It is only recently—with the development of the draft governance policy—that the trust has begun to document its functions, although these are yet to be considered and endorsed by all trustees.

Duties and obligations of trustees

The draft governance policy includes reference to defining the duties and obligations of trustees. Like any trust whose members represent different interests, there is a need to acknowledge and deal with these competing views and priorities. The policy must therefore require that individual trustees, or trustees working as a group in the furtherance of a particular interest:

- give adequate consideration to all three purposes for which the reserve was established—as part of this process, private and professional interests should be acknowledged and appropriately controlled
- not act in a manner that abrogates the duties or obligations of trustees as appointed land managers, particularly where these actions, such as the use of the reserve for a particular purpose can impact on other users—formal agreement must be obtained before any such action is taken.

Trust business rules

For decision-making purposes, the draft policy does not adequately describe the number and composition of trustees required across the three categories to constitute a quorum. Given the issues around trust composition and conflicts of interest which impede decision-making—refer to Part 4—it is important that this issue is addressed as a priority.

In addition to procedures for meetings, the policy should also clarify and/or include:

- procedures for the approval of priority items for discussion at meetings
- the authority to issue statements on behalf of the trust.

Management planning and reporting

The absence of trust management plans and reporting that could assist trustees in administering the reserve significantly reduces the trust's capacity to be clear in its direction, about what action is required and in monitoring progress. This is further compounded by the lack of agreed objectives for managing the reserve.

The plans and reports should be tailored to the functions, responsibilities and accountabilities of the trust, and the nature and scale of its operations. The elements outlined below are the minimum required for the trustees to operate effectively. The draft governance policy identified, among other things, the need to adopt the following elements:

- **A medium- to long-term plan for the management and development of the reserve**—this plan should identify objectives and major initiatives, with associated deliverables, time lines, assigned responsibilities and allocation of appropriate resources.
- **A risk management plan**—this should include identifying and managing major risks and strategies to mitigate these risks.

In addition to these requirements, and to promote a greater degree of openness and transparency, the trustees should introduce the following elements of a governance framework:

- **A mission statement**—this defines the trustees' aspirations for continuing to enhance the reserve's reputation as a world class venue while providing a location that maximises the enjoyment for the community. This mission statement should reflect an appropriate balance between the three purposes of the grant, namely racing, recreation and a public park.
- **A stakeholder engagement strategy**—there should be a comprehensive process to identify the broader community views and how these could be incorporated into the trustees' decision-making processes for the future planning and enhancement of the reserve.
- **A public report on the activities of the trustees**—there should be reporting annually on the performance of the trustees in terms of progress and level of completion of initiatives against the trustees' medium- to long-term plan. It should also include financial reporting.

The minister and DEPI should receive copies of all of these documents, and apart from the risk management plan, they should all be publicly available.

Induction of new trustees

There is no formal induction process for newly appointed trustees. In the absence of documentation outlining key policies or a statement of roles and responsibilities, new trustees have had to rely on existing members to guide them in their duties. With only one to three meetings a year, the opportunities to become familiar with the workings and requirements of the trust are limited.

2.5.4 Managing conflicts of interest

The 2009 *conflict of interest policy framework—Victorian public sector* published by the Victorian Public Sector Commission for use by all Victorian public sector organisations defines conflict of interest as ‘conflicts between public duties and private interests. These can be actual, potential or perceived’. The term ‘private interests’ includes ‘not only an employee’s own personal, professional or business interests, but also the personal, professional or business interests of individuals or groups with whom they are closely associated’.

Guidance for better practice

This framework further states that, ‘Avoiding actual, potential and perceived conflicts of interest is fundamental to ensuring the highest levels of integrity and public trust in the Victorian public sector.’ and that ‘Employees subject to this general policy must:

- take reasonable steps to restrict the extent to which a private interest could compromise, or be seen to compromise, their impartiality when carrying out their official duties
- abstain from involvement in official decisions and actions that could reasonably be seen to be compromised by their private interests and affiliations
- avoid private action in which they could be seen to have an improper advantage from inside information they might have access to because of their official duties
- not use their official position or government resources for private gain
- ensure that there can be no perception that they have received an improper benefit that may influence the performance of their official duties’.

The trust’s current policy on declaring pecuniary interests

The trust developed its existing policy on Declaration of Pecuniary Interests in September 2009. It is inadequate for the purposes of the trust and does not address the conflict of interest issues that have adversely affected decision-making. A protracted negotiation over the fair value of MRC’s grandstand lease is the most prominent example—see Section 4.3.2 of this report.



Centre of Caulfield Racecourse Reserve looking towards the grandstand.

The legal advice informing the policy at the time conceded that a policy specifically for declaration of pecuniary interests was the only option likely to be agreed to by the trustees. The advice stated in part that, 'given the character of the trust, any policy on conflict of interest should focus on pecuniary interests of trustees. No broader conflict of interest concept appears to be workable'.

While trustees are required to disclose any pecuniary interest—where a matter involves an actual or potential financial gain or loss—it does not address the conflict of interest between trustees' obligations to the organisation they represent and their responsibilities as trustees of the reserve to act in the public interest.

Since 2011, the trust has attempted to adopt existing conflicts of interest policies including the then DSE's model policy and the Victorian Public Sector Commission's conflict of interest policy framework. Trustees were unable to agree on an appropriate policy. Subsequently in 2012, legal advice provided to the trust, stated that the:

- trustees need to meet their fiduciary duty
- six MRC trustee representatives are in breach of their public obligations to the trust due to perceived and likely actual conflicts of interest.

Review of the policy and meeting minutes since 2005 show there is no:

- evidence that any trustees have removed themselves from meetings when matters are discussed that relate directly to the benefit or potential benefit of the organisation they represent
- evidence of any formal briefing or education by an independent person reiterating trustees' duties relating to disclosing a potential, perceived or actual conflict
- requirement for trustees to regularly complete a disclosure of pecuniary interest
- disclosure of specific interests at the beginning of meetings which might raise an actual or perceived conflict of interest.

Despite the current and immediate former chairs reminding trustees at the commencement of meetings of the necessity to declare conflicts of interest, there is no record in meeting minutes of any trustees declaring a conflict of interest such as, for example, when MRC's lease with the trustees was discussed.

While the draft governance policy contributes to the trustees developing a more stringent approach to managing conflicts of interest, the trust needs to undertake more work to make sure it properly manages this issue.

Recommendations

That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries:

1. determine the trust's functions, roles, responsibilities, powers and obligations through an analysis of the existing legal framework and apply this to the management of the reserve
2. develop and adopt a governance framework, consistent with contemporary standards, that includes the following key elements:
 - a statement of duties and obligations of trustees, management plans, a mission statement, business plan and a comprehensive conflict of interest policy
 - business rules for administering the trust and making decisions
 - an induction program for new trustees
 - public reporting on trust activities including financial performance
3. develop an agreed comprehensive action plan to implement the above governance framework that:
 - outlines responsibilities and milestones
 - identifies adequate resources for completion.

That the Trustees of the Caulfield Racecourse Reserve also:

4. identify public safety risks and develop strategies to manage those risks.
-

3 Management of the reserve

At a glance

Background

Trustees are required to manage the Caulfield Racecourse Reserve for the three purposes specified in the Crown grant—a racecourse, public recreation ground and a public park. Getting the right balance is challenging, particularly in the absence of transparent priorities to inform decision-making, and management systems and processes to implement them.

Conclusion

Racing interests are well catered for at the reserve. However, the trustees have not given sufficient attention to ensure the optimal use of the reserve by the community. The lack of rigour in managing contractual arrangements with the Melbourne Racing Club (MRC) has allowed further encroachment into public spaces for racing related activities over time—reducing the available and accessible public open space.

Findings

- The trust has no strategic or long-term plan for land use and development at the reserve.
- The trust has not adequately controlled access to Crown land, resulting in use of parts of the reserve by the MRC without legal basis.
- The trust has not identified and quantified maintenance and new works priorities or adequately acquitted maintenance work undertaken.
- Insufficient attention has been given to improving public access and signage.

Recommendations

That the Trustees of the Caulfield Racecourse Reserve:

- expedite the implementation of a land management strategic plan that defines the future use and development of the reserve
- develop and enforce a maintenance and new works program consistent with the strategic plan to identify and agree future works and acquit satisfactory completion of works undertaken
- upgrade public access and improve signage to improve safety and greater public use.

3.1 Introduction

Managing the Caulfield Racecourse Reserve (the reserve) to achieve the three purposes identified in the Crown grant has been, and continues to be, challenging. The Crown grant does not specify the proportion of the reserve allocated to each purpose.

The reserve is one of Australia's premier racecourses. As well as hosting some of the nation's leading races, it houses more than 500 horses and is promoted as providing high quality, industry-leading training facilities.

The reserve's recreational and park facilities are less well known. Over the past decade, a number of community groups, local residents and local government representatives have raised concerns about under-utilisation of the reserve, attributing this to a lack of encouragement for the community to visit and use the reserve.

Within the trust, there have been differing views about how these competing uses can be reconciled. More recently, this has created tensions between trustees representing the Melbourne Racing Club (MRC) and those representing the government and Glen Eira City Council.

We would expect the trustees to establish robust management systems and processes so that priorities can be set, and land use and development decisions made more equitably and transparently.

3.2 Conclusion

In terms of meeting the three purposes under the Crown grant, the trust has given preference to racing interests and paid insufficient attention to use of the reserve for recreational pursuits and as a public park. This has resulted in a limited amount of space being available for community use.

The current situation is in part attributable to the lack of a land management strategic plan that identifies priorities for the reserve and explains their rationale.

The trust has also failed to adequately manage its relationship and contractual arrangements with MRC. This has prevented it from appropriately controlling, when necessary, the impact racing-related activities have on the access and use of the reserve for other purposes.

3.3 Strategic planning for future land use

The trust does not have a land management strategic plan. It has prioritised racing interests over the other purposes specified in the Crown grant. In the absence of a land management strategic plan, planning for development of the reserve over the past 10 years has been, and continues to be, driven largely by MRC's priorities—including accessing and using areas that are not leased or licensed by MRC.

This outcome is understandable given the prominence of the racecourse and the fact that the grant does not give priority to any particular activity. However, the trust has not paid sufficient attention, over a substantial period, to adequately meeting the needs of the community.

Clear and measurable objectives are a prerequisite for effective management and oversight of the reserve. The trust, however, has not defined any objectives or set priorities around what it intends to achieve with respect to the three purposes. This compromises the trust's ability to effectively manage the reserve, both in terms of planning for future use of the reserve and reporting on the degree to which it has been successful in its stewardship of the reserve.

In December 2013, trustees discussed developing a trust master plan—the equivalent of a land management strategic plan—in consultation with MRC, the council and community groups. This matter was further considered at the August 2014 meeting where it was resolved that a working group would make a recommendation on the successful contractor to develop the plan.

It is imperative that the plan is agreed to by all trustees as a matter of priority and that it clearly designates how the reserve is to be used for racing, community and public space purposes, particularly as there are only limited areas that are available for use by the public.

Such a plan would provide a mechanism to direct and control where the trust places its land use priorities, and provide a basis for:

- making funding decisions over the use of the trust's financial reserves
- future negotiations over MRC's request for a licence over those parts of the reserve that they currently occupy and control without any legal entitlement.

The plan should outline the rationale for these priorities and identify how they will be achieved. A survey will be conducted to delineate licensed and leased areas and identify existing infrastructure, fencing, access points and remaining reserve areas.

We would expect a land management strategic plan to include:

- maps, elevations and sections of the reserve with descriptions, such as of areas that are currently leased and used for specific purposes
- site condition/site analysis reports
- land use priorities for racing and community purposes and their rationale
- existing facilities, access points and fencing
- details and location of work to be undertaken
- consultation with stakeholders
- project methodology
- responsibility for day-to-day management and oversight
- milestones and time lines by project/priority
- resource allocation and costs
- risk management arrangements.

3.3.1 Future tenure arrangements

For the first time, a licence is proposed to cover areas of the reserve not subject to current leases with MRC. These leases cover the grandstand complex, Neerim Road Stables and Western Stables. As part of future arrangements, these are being rolled into a single lease and the terms renegotiated.

It is intended that the licence will cover:

- daily access by MRC to the centre of the reserve for training purposes
- non-exclusive access by MRC on the days before and after race days
- at least 10 days a year—either exclusive or non-exclusive as the trustees determine—for non-racing events
- exclusive use over the days of the Caulfield Cup Carnival.

It is imperative that the land management strategic plan is finalised and agreed by all trustees before negotiations are concluded over the licence conditions. The plan should reflect the results of the proposed survey.

There is a risk that the licence negotiations with MRC will limit priorities and proposals in the land management strategic plan. This is particularly the case in terms of the amount of land currently being used and controlled by the MRC without clear legal authority, and the resultant impact this has had on the amount of land available for community use. This is discussed in more detail in Section 3.4.1.

The plan should reflect a detailed and considered assessment of land use options based on stakeholder consultation and contain clearly defined objectives and priorities for the use, access, development and maintenance of the reserve consistent with all three purposes of the Crown grant.

The Department of Environment and Primary Industries' (DEPI) involvement in facilitating an agreed land management strategic plan will be critical to the plan's success and usefulness in guiding future land use decisions.

3.3.2 Factoring stakeholder views into land-use decisions

Stakeholder engagement is particularly important in the development of an effective land management strategic plan. This is a critical input into the planning process as well as for informing the priorities for the overall management of the reserve.

The make-up of the trust enables MRC, Glen Eira City Council and state government views to be considered as part of its decision-making processes. Until recently, however, members of the local community had no direct means of engaging with trustees on matters of importance to them. They had to rely on council representatives to present their views.

Trustees have now taken steps to improve their engagement and interaction with the community. These steps include:

- allowing members of the public to address and attend meetings—prior to this, meetings of the trustees were closed to the public
- the chair of the trust now provides opportunities for community members to meet with him at the reserve to discuss their concerns
- in 2011 the trustees established a website that provides some limited information to the public.

However, further work needs to be done. One of the major impediments to improving community engagement is that trustees are not aware of the nature, timing and extent of the current level of community uses of the reserve. Trustees need to develop accurate measures of the degree to which the community uses the reserve and set a benchmark against which the trust can measure the success of new community engagement strategies.

Decisions made by the trustees that directly impact on the community's access to, and use of the reserve should include community engagement as an integral part of the decision-making process. For example, MRC and Glen Eira City Council decided on the design and upgrade of facilities at the centre of the reserve with little if any input from the trustees or the community. These facilities, reported to be worth \$1.8 million, include a boardwalk, picnic area with barbecues, walking and jogging path and playground. Despite the length of time taken to complete the upgrade, which was first documented in 2006 and launched in April 2013, it does not address longstanding areas of community concern over access and signage.

3.4 Oversight of land use and maintenance

There should be active oversight of the reserve by the trust given its significance to the racing industry and its importance as a community asset. This oversight should concern both maintaining the reserve to a suitable standard commensurate with its status as a premier racetrack and managing future developments consistent with the purposes of the Crown grant.

The absence of a long-term plan for the use of the reserve has made adequate oversight of land use developments by the trust more difficult to manage. This has been compounded by the trust's lack of organisational and executive management capacity and particularly its lack of presence at the reserve. Trustees only meet between one to three times a year at the reserve. By contrast, MRC's headquarters and staff are located at the reserve.

This has resulted in a number of concerns with the use, maintenance and development of the reserve over time:

- enforcement of land use and development approval processes
- MRC's land exchange proposal
- the management of regulations
- oversight of works
- public access to the reserve.

3.4.1 Enforcement of land use and development approval processes

The trust established a Deed of Maintenance and Development (the deed) with MRC in February 1997. The deed involves maintaining and developing the reserve at MRC's expense and to standards established by the trust. The reported value of maintenance works under the deed, as contained in the May 2014 statement by the chair, is around \$280 000 per annum.

The deed requires MRC to develop a maintenance and development plan for negotiation and agreement between MRC and the trust. The deed further requires that MRC reports each year against the plan on work undertaken in the previous 12 months and updates the plan to include works proposed in the forthcoming 12 months. Specifically, the plan should include:

- repairs and maintenance for the good order and condition of the reserve
- new works involving construction, alteration and demolition at the reserve.

In late July 2014, MRC provided a maintenance and development plan to the trustees. Despite the deed requiring that such a plan must be submitted annually, this is the first time since the deed was agreed in 1997 that a plan has been provided to the trust. The plan includes a broad outline of standard works and maintenance, their frequency of coverage and general location. There is no detailed description of the work to be carried out, its specific location, the standard required or how the trust will assess whether standards are being met.

Further, the plan does not clearly identify new works approved and planned for the forthcoming period and other proposed future works requiring approval by the trustees for the work to proceed.

The Crown grant, clause 21, states 'that no improvements shall be effected on the site by the said Club without first obtaining the approval of the trustees'. However, there is no documentary evidence that certain works undertaken in recent years were approved by the trustees. These include:

- an electronic sliding gate at the Glen Eira Road entrance
- a safety fence—1 400 metres—around the northern perimeter
- additional training fences in the centre of the reserve
- training tracks and accompanying fencing at the southern end of the centre of the reserve.



Encroachment of fencing on the reserve.

The consequence of this failure to enforce the provisions of the deed is that MRC is using and controlling Crown land without any clear legal basis and without financial compensation to the trust, with the amount of land potentially available for community use reduced over time.

Of the approximate 54 hectares of land at the reserve:

- 11 hectares—approximately 20 per cent—is under lease to MRC, being the grandstand complex, Neerim Road Stables and Western Stables
- 37 hectares—approximately 69 per cent—is used by MRC without any clear legal entitlement or payment arrangement
- the remaining 6 hectares—approximately 11 per cent—is potential open space for use by the community during prescribed hours.

The trust advised that the lack of financial compensation to it for the use of this land is offset by maintenance works conducted by MRC as part of the deed.

There is, however, a lack of transparency about whether the work as agreed has been undertaken. Section 3.4.4 discusses this in more detail.

MRC is attempting to address its rights to access areas currently not subject to any legal agreement with the trust by establishing a licence that would also include areas of the reserve such as the racecourse proper and training tracks that it uses as part of 'custom and practice' arrangements.

It is intended that MRC will be required to seek approval from the trust for the use of the centre or parts of the centre of the reserve at any time beyond the licence conditions. At all other times, these parts of the reserve would be available for community use and public access. The trust should clearly assess the impact of any such licence including the flow-on effects on other users.

3.4.2 Melbourne Racing Club land exchange proposal

MRC had, as part of its master plan, a project for a commercial development worth an estimated \$750 million that included a triangle of Crown land—the Tabaret car park—that formed part of the reserve. MRC advised that this proposal included 2 000 residential units as well as office and retail space on MRC freehold land adjacent to the Tabaret car park.



Map shows parcels 1, 2 and 3 swapped for parcel 4 in land exchange.
Image courtesy of the Department of Environment and Primary Industries.

At an extraordinary meeting of trustees in October 2006, the trust gave in principle approval for MRC to apply to the then Department of Sustainability and Environment (DSE) to commence discussions on the exchange of Crown land. This was primarily conditional on receiving a suitable parcel of MRC land that would be incorporated into the reserve. The trust at this time did not formally communicate the outcome of these decisions to DSE nor did it closely monitor the land exchange process.

The first written contact with DSE after the October 2006 meeting was in September 2008. This letter from the then chair confirmed trustees' consent to the exchange of land from the reserve to MRC but omitted to inform DSE that this consent was subject to suitable MRC freehold land being exchanged and included in the reserve.

In September 2011, the trust wrote to DSE to enquire about the status of the land exchange and whether the government would incorporate the exchanged MRC land into the reserve. DSE responded in October 2011 noting that:

'in the context of meeting the department's land exchange policy and the legislative requirements relating to land exchanges under section 12A of the *Land Act 1958*, it was considered that Lots 1 and 2 [refer to map on page 32] would provide an improved public amenity and open space and should form a separate recreation/park reserve'.

This was the first time the trust became aware that the freehold land would not be incorporated into the reserve and was almost a year after the then Minister for Environment and Climate Change approved the land exchange. A full chronology of events relating to the land exchange process, following the October 2006 meeting is summarised in Figure 3A.

Figure 3A
Chronology of land exchange process

November 2006	MRC submitted a planning scheme amendment to Glen Eira City Council for approval. Council did not approve MRC's proposal due to concerns over the use and management of Crown land within the racecourse, the number of commercial events, deficiencies in the traffic report and the scale of the proposal.
February 2007	MRC directly approached Minister for Planning seeking his intervention.
October 2007	MRC's application referred to the Priority Development Panel (PDP) for advice. PDP supported a priority development zone to give effect to MRC's master plan.
April 2008	Minister for Planning's office contacted DSE regarding MRC's proposal to seek its advice prior to finalising the PDP's recommendations to the minister. DSE raised the issue that the reserved Crown land cannot be used for purposes other than the three purposes defined under the Crown grant.
July 2008	MRC wrote to DSE to formally propose an exchange allowing MRC to take ownership of the triangle of the Crown land and, in return, MRC would transfer an area of land it owned in Booran Road to the Crown.

Figure 3A
Chronology of land exchange process – *continued*

September 2008	Trust's chair sent a formal letter to DSE confirming trustees' consent for the proposed land exchange. The chair's letter, however, omitted that the condition for consent was based on a suitable parcel of land being returned to the Crown land reserve.
December 2008	Minister for Environment and Climate Change approved in principle the proposed exchange.
February 2010	Valuer-General's report values Crown land at \$10.45 million, while the value of the freehold land was \$5.8 million in total. MRC would pay the government for the difference between the value of Crown land and freehold land.
October 2010	Minister for Environment and Climate Change approved and signed the land exchange agreement.
August 2011	Trust resolved to write to DSE expressing their intention to seek the return of the swapped land to the reserve.
September 2011	Trust wrote to DSE enquiring on the status of the transaction. DSE responded on 5 October 2011 and advised that the land would not return to the Caulfield Racecourse Reserve but form part of a separate recreation/reserve.
April 2012	Trust wrote to the Minister for Environment and Climate Change requesting permission to manage the proposed Booran Road Reserve. Two options were proposed: • reserve the land for racing, recreation and public park purposes and include in the existing racecourse reserve • reserve the land as a separate public reserve managed by a subset of trustees who would be appointed as a committee of management.
July 2012	Minister advised that he did not support the first option as the land 'is not intended to be used, developed or maintained for racing purposes' and with regard to the second option, 'while trustees could be considered for appointment to the committee of the proposed new separate reserve, they would be acting as individual members of the committee and not as a trustee representing any particular body'. The second option was not adopted.

Source: Victorian Auditor-General's Office.

A further issue with the land exchange is the status of the decision made by the trust to support MRC's application to DSE. At the time this decision was made in October 2006 there were no council representatives appointed to the trust. This was due to delays within DSE in appointing council nominated representatives. The council nominated its three representatives in February 2006, however, they were not appointed to the trust until August 2007. DEPI was not able to explain this delay.

At the October 2006 meeting the views of council representatives on the trust were not considered in circumstances where the council had a range of significant concerns with the MRC commercial development proposal—including its scale.

The absence of this group of trustees brings into question whether decisions made by the trustees at four meetings during this 18-month period were valid. Since there are no rules guiding the conduct of trustee meetings, it is unclear what constitutes a quorum or whether attendance from representatives from each of the three groups of trustees is required for decisions to be valid.

DEPI has indicated it would examine whether it could expedite the trustee appointment process.

3.4.3 Management of regulations

Section 13 of the *Crown Land (Reserves) Act 1978* provides the trustees with the power to make regulations for the care, protection and management of the Caulfield Racecourse Reserve with the approval of the Governor in Council. The Crown grant also allows trustees to create regulations over the reserve. It is unclear which of these legal instruments the trust has used as the basis for creating the existing regulations.

With the exception of amendments to allow for increases in race day admission fees in 2007, the regulations have not been fully updated for several decades. They still contain references to penalties for offending in pounds (£).

In addition, the regulations are not an effective tool to manage the reserve, with practical enforcement of the regulations being limited. There is a reliance on MRC ground staff to report and act on issues of concern.

New uses approved by the trust such as a helicopter landing area and installation of telecommunications are not reflected in the regulations. The trust has also not updated regulations to reflect changes in the areas available for public use, such as access to a sports field.

At its October 2010 meeting the trust resolved that a full review of the regulations was required. This was in agreement with DSE advice that the regulations required an overhaul to include relevant laws and acts such as the *Environmental Protection Act 1970* and *Wildlife Act 1975*, which are relevant to public parks and supersede the existing regulations.

In July 2012, the trust sought legal advice, in consultation with DEPI, on updating the regulations and including new permitted uses. The draft regulations have been developed but not approved. Once signed off by the trust and approved by DEPI, they will be issued as part of the finalised lease and licensing arrangements. This is nearly four years after the trust decided to review the regulations.

3.4.4 Oversight of works

There has been inadequate reporting of works planned and undertaken in accordance with the 1997 deed. Over the past three years, MRC's timeliness and detail of reporting on works at the reserve has been variable and falls well short of the agreed requirements in the deed. MRC had not provided the Maintenance and Development Plan, required by the deed, by the due date of February 2014. The plan was provided to the trust in July 2014 and considered at the August 2014 trustee meeting.

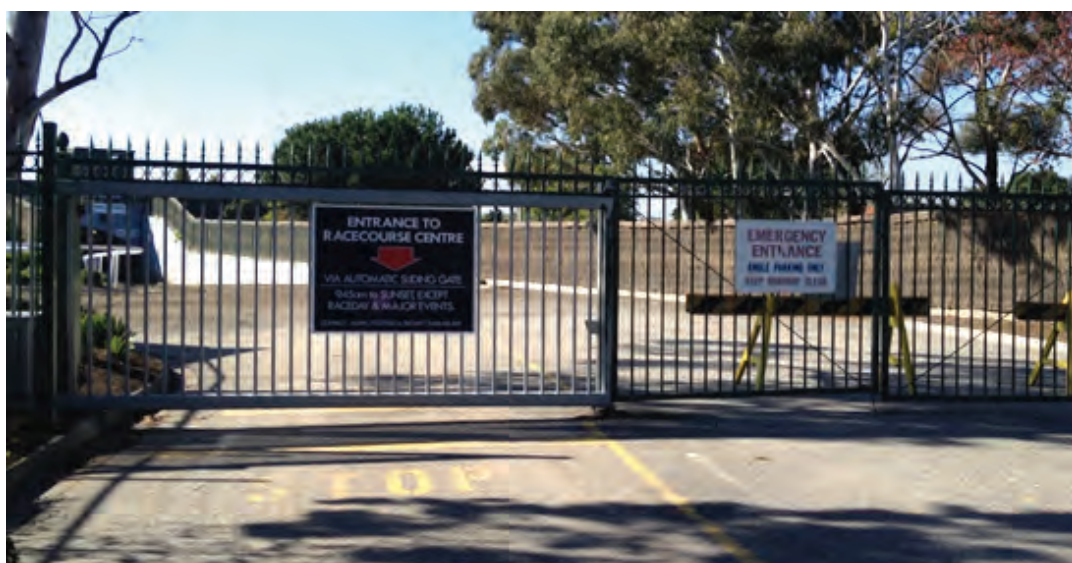
The trust should agree with MRC on a process for an effective acquittal of works undertaken, as well as a means of specifying proposed works. In particular, this should include:

- clearly identifying and quantifying works to be undertaken
- specifying the standards required
- detailing the frequency and specific location of works, both completed and planned
- providing for an acquittal of work undertaken and costs
- implementing regular reporting of progress.

The trust should also conduct a regular condition audit of the reserve to inform priority setting for maintenance activities.

3.4.5 Public access to the reserve

There has been inadequate attention paid to maintaining and improving areas of the reserve that involve public access, particularly pedestrian access and providing clear and appropriate signage, both at entry points and inside the reserve. As a result, public access and signage for the reserve is poor. This is evident in the following photographs taken during an unannounced visit by the audit team in July of this year. However, we were advised in August 2014 that the trustees intend to address these issues as a matter of priority.



Glen Eira Road vehicle entrance.



Guineas Tunnel entrance to the reserve.



Queens Avenue entrance and stairway.



Neerim Road entrance—locked.

Pedestrian entrance via Glen Eira Road—blocked.

In addition, information on the Caulfield Racecourse Reserve Trust, Glen Eira City Council and MRC websites is inadequate as there is limited information provided to the public on access times, entry points and available facilities.

This makes it difficult for the community to know with any confidence when the reserve is open and where to access it. Consequently, the community and public more broadly are not encouraged to use the reserve.

Figure 3B lists the main access and signage issues specific to each of the reserve's four entry points. Each entry point is open every day except on race days and major events; however, they open at different times. The Neerim Road entry point has further restrictions on access times.

Figure 3B
Access and signage issues at the reserve

Main signage and access issues	Glen Eira Road: open 9.45 am to sunset	Guineas Tunnel: open 9.30 am to sunset	Neerim Road: open 9.45 am to 1.30 pm and 4 pm to sunset	Queens Avenue: open sunrise to sunset
Access				
Adequate disability/mobility access	✗	✗	✗	✗
Entry point is clearly accessible and welcoming	✗	✗	✗	✗
Pedestrian paths and walking surfaces to centre are safe, visible and uninterrupted	✗	✗	✗	✗
Signage				
Entry point is clearly signed	✓	✓	✗	✗
Adequate directional signage to and from entry points to park facilities	✗	✗	✗	✗
Adequate layout and directional signage to park facilities within centre	✗	✗	✗	✗

Note: ✓ = adequate, ✗ = inadequate.

Source: Victorian Auditor-General's Office.

Recommendations

That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries:

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.

That the Trustees of the Caulfield Racecourse Reserve also:

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
 7. develop a comprehensive community engagement strategy to identify community needs and the community's views on potential future land use and development priorities
 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
 9. develop and enforce a maintenance and new works program consistent with the proposed land management strategic plan 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.
-

4 Oversight of the trust

At a glance

Background

The Department of Environment and Primary Industries (DEPI) is responsible for the oversight of Crown land in the state on behalf of the Minister for Environment and Climate Change.

Conclusion

DEPI has not been effective in its oversight of trustees' management of the Caulfield Racecourse Reserve. DEPI has not worked proactively with the trustees to assist them in resolving significant governance and management issues. There is a lack of clarity about the functions and responsibilities of DEPI and the trustees and their relationship with each other.

Findings

- DEPI chose not to intervene in stalled leasing negotiations despite the trust's inability to resolve issues after nearly three years and its requests for departmental assistance.
- DEPI has failed to address significant issues that have been drawn to its attention by the government and council trustees, such as concerns over trustees' conflicts of interest.
- DEPI has not worked with the trust to introduce governance initiatives and has not followed up on any progress made.
- The lack of agreed reporting requirements by the trust to DEPI has resulted in a lack of accountability for managing the reserve.

Recommendations

That the Department of Environment and Primary Industries:

- increases its level of oversight and support for the trustees
- works with trustees to establish a governance framework that meets contemporary better practice standards
- introduces an effective reporting framework covering the operational and financial performance of the trust.

4.1 Introduction

Land can be reserved for a variety of public purposes under the *Crown Land (Reserves) Act 1978* (CLRA). The CLRA provides for the appointment of land managers and describes their powers and obligations relating to Crown land.

The minister responsible for the CLRA is the Minister for Environment and Climate Change. The Department of Environment and Primary Industries (DEPI) supports the minister in performing his functions under the CLRA.

DEPI describes itself as having a major land management responsibility. It explains that:

'As overseer, DEPI may allocate the management of Crown land to others to manage on its behalf. Once Crown land has been placed under the management of another land manager, that manager is then responsible for day-to-day management, improving, maintaining and controlling the land for its intended use, although DEPI may provide advice and assistance to them'.

For DEPI to effectively carry out its role in supporting the minister and overseeing the performance of the Caulfield Racecourse Reserve Trust it needs to establish, in consultation with the trustees, the necessary governance and reporting arrangements for the reserve. This will enable it to gain assurance that the management of the reserve is consistent with the purposes for which it was reserved and compliant with relevant government policies and legislation.

How well DEPI exercises this oversight role is the focus of this Part of the report.

4.2 Conclusion

DEPI has not been effective in its oversight role of the trustees' management of the Caulfield Racecourse Reserve (the reserve) and has provided only limited assistance.

DEPI has not worked proactively with trustees to facilitate the resolution of significant issues that adversely affect the management of the reserve.

The lack of engagement by DEPI with the trust has contributed to the absence of an effective governance framework to control the management of the trust. Specifically, there is an absence of strategic planning and management policies as well as a lack of performance reporting to DEPI and therefore to the minister.

DEPI has now committed to improving its oversight of the management of the reserve and to working with the trust to introduce governance arrangements that reflect contemporary standards. Given DEPI's expertise in land management and its role as the minister's representative, its engagement with the trust has the potential to make a significant difference to the management of the reserve with improved outcomes for the community.

4.3 Discharge of oversight role

In the absence of any guidance on DEPI's role in relation to overseeing trusts, we used the former Department of Sustainability and Environment's *DSE's Guide to Good Governance – board members: An introduction to duties and standards of conduct* of June 2011 as the better practice standard to determine how effectively DEPI has discharged its role in overseeing the trustees' management of the reserve. While the trustees appointed to manage the reserve are not established under legislation as a trust, or appointed to a board, the principles of good governance clearly apply, as the trustees are responsible for managing a significant Crown land asset on behalf of the community.

The good governance guide defines DEPI's role as providing strategic and policy advice to the minister and overseeing the agency concerned on behalf of the minister. We examined DEPI's role in terms of:

- its efforts in working with the trustees to introduce sound management and governance arrangements
- the extent to which it has effectively engaged with the trustees on major issues affecting the management of the reserve.

4.3.1 Facilitating effective trust governance arrangements

Extent of DEPI's role

DEPI's oversight role is described in the good governance guide. This includes:

- informing agencies of their roles and responsibilities
- encouraging the adoption of standards of conduct
- identifying applicable government policies and legislation
- clarifying what reporting requirements should be put in place.

These functions are based on DEPI performing a proactive role in supporting the trust. However, DEPI has adopted a largely reactive role and has limited its involvement to giving advice to the trustees only when requested. It has not worked effectively with trustees to set up appropriate governance arrangements to enable them to perform their functions effectively under the Crown grant, the CLRA, and other relevant legislation or government policy—for example *Leasing Policy for Crown Land in Victoria 2010*.

Reporting requirements

Neither the Crown grant nor the CLRA require trustees to report on their activities or performance to the minister or the department. DEPI has not established a suitable reporting framework. Consequently, trustees do not account to the minister for their performance in managing the reserve. This seriously compromises the effectiveness of DEPI's oversight role.

Trustees provide DEPI with a copy of minutes from their meetings and financial statements. DEPI should take better advantage of information contained in these documents. However, DEPI has given little, if any consideration to the issues contained therein.

DEPI could use this information to determine when oral or written follow-up is required. It could also periodically attend trustee meetings as an observer, particularly when critical decisions are made or when performance is to be reported. In addition, a site visit may be warranted to inspect the condition of the reserve or examine access to and the quality of the public spaces within the reserve.

Governance framework

Despite the trustees identifying potential governance guidance and practice models, DEPI has not actively engaged with the trust on implementation.

For example, in July 2013 trustees sought advice from DEPI on the development of the trust's governance framework. Trustees enquired about whether DEPI intended to develop a set of principles or a template that would be appropriate for the trust to use.

DEPI informed the trustees that it would not develop a separate set of guidance material applicable to the trust but the trust could consider using the Australian Institute of Company Directors guidance as the basis for a governance policy. This guidance is based on a set of high-level principles and further elaboration of more detailed policies and procedures is needed.

DEPI provided no further assistance and did not follow up to see what progress the trustees had made in addressing governance issues.

A governance framework should include, but not be limited to:

- a statement of the role, powers and responsibilities of the trust
- a code of conduct
- a corporate plan and business plan
- a risk management strategy
- key policies, such as managing conflicts of interest
- a community engagement strategy.

Although the trust in recent years has outlined its intentions to address acknowledged weaknesses in governance arrangements, progress has been slow. As noted previously in this report, the lack of a governance framework has impeded the trust's ability to perform its role as a Crown land manager effectively and led to an inability to make decisions in the interests of all key stakeholders.

4.3.2 Engagement with the trustees

We examined DEPI's engagement with the trustees across the following significant issues, each of which impacts on how effectively trustees carry out their responsibilities for managing the trust and the reserve:

- conflict of interest issues
- negotiations on the grandstand lease
- future land use and development
- development of regulations.

Conflicts of interest

Glen Eira City Council and members of the local community as well as the government and council trustees themselves have regularly raised concerns over conflicts of interest at the trust. The current chair of the trust met with the minister's office in early 2013 to re-emphasise these concerns. Previously, the former chair had written to the Premier about his concerns regarding the poor management of conflicts of interest that adversely influenced the trust's ability to effectively manage the reserve.

As a collective, the trustees are primarily responsible for setting up the systems and processes to enable them to manage conflicts of interest effectively. This has not occurred. DEPI should, in line with its stated oversight and support role, have worked with the trustees to facilitate resolving this issue. The implications of not being able to adequately deal with conflicts of interest is significant. It prevents the trustees from effectively performing the role for which they are appointed.

DEPI has only briefed the minister on conflict of interest issues in response to correspondence from external parties. By way of illustration, Glen Eira City Council raised conflicts of interest within the trust with the minister in October and December 2008 and in March 2009.

The March 2009 council letter indicated that:

'the current governance arrangements involve Melbourne Racing Club [MRC] nominees making decisions on MRC proposals for the benefit of the MRC. ... The arrangements are incompatible with the Ombudsman's Report of March 2008 concerning conflict of interest in the public sector and ought to be reformed'.

DEPI prepared a ministerial briefing in May 2009 in response to the council letter, which advised that:

'the structure of the trust recognises the status of the reserve as one of the pre-eminent racecourses in Melbourne by virtue of the number of MRC representatives, but also clearly ensures that none of the three representative bodies comprising the trustees has a controlling interest or majority vote without the support from others'.

The issue is not whether any one party has a controlling interest but rather the failure of the trust to recognise and manage conflicts of interest. In other documents DEPI asserts that a conflict of interest only warrants attention if an individual or individuals have a personal financial interest in the matter and they are in a position to influence or determine an outcome that would further this interest. This interpretation of conflict of interest does not address a situation where benefits may flow to third parties who have a professional relationship with the reserve's trustees.

This position is contrary to advice to the trust in February 2012 which takes a broader view and refers to the department's own *Committee of Management—Responsibilities and Good Practice Guidelines* of 2011. This advice stated in part:

'On the conflict of interest front, at the very least, the six trustees appointed by MRC would have a perceived conflict of interest within the meaning of page 6 of DEPI's *Committee of Management—Responsibilities and Good Practice Guidelines*'.

This advice goes on to say:

'Clearly the public could reasonably form the view that a conflict exists or could arise through these six trustees private obligations to the club, which could (theoretically) improperly influence their decision-making as trustees for the Crown land comprising the racecourse in relation to tenure issues'.

This broader perspective can be found in DEPI's briefing to the minister in November 2012 that followed the receipt of a letter from the then chair of the trust who raised serious concerns about how the trust manages conflicts of interest.

In response the minister suggested the chair should remind trustees of their obligations to conform to accepted procedures for dealing with real, potential and perceived conflicts of interest as set out in the Directors Code of Conduct, a copy of which had been previously supplied to trustees. The minister also provided a copy of the department's model conflict of interest policy. This policy was tabled by the trust at its April 2013 meeting but was not adopted as the trust determined that 'some elements of the policy were not relevant to the trust'. As a consequence, there is no policy to guide trustees in how to identify and manage conflicts of interest.

Given the minister's expectation that the trustees adhere to accepted procedures to manage conflicts of interest, the department should have followed up this issue and advised the minister about whether or not appropriate action had been taken by the trustees. This did not occur.

The conflicts of interest at the trust are in some ways an inevitable consequence of the composition of the trust as established in the Crown grant. This, however, is not a unique situation—representative boards often face this challenge and are expected to set up the necessary policies and practices to effectively manage it.

DEPI's failure to adequately address this issue is now apparent in trustees' inability to resolve their protracted grandstand lease negotiations with MRC.

Lease negotiations

DEPI did not attempt to resolve the impasse between the trustees and MRC over the grandstand lease until September 2013. At that stage, the lease negotiations had been going for almost three years. Negotiations are still not complete as each party's views of the appropriate commercial value of the lease differ considerably.

The October 2010 trustee meeting minutes contain the first reference to the commencement of these negotiations. Two and a half years later, in April 2013, the chair of the trust invited DEPI to become directly involved in lease negotiations.

DEPI wrote back declining the invitation stating that:

'.... as the minister is not party to the lease, it is preferable that departmental officers not attend negotiations but remain available to provide advice and guidance on specific issues where necessary'.

There was no evidence to suggest that DEPI provided any advice or guidance to the trustees to help them resolve this issue.

Leaving the resolution of the dispute to the parties to the lease at the early stages of negotiations was reasonable and appropriate. However, once it was apparent that an agreed position between parties was unlikely, as was the case in April 2013, DEPI should have become actively involved. Indeed, it should have engaged with the trust on this issue well before April 2013. This should have also prompted DEPI to question whether the fundamental management arrangements in place needed to be formally reviewed and if necessary replaced.

In September 2013, the chair of the trust, MRC representatives and DEPI met with the minister's staff to discuss the unresolved lease proposal. This is the first documented instance of DEPI becoming directly involved in an attempt to resolve the lease dispute. The leasing arrangements remain unresolved. In an attempt to conclude the negotiations, DEPI has engaged a mediator to expedite this process.

Plans for future land use and development

The trust has not articulated its future vision or plans for the reserve. MRC and Glen Eira City Council have developed their own master plans for the precinct that include a vision for how the reserve will be used. However, neither has formally sought input to these plans from the trust.

The local community has raised concerns in a number of forums about how horse racing and commercial events have impacted their access to, and use of, the reserve. DEPI has not proactively explored these matters with the trust. The trust first acknowledged a need for its own land management plan in December 2013, but it is yet to develop one. The trust advised that it intends to use the funds it has accumulated since 2010—totalling \$403 000 as at 30 June 2013—to produce a plan for future land use and development at the reserve. DEPI has the opportunity now to play an important role in working with the trust to facilitate the finalisation of this plan.

Regulations

Under both the Crown grant and the CLRA, the trustees have the power to make regulations that impact use of and access to the reserve.

Despite the trust consulting and involving DEPI in updates to the parts of the regulations that deal with entrance fees on race days, DEPI has not sought to clarify under which legal instrument the regulations have been made, whether as a whole they are within the scope of that instrument and are enforceable, and what procedures need to be followed to give them their necessary effect. In addition, there has been no follow-up with the trust on progress to update the regulations to reflect changes such as new land uses at the reserve, despite the fact that the trust committed to a complete review of regulations in October 2010. DEPI was aware of the trust's commitment in this regard.

4.3.3 Improving oversight and support

VAGO's February 2014 report, *Oversight and Accountability of Committees of Management*, recommended a more strategic approach to target oversight and support for higher-risk committees who manage Crown land on behalf of the minister. For high-profile and valuable assets such as the Caulfield Racecourse Reserve, a similar targeted approach should be taken.

A prerequisite for improving oversight of and support for the trust by DEPI is that their respective roles, responsibilities and relationship should be articulated and agreed between the parties.

DEPI has not worked with the trust to address significant issues despite the willingness of the trustees for it to be involved.

In many instances, DEPI's intervention would not have had major workload implications nor were staff ill-equipped to make a significant contribution. Along with improved reporting requirements, a proactive approach to engaging with trustees would have significantly assisted in more effectively managing the reserve.

DEPI has, during the course of this audit, acknowledged that due to the historic nature of the trust, its oversight has not kept pace with contemporary management standards. DEPI has also acknowledged that recommendations in VAGO's *Oversight and Accountability of Committees of Management* report can be applied to the operation of the trust. To this end, it has committed to working with the trust to develop key documents to assist the trust's governance and management of the reserve.

Specifically, these documents include:

- a reserve land management strategic plan identifying opportunities and risks
- engagement/communication guidelines to assist the trust in communicating with DEPI
- a constitution/terms of reference, conflict of interest policy and code of conduct.

DEPI also acknowledged, 'the efforts made by the trust over the past three years to improve the trust's governance performance. This has been done in a difficult environment where negotiations with MRC have been ongoing in relation to the renewal of the club's lease'.

DEPI's revised position on its oversight of the trust is a significant step forward and should result in improvements to the overall management of the reserve. It will also assist the trust to address longstanding unresolved issues that have prevented it from meeting all of its obligations as a Crown land manager.

4.3.4 Review of current management arrangements

In July 2012, the former chair of the trust wrote to the Premier raising concerns about the suitability of the current management arrangements for the reserve, particularly in managing conflict of interest. This letter was forwarded to the minister for a response. The minister wrote to the then chair in November 2012 indicating his view that the current arrangements did not meet contemporary standards and that DEPI would investigate other options that may be suitable for the reserve.

DEPI considered a range of alternative governance options for the reserve, including:

- abolishing the Caulfield Racecourse Reserve Trust and creating new management arrangements
- establishing a new trust or committee of management through the powers the minister has under the CLRA
- drafting enabling legislation to establish a trust similar to what is in place for other sporting and recreational facilities.

There was no evidence of any action taken or any feedback provided to the trustees about what governance options may be suitable for the reserve. This has meant that issues adversely affecting the management of the reserve have remained unaddressed.

4.4 Improving management arrangements

Given the range of concerns identified with the current trust management arrangements, both DEPI and the trust need to take action to rectify this situation.

As a priority, DEPI should address the fundamental weaknesses in the current arrangements and consider the long-term alternative Crown land management options that may provide a more appropriate approach.

4.4.1 Existing structure

Despite the considerable barriers to making the current composition of trustees work together effectively to satisfy the purposes of the Crown grant, there is scope to address these barriers within the existing trust framework. It is also important to recognise that there have been recent attempts by government and council representatives to address longstanding governance concerns at the trust and these should be given the opportunity to be put into effect.

DEPI should work with the trustees to address the significant governance issues that have adversely affected decision-making in relation to the reserve. Progress in introducing new arrangements should be closely monitored and overseen by DEPI and reported to the minister.

For this approach to be viable, it would need to be based on two preconditions:

- The current trustees must commit to fulfilling their obligations in accordance with contemporary governance standards including placing the public interest—in this case those interests that align with the agreed objectives for the reserve as a whole—ahead of any professional or private interests.
- Boosting the level of organisational and executive management capacity at the trust to develop governance policies and procedures, and strategic and corporate documentation, and establish operational processes that will drive effective management and oversight of the reserve.

This increase in capacity should also include additional meetings of the trust. Since 2005, the number of meetings has varied from one to three each year, with two scheduled for 2014. This is not sufficient to enable effective management of issues associated with the reserve.

If these preconditions are not agreed and met, then DEPI should consider alternative Crown land management arrangements.

4.4.2 Alternative arrangements

DEPI is undertaking a number of major initiatives with the aim of reforming the management of Crown land. It has an ongoing project that, among other things, looks at improved categorisation of committees of management. This allows for a more tailored approach to reporting, governance and compliance to better reflect risk and materiality.

There have been two further initiatives which DEPI has recently commenced for improving management of Crown land.

DEPI is currently scoping reforms to achieve a better return on DEPI's investment in the Crown land estate and gain greater community satisfaction with accessing, using and managing Crown land and community assets. This project also focuses on governance and identifying the most appropriate Crown land manager for a reserve.

DEPI has also begun a Governance Reform Initiative. This work is intended to focus on statutory authorities and their relationship with DEPI and will take into account recent amendments to the *Public Administration Act 2004* relating to departmental responsibility for, and oversight of, these entities.

It is unclear whether these two initiatives will cover, or could be expanded to cover, the future of the management of the reserve. There is no definitive timetable set by DEPI to address the management of the reserve. However, these initiatives are not expected to impact on the management framework for the reserve in the medium to long term.

If there is no agreement by all trustees to introducing suitable management and governance arrangements, consideration of alternative arrangements for the reserve by DEPI should be expedited. It should start exploring these options now, including the legislative framework needed to support any changes to the management arrangements over the trust.

In addition to the concerns identified at the trust, there are other reasons for bringing forward consideration of the most appropriate management options for the reserve. These include:

- management arrangements at the reserve have essentially remained the same for 140 years
- the significance of the reserve in terms of its size and value as well as its high public profile as the site of the Caulfield Racecourse
- concerns regularly raised by Glen Eira City Council and residents over accessing and using the reserve and the suitability of current management arrangements.

Recommendations

That as a priority, the Department of Environment and Primary Industries:

10. introduces more rigorous oversight of the Caulfield Racecourse Reserve
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
12. works with the trust to secure the commitment of all trustees to comply with a set of governance standards that reflect contemporary practice.

That the Department of Environment and Primary Industries also:

13. closely monitors the trust's progress in implementing its governance framework and actively supports the trust in the development process
 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
 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.
-

Appendix A.

Trustees of the Caulfield Racecourse Reserve

Introduction

Figure A1 lists the current membership of the Trustees of the Caulfield Racecourse Reserve.

Figure A1
Trustee representatives

Representative	Date approved by Governor in Council	Tenure
Government		
Mr Greg Sword, AM (Chair)	20 August 2003	Indefinite
Mr Ross Kennedy	18 February 2009	Indefinite
Ms Marion Lau, OAM	18 October 2011	Indefinite
Justice Shane Marshall	20 August 2003	Indefinite
Mr Nick Staikos	20 April 2010	Indefinite
Mr Edgar M. P. Tanner	4 June 1996	Indefinite
Melbourne Racing Club		
Mr Matthew Cain	17 August 2010	Indefinite
Mr Rodney Fenwick	24 July 2012	Indefinite
Mr Peter Le Grand	20 November 2007	Indefinite
Mr Ian MacDonald	24 January 2001	Indefinite
Mr Peter McCarthy	17 April 2012	Indefinite
Mr Michael Symons	20 November 2007	Indefinite
Glen Eira City Council		
Cr Margaret Esakoff	13 March 2013	Four-year term
Cr Jamie Hyams	13 March 2013	Four-year term
Cr Michael Lipshutz	13 March 2013	Four-year term

Source: Department of Environment and Primary Industries.

Appendix B.

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994*, a copy of this report, or part of this report, was provided to Department of Environment and Primary Industries and the Caulfield Racecourse Reserve Trust.

The submissions and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

Department of Environment and Primary Industries	56
Caulfield Racecourse Reserve Trust.....	60

RESPONSE provided by the Secretary, Department of Environment and Primary Industries



**Department of Environment
and Primary Industries**

Ref: SEC010647
File: LA/05/3114



Mr John Doyle
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9 SEP 2014

Dear Mr Doyle *John,*

**PROPOSED REPORT - MANAGEMENT AND OVERSIGHT OF THE CAULFIELD RACECOURSE
RESERVE**

Thank you for your letter dated 27 August 2014, inviting me to provide submissions or comments to be included in the report on the Management and Oversight of the Caulfield Racecourse Reserve.

The Department of Environment and Primary Industries (DEPI) welcomes the findings in the report and accepts each of the recommendations directed to DEPI.

The findings raised in the report will provide DEPI with an opportunity to work more closely with the trustees in developing an improved governance framework for the operations of the Caulfield Racecourse Reserve. DEPI has developed an action plan to improve its oversight and reporting requirements (enclosed).

I would like to express my appreciation to your audit team for their professionalism during the conduct of this audit.

Yours sincerely

Adam Fennessy
Secretary

Encl.

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RESPONSE provided by the Secretary, Department of Environment and Primary Industries – continued

DEPI Action Plan Management and Oversight of the Caulfield Racecourse Reserve				
VAGO Recommendations	DEPI Actions	Responsibility	Completion Date	
1. That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries determine the trust's functions, roles, responsibilities, powers, and obligations through an analysis of the existing legal framework and apply this to management of the reserve	DEPI supports this recommendation and will provide advice and context to contribute to the Trust's legal analysis, and work with the Trust to ensure that the roles and responsibilities of the Trust are clearly defined and documented.	CRRT/ DEPI	End March 2015	
2. That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries develop and adopt a governance framework, consistent with contemporary standards that includes the following key elements: • A statement of duties and obligations of trustees, management plans including a mission statement, business plan and a comprehensive conflict of interest policy • Business rules for administering the trust and making decisions • An induction program for new trustees • Public reporting on trust activities including financial performance.	DEPI supports this recommendation and will work with the Trust – clarifying government expectations where necessary – to ensure that it establishes a governance framework that is consistent with contemporary standards and includes the key elements recommended by VAGO.	CRRT/ DEPI	End March 2015	
3. That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries develop an agreed comprehensive action plan to implement the above governance framework that: • Outlines responsibilities and milestones • Identifies adequate resources for completion	DEPI supports this recommendation and will work with the Trust during the development of its action plan	CRRT/ DEPI	End March 2015	

RESPONSE provided by the Secretary, Department of Environment and Primary Industries – continued

5. That as a priority, the Trustees of the Caulfield Racecourse Reserve, in consultation with the Department of Environment and Primary Industries 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.	DEPI supports this recommendation and will work with the CRRT and provide appropriate Ministerial input to implement a land management strategic plan for the Reserve, which is consistent with the objectives of the Crown grant.	CRRT/ DEPI	End June 2015
10. That as a priority, the Department of Environment and Primary Industries, introduce more rigorous oversight of the Caulfield Racecourse Reserve	DEPI supports this recommendation and to ensure effective oversight over the operations of the CRRT, DEPI will: - a). Meet with the Trust annually to review its operations and performance. - b). Prepare a Statement of Expectations (SOE) that outlines the Minister's expectations in relation to: planning, policy compliance, and accountability, including auditing, financial and performance reporting, and transparency expectations. The SOE will also detail the Minister's expectations in relation to acquittal of actions in response to this audit. - c). Hold a quarterly meeting between the Trust Secretary and nominated DEPI Officer to discuss current or emerging issues relating to the CRRT. - d). Request the Trust to provide an annual update on performance against the objectives and actions arising out of the business and strategic plans.	DEPI	October 2014, and then ongoing.
11. That as a priority, the Department of Environment and Primary Industries establishes a comprehensive reporting framework including: - Reports on progress on achieving land use and development priorities - Report on progress against the business plan - Financial statements prepared in accordance	DEPI supports this recommendation and as set out in response to recommendation 10, through the SOE DEPI will establish a comprehensive reporting framework that addresses the recommended inclusions.	DEPI / CRRT	End June 2015

RESPONSE provided by the Secretary, Department of Environment and Primary Industries – continued

with Australian Accounting Standards		DEPI	Ongoing commencing October 2014
12. That as a priority, the Department of Environment and Primary Industries works with the Trust to secure the commitment of all trustees to comply with a set of governance standards that reflect contemporary practice.	DEPI will seek assurance on adoption and compliance with contemporary governance standards through structured reporting requirements established by the SOE – such as periodic performance reporting and acquittal of the recommendations of this review – and work through any issues in regular meetings with trustees.	DEPI	Ongoing
13. That the Department of Environment and Primary Industries also closely monitor the trust's progress in implementing its governance framework and actively supports the trust in the development process	DEPI supports this recommendation and as set out in response to recommendation 10 will establish clear expectations in relation to acquittal of the recommendations of this review, and will meet quarterly with the trust to provide support and guidance with the development of the governance framework until the trust's action plan is fully implemented.	DEPI	End April 2015
14. That the Department of Environment and Primary Industries also ensure 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.	DEPI supports this recommendation and to assist the CRRT with the implementation of this recommendation, DEPI will: a). Provide the trust with the standard <i>Crown Land (Reserves) Act 1978</i> , Model Draft Regulations b). Meet with the trust to review current regulations c). Advise the trust of administrative process necessary to amend reserve regulations	DEPI	End April 2015
15. That the Department of Environment and Primary Industries also explore 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.	DEPI supports this recommendation and will a). Determine a range of other land management options for consideration of the Minister b). Survey trustees to determine preferred land management regime c). DEPI to initiate discussions with Racing Victoria regarding strategic planning for racing in Victoria as it relates to Caulfield Racecourse Reserve	DEPI	End May 2015
		DEPI	October 2015
		DEPI	October 2015
		DEPI	October 2015

RESPONSE provided by the Chairman, Caulfield Racecourse Reserve

1

CAULFIELD RACECOURSE RESERVE

9 September 2014

Mr John Doyle
Auditor- General
Victorian Auditor-General's Office
Level 24, 35 Collins Street
Melbourne Vic 3000



Dear Mr Doyle

Re Performance Audit: Management and Oversight of Caulfield Racecourse Reserve

Thank you for your letter dated 27 August 2014 enclosing a copy of the proposed report. The Trustees of the Caulfield Racecourse Reserve have now all had an opportunity to review this.

The Trust welcomes the VAGO report and believes it provides an important reference for the future action and behaviour of the Trustees.

Over the past 3-4 years, the Trustees have been engaged in negotiations with the MRC over the renewal of the Club's long term lease. The Trustees have sought and received independent advice in relation to the conditions of the new lease. This has led the Trust to seek conditions for the proposed new lease and licence from the MRC that are significantly different from the practices of the past. The Trust has already begun to address many of the shortcomings of the past but acknowledges that this is only a beginning.

The Trustees believe that the VAGO report, and the renewed commitment of the department (DEPI) will greatly assist the Trust to make the changes identified in the report.

In taking the recommendations forward, the Trust notes and agrees with the audit observations in respect of the need for increased organisational capacity and a presence at the Reserve. The Trust further notes that notwithstanding the currently limited organisational capacity, the Trust has dealt with more than 15 resolutions out of sessions and held over 40 meetings of specific purpose Working Groups over the past 18 – 36 months in addition to the scheduled bi-annual meetings of the full Trust.

**RESPONSE provided by the Chairman, Caulfield Racecourse Reserve –
continued**

All Trustees have been invited to comment on the proposed report and the attached response to the recommendations detailing the Trustees action to each and a timeframe for completion of these actions was circulated and adopted by a majority of Trustees.

The six Trustee's nominated by the Melbourne Racing Club have prepared a separate response to the report representing their views. I include their views in my response so as a complete response is offered and as a matter of fairness.

The MRC nominated Trustee's response is as follows:

The MRC Trustees are fully prepared to work with all Trustees to implement the recommendations of the Performance Audit and in doing so do not oppose the responses you have submitted to the Auditor General nevertheless the MRC Trustees wish to comment by way explanation in respect to recommendations 2,8 &9 as follows:

Recommendation 2

The MRC nominated Trustees agree to the development and adoption of the governance framework.

The assistance of DEPI is essential in developing a framework which recognises the unique nature of the Trust and maintains consistency with the original intention of the Crown Grant and the Act.

The framework must also be developed within the context that DEPI does not consider the Trust a public entity under the Public Administration Act 2004 or a public body under the Financial Management Act 1994.

Recommendation 8

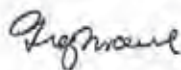
By way of explanation the MRC appointed Trustees support this recommendation on the understanding that any regulations that may be proposed in the future recognises the terms of any Lease/Licence Agreements negotiated with MRC by the Trust.

Recommendation 9

By way of explanation the Trustees appointed by the MRC would comment that the current Deed of Maintenance and Development provides for annual maintenance and improvements and any decision to cancel this agreement without reviewing its performance in advance of finalizing the terms of the Lease/Licence under negotiation may result in unnecessary delay with these negotiations and cause interruption to scheduled maintenance of the racecourse.

The MRC Trustees look forward to working with all Trustees to further the objectives of the Trust.

Yours sincerely



Greg Sword AM
Chairman
Caulfield Racecourse Reserve

cc Dallas Mischkulnig [dallas.mischkulnig@audit.vic.gov.au]

ENC

**RESPONSE provided by the Chairman, Caulfield Racecourse Reserve –
continued**

CAULFIELD RACECOURSE RESERVE

Resolution and Plan of Implementation

In relation to the recommendations contained in the proposed report, the Trust is committed to implement all of the recommendations within a 12 month time period as follows:

Recommendation 1

Determine the Trusts functions, roles responsibilities, powers and obligations through analysis of the existing legal framework and apply this to the management of the reserve.

The Trust has begun this process through external advice and will commit to working with DEPI to conclude this review within the first 6 months.

Recommendation 2

Develop and adopt a governance framework, consistent with contemporary standards that include the following key elements:

- *A statement of duties*
- *Business rules*
- *Induction program*
- *Public reporting*

The Trust has initiated this process with a first draft going before the August meeting of the Trustees. The Trustees undertakes to work with DEPI to conclude this process within the first 6 months.

Recommendation 3

Develop an agreed comprehensive action plan to implement the above governance framework that:

- *Outlines the responsibilities and milestones*
- *Identifies adequate resources*

The Trust undertakes to work with DEPI to implement this recommendation within three months following the completion of recommendations 1 & 2.

Recommendation 4

Identify public safety risks and develop strategies to manage those risks

The Trust undertakes to develop a risk register and risk management strategy within the first 12 months.

RESPONSE provided by the Chairman, Caulfield Racecourse Reserve – continued

Recommendation 5

Implement a land management strategic plan that contains clear and measurable objectives that defines future land use and development consistent with the purposes of the Crown Grant

The Trust undertakes to develop the LMSP working with DEPI and consulting with both the Glen Eira Council and the MRC and seeking public input to the plan. The Trust undertakes to deliver that plan in the first 12 months.

Recommendation 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

The Trust undertakes to develop a plan to improve access within the first month and for the progressive implementation of that plan in the first 6 months.

Recommendation 7

Develop a comprehensive community engagement strategy to identify community needs and the communities view on potential future land use and development priorities

The Trust undertakes to develop the engagement strategy in the first 4 months and in accordance with any recommendations of the LMSP and to use this engagement to assist with the development of the Reserve.

Recommendation 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

The Trust has already begun a review of the current regulations. This review will now include the focus of the recommendation. The Trust undertakes to complete this review within the first 6 months.

Recommendation 9

Develop and enforce a maintenance and new works program consistent with the LMSP 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*

The Trust has commenced some work on this matter. As the report notes, there remains in place a “Deed of Maintenance and Development” entered into in 1997 that will not expire until 2018. The Trust has sought to cancel this Deed by agreement with MRC as part of the overall Lease & Licence negotiations. The Trust will progress the development of a maintenance works program as a part of the overall Lease and Licence negotiations. The Trust undertakes to finalise a maintenance works program in the first 9 months, subject to the completion of negotiations of the new Lease and Licence.

Auditor-General's reports

Reports tabled during 2014–15

Report title	Date tabled
Technical and Further Education Institutes: Results of the 2013 Audits (2014–15:1)	August 2014
Coordinating Public Transport (2014–15:2)	August 2014
Managing the Environmental Impacts of Transport (2014–15:3)	August 2014
Access to Legal Aid (2014–15:4)	August 2014
Managing Landfills (2014–15:5)	September 2014

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