

REPORT TO: The Musselburgh Racing Associated Committee
MEETING DATE: Tuesday 3 July 2018
BY: Racecourse Health & Safety Officer
SUBJECT: Health & Safety Report

2

1 PURPOSE

To advise the MRAC of Health and Safety Management at Musselburgh Racecourse.

2 RECOMMENDATIONS

2.1 The MRAC is asked to note the report

3 BACKGROUND

3.1 HEALTH AND SAFETY DIARY DATES TO NOTE:

- **30/03/18** – Annual Safety Certificate issued. No issues to report.
- **05/04/18** – Annual Raceday staff Health and Safety Briefing took place – Included all Emergency Procedures and Health and Safety legislation. Scenarios to be included that could occur on any raceday.
- **02/06/18 / 09/06/18** – Raceday Safety Control Room in operation – Enhanced the safety and security operation on the racecourses Category A race fixtures. Police Command – Raceday Safety Officer managed all aspects of the racedays Safety Operation.
- **04/07/18** – Safety Staff raceday on job assessments – To monitor the safety staff whilst on duty on a raceday.
- **18/07/17** – Quarterly Health and Safety Meeting planned. All department Health and Safety representatives to attend.

3.2 STAFF TRAINING UPDATE

Training Requirements:

Groundstaff training requirements highlighted within Health and Safety meetings. Manual Handling training refresher course required for all groundstaff. Refresher course now detailed for July 2018.

Safety staff receive continuous safety and security training throughout the year, as well as World Host Customer Care update training sessions.

3.3 HEALTH AND SAFETY – Points to note from most recent Quarterly Health and Safety meeting:

- Horse Box Loading Ramp – Extra lighting provided in the vicinity of the ramp. The structural condition to be regularly checked to ensure safety levels are maintained. New fencing erected to control traffic in this area.
- Health and Safety Documentation – All documentation has been reviewed and new filing system installed to ensure a complete audit trail is available at all times by computer and paper.
- All contractors information letters to be reviewed by the end of January. To ensure all contractors visiting the racecourse adhere to safety protocol at all times. The letter will also detail the individual contractors possess the correct and required documentation and insurances that are to be available for inspection at any time.
- Mark Bemrose (Head Groundsman) and Brian Melrose (Stable Manager) both successfully completed First Aid at Work Course. Qualification is valid for 3 years.

3.4 CAPITAL EXPENSE UPDATE

Desirable Future Capital Expenditure:

- **Freddie's Bar** – improve the layout to improve the customer experience and to improve access/egress (2017/18). **Under consideration to be included in the 2018-19 capex programme.**
- **Improve the track layout** – increase the radii of the bottom bend. Cost c£500k to £1m. Long-term project.
- Continuous maintenance on recognised safety issues throughout the site has taken place. The Main Stand Grandstand steppings have been inspected and repaired where necessary as well as the tarmac area and manhole covers in front of the Betting Shop. Regular checks take place to ensure any issues that arise are dealt with quickly.

3.5 LEGISLATIVE CHANGES

No changes to report to affect this period. All new legislation has been issued on the 1st April 2018. No relevant changes to affect the current situation.

3.6 ONGOING INDIVIDUAL HEALTH AND SAFETY ISSUES

Claims – There are currently no cases ongoing against the racecourse:

Non Raceday Events – There has recently been communication with the golf course through enjoyleisure (EL) regarding events on the racecourse out with racedays. The racecourse position is that we risk assess all events. Should the risk assessment establish that the golf course will need to close or partially close for the event to take place safely then we make the request to EL. In doing so we would share the risk assessments with EL. We would only proceed with their approval to close the golf course.

In the past EL interpreted that the racetrack is shared property and as such EL believed it had a veto on the use of the racetrack on health and safety grounds regardless of whether any risks existed and regardless of our own assessment of any risk and the mitigating measure we put in place.

The racecourse track record on health and safety is excellent and we will continue to stage events out with racedays on this basis.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 BACKGROUND PAPERS

- 6.1 None

AUTHOR'S NAME	Steve Horlick
DESIGNATION	Safety Officer, Musselburgh Racecourse
CONTACT INFO	07912 343 131
DATE	Wednesday, 27 June 2018

REPORT TO: The Musselburgh Racing Associated Committee
MEETING DATE: Tuesday, 3 July 2018
BY: Racecourse General Manager
SUBJECT: Finance – Draft Audited Accounts 2017-18

3

1 PURPOSE

- 1.1 To provide the MRAC with the draft 2017-18 audited accounts and take any questions.

2 RECOMMENDATIONS

- 2.1 The MRAC are asked to note the draft un-audited accounts.

3 BACKGROUND

- 3.1 Profit for the year was £175,348 compared to the budget of £40,695
3.2 Capex for the year was £45,427 compared to budget of £50,000
3.3 Retained profit for the year was £129,921 compared to a budget of -
£9,306

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

- 6.1 Financial – See above

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 Draft 2017-18 Audited Accounts

AUTHOR'S NAME	Bill Farnsworth
DESIGNATION	General Manager, Musselburgh Racecourse
CONTACT INFO	Tel 07710 536 134
DATE	Wednesday, 27 June 2018

DRAFT

YEAR 2017/18

FINANCIAL STATEMENTS

for the year ended 31st March 2018

Required by

BRITISH HORSERACING AUTHORITY

In accordance with The Rules of Racing

=====

Name of Racecourse.....MUSSELBURGH.....

Any Communications respecting this Form should be addressed to -

**REGISTRY OFFICE OF THE BRITISH HORSERACING AUTHORITY
151 SHAFTESBURY AVENUE, LONDON WC2H 8AL**

**Musselburgh Racing Associated Committee (formerly)
Musselburgh Joint Racing Committee**

Profit and Loss Account

for the year to 31st March 2018

		2018		2017		
Profit directly relating to race days -	£	£	£	£		
Flat		515,329		576,928		
National Hunt		<u>429,009</u>		<u>467,016</u>		
		944,338		1,043,944		
Add - Fixed income		<u>970,309</u>		<u>810,560</u>		
		1,914,647		1,854,504		
Deduct - Fixed expenditure		1,739,299		1,602,888		
Profit (Loss) for the year		<u>175,348</u>		<u>251,616</u>		
Donation to East Lothian Council in relation to capital expenditure	(45,427)	(233,570)
Retained profit (loss)		<u><u>129,921</u></u>		<u><u>18,046</u></u>		

The notes on pages 5 to 6 form part of the Financial Statements

**Musselburgh Racing Associated Committee (formerly)
Musselburgh Joint Racing Committee**

Balance Sheet at 31st March 2018

	2018		2017	
	£	£	£	£
CURRENT ASSETS				
(1) INVESTMENTS				
Cost or valuation at 1st April 2017		-		-
Additions		<u>74,462</u>		<u>-</u>
At 31st March 2018		<u><u>74,462</u></u>		<u><u>-</u></u>
Investments at 31st March 2018 consist of a 1.6% stake in Britbet Racing LLP.				
The value of the investment at the year-end is the value of the capital introduced into the LLP. The committee have considered the valuation of this at the year-end and are satisfied that no adjustment to the carrying value is required				
(2) DEBTORS				
Debtors		901,113		991,343
Balance on Racecourse Bank Account		<u>30,294</u>		<u>60,454</u>
		<u><u>931,407</u></u>		<u><u>1,051,797</u></u>
CURRENT LIABILITIES				
CREDITORS :				
Balance on ELC Bank Account	(129,068)	(309,430)
HBLB Loan	(51,713)	(78,356)
Amounts falling due within one year (Note 2)	(<u>637,771)</u>	(<u>606,615)</u>
		<u><u>818,552</u></u>		<u><u>994,401</u></u>
NET CURRENT ASSETS		187,317		57,396
TOTAL CURRENT ASSETS LESS CURRENT LIABILITIES		<u><u>187,317</u></u>		<u><u>57,396</u></u>
CAPITAL AND RESERVES				
Other Reserves - Retained Profit (Note 3)		<u>187,317</u>		<u>57,396</u>
		<u><u>187,317</u></u>		<u><u>57,396</u></u>

The notes on pages 5 to 6 form part of the Financial Statements

Approved on

.....
Chairman

**Musselburgh Racing Associated Committee (formerly)
Musselburgh Joint Racing Committee
Notes to the Financial Statements 31st March 2018**

(1) ACCOUNTING POLICIES**Accounting convention**

The financial statements are prepared under the historical cost convention.

Income

Profit directly relating to race days represents admission and other related income including sponsorship less direct race day expenditure and net prize money.

Taxation

The Committee is exempt from taxation

(2) CREDITORS : AMOUNTS FALLING DUE WITHIN ONE YEAR

	2018	2017
	£	£
Other Creditors	637,771	606,615
	<u>637,771</u>	<u>606,615</u>

(3) RETAINED PROFIT

	2017/18	2016/17
	£	£
Balance at beginning	57,396	39,350
Profit (Loss) for the year	129,921	18,046
Balance at end	<u>187,317</u>	<u>57,396</u>

REPORT TO: The Musselburgh Racing Associated Committee
MEETING DATE: Tuesday 3 July 2018
BY: Senior Operations and Commercial Manager
SUBJECT: Operations and Commercial Report

4

1 PURPOSE

- 1.1 To update the Committee on the commercial and operational performance of the racecourse for 2018/19

2 RECOMMENDATIONS

- 2.1 The Committee are asked to note the performance to date.

3 BACKGROUND

3.1 **Highlights**

It has been a difficult start to the year with a trend of slow sales for our Sensational Six fixtures. Easter Saturday, Ladies Day and Scottish Sprint Cup all came in under budget. Ladies Day remained a sell out, but the income was below budget.

Our Community engagement activity has made significant progress with the initial stages of an innovative transition project with Musselburgh Grammar School underway.

3.2 **Commentary:**

- **Attendance** (Author S Montgomery)

Admissions for 2018/19 are forecast to achieve £793,326, which is £85,174 below budget. Sales were significantly down on Easter Saturday (-£21,159), Ladies Day (-£25,675) and Scottish Sprint Cup Day (£30,163). We also abandoned racing on 5th April (-£10,000).

The slow pace of sales for our bigger days has been attributed to a variety of factors.

- The Beast from the East had a significant impact on our key sales window in early spring.

- Our two events in June were also competing with hugely popular music events.
- Uncertainty over our racing license
- National trend for slower raceday sales

Although Ladies Day sold out our income is still down, partly to more people purchasing at a lower ticket price and the cancellation of a marquee for 400 people, due to lack of demand.

For 2019 we are looking at a number of changes. Our two Saturdays in June were only a week apart, following changes in the fixture list in 2018. We feel it would be better to focus on selling one event (Ladies Day on Derby Day) and maximising the opportunities. Easter Saturday will benefit from falling one month later and the rehomed Scottish Sprint Cup will strengthen the programme on this day.

We are also undertaking a review on our sales windows and ticket pricing for 2019/20. We are currently working with Two circles via the Insight= Growth project to analyse the data to inform our decisions for next year.

Fixtures remaining in 2018/19 will be less effected by the factors mentioned above. We are comfortable that despite some national trends for slower event sales our budgets are achievable. We will identify any costs savings across Marketing and Operations wherever possible.

- **Advertising and Marketing** (Author A Johnston)

Raceday Expenditure for 2018/19 is on budget at £190,745.00.

For Easter Saturday the combined spend was £29,407, just under budget of £32,178. As part of the Turbo Boost campaign, we had support from Two Circles. This resulted in;

- Increase of returning customers (7%)
- total crowd was down (34%) on 2017

The main factors for the declining crowd were attributed to poor weather; however, we also identified that people's basket size i.e. the amount of tickets purchased by each customer reduced by 26% since 2015. This is against an industry average decline of 14%. We believe this is down to our pricing strategy, which is under review for 2019.

The two Saturday's in June had a combined spend of £73,942, which is on budget despite the advertising and marketing for Ladies Day needing to continue right up until the week of Ladies Day. The activity resulted in

- Ladies day purchasers increasing from 2,900 to 3,196
- Ladies Day admission only tickets increasing from 7,477 to 7,697
- SSC total purchasers decreased from 1,142 to 832
- SSC advance tickets decreasing from 4,128 to 3,548

The activity to promote Ladies Day did reach more people than in 2017, however they either bought a cheaper ticket or bought less tickets than in 2017. This will be addressed in our pricing review for 2019. No longer having two Saturdays in June will significantly reduce the activity and budget required for this period.

Fixed marketing expenditure for 2018-19 is £112,861.00. Total amount spent to date is £12,185.00, however the majority of this budget is allocated to activity that

is planned for the second half of the year e.g website, CRM and ticketing updates for 2019 fixtures and annual brochures. Savings in website and ticketing support, will be possible and any non essential activity identified to make savings where possible.

- **Raceday Operations** (Author P Duncan)

The Operational Costs are forecast to be £454,940, which is £8,419 down on budget.

Easter Saturday operational spend was £34,781. This is £4,114 over budget, due to the requirement for increased marquee flooring, carpeting and heaters due to the weather. Reserved picnic table payments were refunded to attendees due to the inclement weather and solutions for this will be looked into for the future.

Ladies Day entertainment included Queen of Style mini competitions located around the different marquees with the final held in the main Stage Marquee generating great interest and participation. Working with Rogue Village saw the Stage Marquee take on a much brighter and open space than in previous years. The operational costs for Ladies Day were £165,041. £10,000 lower than budget as we removed one of the Pincic Pavillion marquees due to lack of demand.

For both racedays, we again worked closely with Police Scotland and delivered enhanced CCTV coverage across the course. We also created an Event Control Room for the first time. This created a central location for security, police and first aid to have an overview of the day utilising the CCTV feed. These costs were covered within the Operations budget.

The new food court tarmac area was well received by racegoers and suppliers helping create an improved service area.

Sustainability will be a focus over the next quarter engaging with the Green Tourism Business Scheme through VisitScotland. The aims from this work would be to reduce costs, improve efficiency and reduce the environmental impact of the racecourse.

- **Corporate Hospitality** (Author E Bidie)

The Corporate Hospitality budget 2018/19 to Scottish Sprint Cup Raceday was set to make a profit of £165,093. Forecast to same date is £141,305. A shortfall of £23,788. This shortfall is due to slower sales on Easter, which proved harder than predicted falling two weeks earlier than 2018 and Scottish Sprint Cup, which proved harder to sell than the previously popular Edinburgh Cup Raceday. Ladies Day continued to deliver strong hospitality sales with a raceday profit of £40,000, with the VIP marquee delivering £24,746 of this.

Our focus on quality and service continues to reap rewards. In particular, two new firms from 2017 are returning in 2018 with a total of 155 guests. Beatsons Building Suppliers, a builders merchant from Alloa is returning with 80 guests rather than take a cheaper package at another Scottish Racecourse. Witherbys is a successful publishing company in Livingston, who will bring 75 of their Scottish staff. This is contributing to a strong July and August, which is forecast to be above budget.

The focus for our next quarter will be to set prices and review packages for next year. I also plan a completely new way of corresponding with clients, as I feel the annual brochure may not be effective these days. I am looking at ideas around a video to

send to clients and a handful of luxury brochures with a gift, to send to our very loyal clients.

- **Community Engagement** (Author S Montgomery)

Significant progress has been made with our community engagement activity, with educational outreach being the focus for 2018.

We have been working on the planning and delivery of an innovative Transition Project for Musselburgh Grammar School. Currently in its pilot stage we have worked in partnership with Musselburgh Grammar School and Racing to School. This will result in over 500 pupils, from Primary 7 to S1, from across Musselburgh, attending events at Musselburgh Racecourse in 2018. This transition project has evolved from speaking to Musselburgh Grammar teachers and Heads of the local Musselburgh Primary Schools. Listening to their needs and matching these with the opportunities that we can offer through our own resources and the help of Racing to School. In total we will deliver 9 days of activities within this project that combines educational activities, aligned with the National Curriculum, while showcasing the opportunities and activities that are available at Musselburgh Racecourse and in racing. So far we have delivered six full days welcoming S1 and P7 pupils in February and May. With a further three days welcoming S1 students due in October.

In addition, we will also host a further 5-7 Racing to School events co-ordinated directly by Racing to School.

As part of our Educational outreach activity, we have an ongoing partnership with Foulrice Racing and Napier University to provide a 6 month paid placement to one of their students. Catriona Kendell has recently completed her placement and was a huge asset to the team during a busy period for the office. She brought excellent customer service skills with her and has gained a greater understanding of the operations of running events during her time with us.

We also provided a one-week work experience placement (unpaid) for Hannah Hogg, an S4 pupil from Musselburgh Grammar School, who spent a week in the office supporting our Sales team.

All of the above is part of our ongoing commitment to strengthening our links with the local community and giving something back via our community engagement strategy. This activity also supports The Year of Young People 2018.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.2 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 None

7 BACKGROUND PAPERS

7.1 None

AUTHOR'S NAME	Sarah Montgomery
DESIGNATION	Racecourse Commercial Manager
CONTACT INFO	07796314733
DATE	Tuesday 26 June 2018

REPORT TO: Members' Library Service

BY: Depute Chief Executive (Resources and People)

SUBJECT: Musselburgh Racecourse

5

1 PURPOSE

- 1.1 To report the recommendation of the preferred operating model of the Musselburgh Racecourse as determined by the Working Group.

2 RECOMMENDATIONS

That the Council:

- 2.1 Notes that the Working Group recommends that the preferred long term operation of Musselburgh Racecourse is carried out by a third party operator and that the Chief Executive shall commence the procurement process to appoint a third party to operate the racecourse.

3 BACKGROUND

- 3.1 At a meeting of the Council on 24 April 2018 approval was granted for the setting up of a Working Group consisting of Councillors O'Donnell, Small and Currie, members of the LRS and Council Officers supported by Pinsent Masons LLP.
- 3.2 The scope of the Working Group was to analyse the different proposed operating models and determine which would be the preferred route to operate Musselburgh Racecourse in the long term. A more detailed analysis worked through by the working group is attached at Appendix 1 of this report. The Appendix includes analysis on an Arms-Length External Organisation (ALEO) and Third Party Operator and also included for completeness is a brief analysis of adopting the Associated Committee as a long term operating model.
- 3.3 The first consideration was in determining whether the Council could put in place an ALEO or Third Party Operator to operate the racecourse while remaining compliant with the common law and statute that govern the

Musselburgh Links and the reclaimed lands. On analysis both options were capable of being progressed without detriment.

- 3.4 It was determined by the Working Group that the current interim operational model, of an associated committee, while remaining competent had on balance more long term potential disadvantages than a third party operator. The key disadvantages from this arrangement would be demonstrating sufficient governance with horseracing expertise within the committee, there would be potential concerns about the racecourse employees employment status and there would be a requirement for the Council to operate in a commercial environment while complying with sporting governance principles as requested by the British Horseracing Authority, public procurement procedures, and the Council's Standing Orders for all contracts that are required for the operation of the racecourse.
- 3.5 The Working Group then considered the operation of the racecourse by a third party operator acknowledging that there were several types of third party operators. These were categorised as ALEOs and external third party operators. For the purpose of the working group the definition of an ALEO was an organisation which is fully owned or controlled by the Council.
- 3.6 One of the benefits of an ALEO would be that it was possible for the Council to directly award the contract to the ALEO without requiring a procurement process. This is because it could be demonstrated that the ALEO would be carrying out the service purely for the Council. This operational model would further provide greater control to ensure that the Council remained compliant with the legislative framework that the Council requires to operate, or ensure the operation, of the racecourse. In addition, an ALEO could be created and be operating the racecourse in a relatively short period of time.
- 3.7 The ALEO may require to consider the employee's pay structure as there may be a requirement to ensure that these are on the same or similar levels to the Council's. In addition the ALEO would be required to comply with public procurement. This presented some concern from certain members of the Working Group who were of the view that this may limit the ability for Musselburgh Racecourse to compete with other racecourses and leisure/sporting entities when wishing to employ staff. It was also noted that the industry has certain expectations in the structure of employment terms and conditions and this would mean that Musselburgh Racecourse could be considerably different from the industry standard. Further it was also noted that the requirement to comply with public procurement for the daily operation of the racecourse may create some complications when dealing with some matters in which the racing industry would see collaboration in procuring goods and services for the racecourse. This would reduce the ability to collaborate and may result in poorer value from these contracts.
- 3.8 It was noted that there is the possibility of a commercial facing ALEO which would avoid the concerns raised in 3.7 above. This ALEO would not require to use public procurement to enter into the operational contracts

nor would there be an issue with employee pay structures. The working group considered this as a viable option however for this commercial facing ALEO to be able to operate it would require to be successful in a procurement process. This would require setting up a company to bid for the work and in the circumstances seemed difficult to justify.

- 3.9 Consideration was then had on a third party operator and the benefits were similar to that of a commercial facing ALEO. However, the main risk around the third party operator was in relation to control. It was discussed and viewed that an appropriately drafted operating contract would provide the Council with sufficient protection.
- 3.10 The next consideration was in reviewing the aspirations of the Council in relation to the racecourse and reviewing which model would best deliver these. This included considering potential capital expenditure at the racecourse and reviewing potential terms for operating and how that would link to capital investment from the Council or other operator, which may be influenced by the duration of the contract and will be determined following market testing. It also included the Council's desire to continue to ensure the racecourse was able to maintain and develop its place as a leading provider of horseracing as well as the wider benefit through the Common Good.
- 3.11 It was noted that the Third Party Operator route would allow the Racecourse to continue to be operated with suitable racecourse knowledge and enhanced expertise. Further this would provide an opportunity for the racecourse to continue to develop as a leading horseracing venue. This was a concern in terms of the ALEO as there would be a requirement to locate financing for the ALEO and a question as to whether the ALEO would be able to generate sufficient finance in its own right and without recourse to the Council to permit sufficient investment to allow the racecourse to remain or improve on its current position.
- 3.12 On consideration of all of the options available to Working Group have unanimously agreed that the most economically advantageous and preferred route for the operation of Musselburgh Racecourse should be by procuring a third party operator.

4 POLICY IMPLICATIONS

- 4.1 The Council will continue to operate the racecourse by means of the Musselburgh Racing Associated Committee until appointment of a third party operator.
- 4.2 Any appointed third party operator will be required to operate the Racecourse within the parameters of the Statute

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

- 6.1 Financial – the procurement process is expected to deliver an operator that will place the Council at least in as good a position as it is now and hopefully better. To ensure that the procurement is adequately supported and delivered there will be a requirement to obtain external legal and other advisors who have knowledge of the racecourse industry. Due to the timescales involved and dependant on: (i) the extent of the advice required: and (ii) the procurement process followed, it is anticipated the costs will be between £75,000 and £100,000. As the procurement process will directly impact the operation of the racecourse it is proposed that these costs are insofar as possible funded through the racecourse accounts.
- 6.2 Personnel –following the procurement process the racecourse staff would transfer to the new operator. In addition there will be a requirement to ensure that the racecourse General Manager and the Legal and Procurement Services of the Council are adequately resourced to ensure that the procurement is progressed as expediently as possible. .
- 6.3 Other – none at present

7 BACKGROUND PAPERS

- 7.1 Minute of Council on 19 December 2017 (Private Report)
- 7.2 Minute of Council on 27 February 2018 (Private Report)
- 7.3 Members' Library Report, Governance Review – Musselburgh Racecourse. Members' Library Service Ref: 37/18. March 2018 Bulletin.
- 7.4 Minute of Council on 24 April 2018

AUTHOR'S NAME	Carlo Grilli
DESIGNATION	Service Manager – Legal & Procurement
CONTACT INFO	ext 7770
DATE	14 June 2018

Appendix 1

Musselburgh Racecourse – Options Appraisal

Definitions

The terms below shall have the following meaning:

ELC: East Lothian Council

LRS: Lothians Racing Syndicate limited

1985 Act: East Lothian District Council (Musselburgh Links, etc.) Order Confirmation Act 1985

General Comments

All parties and the BHA have agreed that the status quo is not an option.

The Council has set up a new associated committee of the Council (Musselburgh Racing Associated Committee) which complies with both legislative requirements and the BHA's requirements for licence purposes. This is an interim solution pending implementation of an agreed long term approach.

As part of the deliberations the working group in consideration an ALEO, were aware that there would need to be a trade off between control and commercial freedom on the one hand and the ability of ELC to make a direct award of the operating contract to the ALEO on the other.

The working group in considering the 3rd party operator route were of the view that this would satisfy ELC's requirement to have oversight over strategic matters, set parameters and enable the racecourse to operate at arms length. It also provides encouragement to the employees that they can continue to develop a market leading racecourse. Any move towards a 3rd party operator would require a tendering exercise which requires to be carefully prepared/drawn with every consideration for the key factors important to ELC and LRS in terms of the outcome(s) sought. It is by no means certain that a successful bidder could be found hence the importance of having a workable interim solution that is in place pending any transfer to a 3rd party operator or failure of that process.

A procurement for a third party operator will allow contract management of the operator through the associated committee structure. This would also ensure that ELC are meeting best value considerations and complying with their statutory obligations.

Irrespective of which option is chosen be it an ALEO or Third Party Operator, the operator is likely to want full indemnification in respect of any employee issues and this would be expected to be given ELC.

Road Map

<p>Irrespective of which option is chosen, there will need to be further consideration of the future governance structure of the racecourse, with clear demarcation between the supervisory and operational functions. This will be dealt with in the case of the associated committee through the standing orders of ELC; or through the memorandum and articles of association of the ALEO; or through the contract opportunity and the contract management function if a 3rd party operator is procured</p> <p>If the ALEO route is preferred, ELC should ensure that the structure and memorandum and articles of the company reflect (a) the supervisory oversight of ELC and (b) the obligations incumbent upon ELC flowing from the 1985 Act.</p> <p>If ELC chose to procure a 3rd party operator, they should specify the contract requirements in as detailed manner as possible. This will remove dubiety during the operational phase. Robust contract management should also be in place to ensure that the contract outputs are met.</p> <p>There is a general requirement in procurements that all procurement and contract documentation is available at the time the contract notice is published. This task should be completed in advance of publication of the contract notice and will follow ELC's standard procurement processes.</p> <p>If there is a TUPE transfer there is an obligation to inform and consult with appropriate representatives of the employees. The obligation is to inform and consult in "good time" before the transfer. The process normally takes about a month but this can vary depending on the timetable for the wider process.</p>

Option	Advantages	Disadvantages
<p>1. Associated Committee and Sub-committee of ELC</p>	<p>This regularises and delivers a compliant structure</p> <p>The racecourse would be directly controlled by the Council through its Associated Committee and Sub-Committee.</p> <p>The Scheme of Administration's terms of reference will be compliant with the 1985 Act and ELC's own powers.</p> <p>Ensures that there is compliance with the procurement regulations and/or ELC standing orders.</p> <p>This option ensures that ELC is not in breach of any legislation and in particular the 1985 Act.</p>	<p>Any committee of ELC remains a part of the council structure and will not have a distinct legal personality separate from ELC.</p> <p>It will not be able enter into any contracts for works, goods or services in its own accord – these must be in the name of ELC and will require to procure works, goods and services in line with the procurement regulations or ELC standing orders</p> <p>There will be a loss of commercial flexibility.</p>

	<p>It would be possible to achieve a reasonably quick transfer of employees to ELC under TUPE and would clear up any doubt as to employees status and standing</p>	<p>The inconsistency of the current employees' terms and conditions compared to ELC terms and conditions could put ELC in breach of its Single Status Agreement. ELC could be exposed to potential equal pay claims.</p> <p>At the very least, new hires would need to be engaged on ELC terms and conditions.</p>
<p>2. Arms Length External Organisation</p>	<p>ELC would be able to make a direct award of the contract to operate the racecourse to the ALEO provided that the ALEO is set up in a manner compliant with procurement regulations (if these requirements are met this would be commonly referred to as being Teckal compliant).</p> <p>ELC could still enjoy oversight through appointment of ALEO directors holding office alongside LRS or other independent members.</p> <p>The ALEO's memorandum and articles of association could reflect ELC's obligations under the 1985 Act.</p> <p>Good governance could be factored in to the relationship between ELC and the ALEO with a proper demarcation of functions and oversight between the two.</p> <p>It would be possible to achieve a reasonably quick transfer of employees to ALEO under TUPE. ELC would retain control over the ALEO</p>	<p>Tax implications of any ALEO structure would need to be explored further (this would depend on the type of ALEO set up (ie Company Limited by Share, Limited Liability Partnership or otherwise and is beyond the remit of this paper).</p> <p><u>Teckal Compliant</u></p> <p>Relying on the Teckal exemption would mean that ELC would be required to exercise a level of control over the ALEO similar to that it exercises over its own council services.</p> <p>The ALEO would be limited to providing at least 80% of its functions for ELC. This may stifle commerciality. It is a question whether this would be a limiter on the activities of the ALEO as the ALEO would be discharging ELC's obligations under the 1985 Act.</p> <p>The inconsistency of the employee's terms and conditions compared to ELC terms and conditions could expose ELC to potential equal pay claims.</p> <p>New hires may need to be engaged on terms and conditions comparable with ELC terms and conditions.</p> <p><u>Non- Teckal Compliant</u></p> <p>ELC could not make a direct award to the ALEO to operate the racecourse without being in breach of procurement regulations.</p>

<p>3. Third Party Operator</p>	<p>ELC can comply with the relevant procurement regulations to appoint the operator. Thereafter any contracts required for an operation of the Racecourse would be entered into by the Third Party Operator and no further procurement would be required.</p> <p>ELC would achieve best value through opening the contract opportunity to the market and testing this.</p> <p>ELC would still retain strategic oversight of the operations through its committee structure and through proper and robust contract management arrangements.</p> <p>The contract management function will be undertaken through ELC committee structure with a major role for LRS bringing their experienced and knowledgeable in the racing industry.</p> <p>The racecourse employees would transfer to the new operator by way of a TUPE transfer.</p> <p>A Third Party Operator would have more freedom than ELC or ALEO to set terms and conditions for new hires at an appropriate level.</p>	<p>There is a requirement to invest resources up front to ensure the success of the procurement.</p> <p>The procurement process may take some time dependant on the procedure chosen.</p> <p>LRS would have to chose between bidding to be operator (either on their own or in partnership), or agreeing to provide contract management oversight. They would be conflicted from undertaking both aspects.</p> <p>LRS would not be able to help specify the contract opportunity and bid in the process. This would likely be a breach of the overarching procurement principle of equal treatment of all bidders.</p> <p>NOTE: <i>The LRS have confirmed that they are not interested in bidding to operate the racecourse.</i></p> <p>The procurement process will take some time which mayl mean that the permanent employment position will not be quickly resolved</p>
---------------------------------------	--	--

REPORT TO: Musselburgh Racing Associated Committee

MEETING DATE: 3 July 2018

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Meeting Dates 2018/19

6

1 PURPOSE

- 1.1 To advise of the proposed dates for Musselburgh Racing Associated Committee meetings in 2018/19.

2 RECOMMENDATIONS

- 2.1 The Musselburgh Racing Associated Committee is asked to approve the proposed dates for meetings during 2018/19:

Tuesday 18 September 2018
Tuesday 18 December 2018
Tuesday 19 March 2019
Tuesday 2 July 2019

- 2.2 The Musselburgh Racing Associated Committee is asked to note that meeting dates for future years will be set by the Council as part of its annual Schedule of Meetings.

3 BACKGROUND

- 3.1 The Committee is advised of the proposed meeting dates for 2018/19. In future years, the dates for meetings will be presented to Council for approval as part of the Council's Schedule of Meetings (following consultation with the Racecourse General Manager). The Schedule of Meetings is usually presented to Council in February or April of each year.
- 3.2 Due to the governance review of the Racecourse, no meeting dates for the then MJRC were set for 2018/19 when the Schedule of Meetings was presented to the Council for approval at its meeting on 27 February 2018. It is therefore proposed that for 2018/19 the Committee approves the dates as set out in Section 2.1 above.

3.2 The Racecourse General Manager has been consulted on the proposed dates and has confirmed that these dates are suitable from a racing calendar perspective.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial – None

6.2 Personnel – None

6.3 Other - None

7 BACKGROUND PAPERS

7.1 None

AUTHOR'S NAME	Lel Gillingwater
DESIGNATION	Team Manager – Democratic and Licensing
CONTACT INFO	lgillingwater@eastlothian.gov.uk
DATE	12 June 2018