



**MINUTES OF THE MEETING OF
MUSSELBURGH RACING ASSOCIATED COMMITTEE**

**TUESDAY 24 SEPTEMBER 2019
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor F O'Donnell (Chair)
Councillor A Forrest
Councillor K Mackie
Councillor S Currie
Mr R Miller-Bakewell
Mr R Anderson Green

In Attendance:

Mr B Farnsworth, Racecourse General Manager
Mr D Kennedy, Racecourse Financial Controller
Mr A McCrorie, Depute Chief Executive (Resources and People Services), ELC
Mr C Grilli, Service Manager, Legal and Procurement, ELC
Ms J Allen, Senior Communications Adviser, ELC

Others Attending:

Ms M Sharp, East Lothian Courier

Clerk:

Ms S Birrell

Declarations of Interest

None

1. MINUTES OF MEETING ON 25 JUNE 2019 FOR APPROVAL

The Chair announced that the Committee would meet in private business at the end of the meeting, to approve the private minutes from the meeting held on 25 June 2019. She was happy to take amendments to the public minute at this time.

Mr Miller-Bakewell asked why his suggested changes to the public minute of 18 March and 23 April had not been recorded in the minutes of the meeting of 23 June. The Clerk responded that it was standard practice to update the minute in question rather than

outline changes in the minute of the following meeting. Mr Miller-Bakewell asked for copies of the final approved minutes from these two meetings.

Mr Anderson Green asked if an amendment could be made to item 5 of the minute. The Chair refused to accept the change, stating that what had been recorded was an accurate reflection of the meeting.

Mr Anderson Green asked for additional information to be added to item 9 of the minute, and was asked to discuss this issue under item 6 of the meeting agenda. He recorded his disappointment that this critical information had not been included in the note of the previous meeting.

Mr Anderson Green asked for a further addition of information to the minute at item 9 and the Chair agreed to look into this in consultation with the Clerk. Councillor Currie reminded the Committee that the minutes were designed to represent a summary of business transacted at the meeting.

Decision

The Committee agreed to approve the public minutes as a true record.

2. HEALTH & SAFETY REPORT

The Racecourse General Manager, Mr Farnsworth, gave a verbal report on Health & Safety, informing the Committee that there were no outstanding issues at this time. Ethos Environmental were providing advice relating to the use of the Racecourse on non-race days by members of the public. A meeting with Enjoy Leisure had not been as constructive as he had hoped, but Mr Farnsworth was awaiting a report from Ethos Environmental before progressing the matter further.

Decision

The Committee agreed to note the verbal report.

3. FINANCE REPORT

The Racecourse General Manager and Racecourse Financial Manager had submitted a report to update the Committee on the profit/loss forecast for the full year from 1 April 2019 to 31 March 2020, and to update the Committee on the profit/loss forecast for the flat racing season from 1 April 2019 to 15 October 2019.

Mr Farnsworth spoke to the report, drawing the Committee's attention to the forecast profit/loss, the forecast expenditure on maintenance and capex development, the forecast expenditure on unbudgeted costs, and the forecast opening and closing balance sheet position. The anticipated downturn in income from Media Rights had not been as significant this year as previously expected but the closure of 2500 betting shops was imminent and should be prepared for accordingly. He reported that the Racecourse had had an excellent summer. He explained that Musselburgh had lost a jump fixture in February because we had been outbid on this fixture by other Racecourses who had increased their spending on prize money while Musselburgh's had stayed the same. He added that the Levy Board had decreased their prize money grants and race incentive fees, which had impacted on the Racecourse, and there were few opportunities left within the season to offset this reduction, given that Musselburgh's highest prize money race days had passed on Easter Saturday and on Ladies Day. He reported on increases to revenue and race day income as a result of the strong performance over the summer.

The Chair passed on her thanks and the thanks of the MRAC to all of the staff who had participated in these successes, noting that the financial performance of the Racecourse was not always under the General Manager's control. She asked about the reduction in Levy Board funding. Mr Farnsworth remarked that there were underlying issues connected to the percentage of income that bookmakers were required to pass to the Levy Board, and outlined a method a particular bookmaker had used during the Cheltenham Race meeting.

The Chair asked why the number of jump fixtures had been reduced by the BHA. Mr Farnsworth responded that the process for fixtures commenced in March/April and was concluded by the preceding July. Musselburgh had bid in June and after this time the BHA had removed several of the anticipated jump fixtures for February. Although fewer fixtures had been removed than originally expected (20 instead of 50), it had meant that Musselburgh had lost one of their February race days and should expect to lose around £40,000 of budgeted profit.

In response to further questions from the Chair, Mr Farnsworth confirmed that the anticipated closure of betting shops would happen at a later date, and that the re-branding of the Caledonia Cup to the Edinburgh Cup had led to a 40% increase in admission revenue. The increase in spending on prize money by the Racecourse had been due to the decrease in funding from the Levy Board, as the Racecourse had taken the decision to retain prize money at a similar level despite this decrease. Racecourses media rights income is higher this year than anticipated because of the slower closure of betting shops and most, if not all Racecourses had used all or part of this money to maintain prizemoney and offset lower prizemoney grants from the Levy Board. In terms of forecast fixed expenditure, Mr Farnsworth clarified that the Racecourse had considered reducing the use of Sure PR but on reflection, and after a busy year, had decided that the advice they received from Mr Rafferty of Sure PR was valuable and likely to be required going forward.

In response to a question from Mr Anderson Green, Mr Grilli confirmed there had been no additional legal fees incurred as a result of the procurement process at this time. Mr Grilli also informed the Committee that a recommendation from the Racecourse Auditors to seek legal advice on the allocation of responsibility for fees between the Council and the Racecourse had been removed from the Auditors recommendations as a result of the Council providing financial support to the MRAC, if required.

Before Mr Farnsworth moved on to talk about the rest of the report, the Chair asked him to be considerate of discussing an ongoing employment tribunal process in a public meeting.

Mr Miller-Bakewell asked if Mr Grilli could comment on the anticipated cost of a special advisor who had been employed by the Council. Mr Grilli was not able to comment on this matter. The Chair informed those present that the appointment of a special advisor had been requested by the staff of the Racecourse. In response to a further question from Mr Miller-Bakewell, Mr Grilli confirmed that the Racecourse would be expected to cover these costs.

In response to comments from Mr Miller-Bakewell, the Chair pointed out that there were many aspects of the business of the Racecourse which were difficult to predict. Mr Farnsworth highlighted his particular concerns over budgetary items of which he had no knowledge or control: the Chair accepted this point, adding that as soon as the detail of these items was known this information would be passed to him. Mr Anderson Green stressed that he found it scandalous that the Committee would not be informed of these costs at this time.

In response to further questions from Mr Anderson Green on the possibility of seeking legal advice on the allocation of fees, the Chair asked that this discussion was heard as part of item 6 on the agenda.

Decision

The Committee agreed:

- i) to note and approve the financial performance to date for the full year from 1 April 2019 to 31 March 2020,
- ii) to note and approve the forecasts for the flat racing season from 1 April 2019 to 15 October 2019, and,
- iii) to discuss the other two recommendations as part of the report at item 6 of the Agenda.

4. OPERATIONS & COMMERCIAL REPORT

A report had been submitted by the Senior Operations and Commercial Manager to update the Committee on the commercial and operational performance of the Racecourse for 2019/20.

Mr Farnsworth spoke to the report in detail, outlining the success of the highlighted race days, the welcome impact of good weather, and the meticulous marketing campaigns undertaken by the marketing team at the Racecourse, mentioning in particular the work of Aisling Johnstone and Susan Findlay. He summarised the care that had to be taken when marketing events, particularly when looking to attract a targeted audience. He explained how a marketing plan began with awareness advertising and became more directed closer to the event. With regards to marketing, reinvention was essential to maintain interest.

He mentioned that there had been an issue with replacement bus services running between Musselburgh and Edinburgh instead of the usual train service on a recent race day and although the egress of customers had not been ideal, the impact had been minimised.

Mr Farnsworth concluded by informing the Committee that it was also important for the Racecourse to deliver on their promise of a quality experience to all racegoers. The vast majority of feedback received by the Racecourse was positive in this regard. He added that the Racecourse had maintained their Visit Scotland visitor experience 5 star rating. *Post Meeting Note: the Racecourse has now held a 5 star Visitor Scotland rating for 13 years.*

The Chair asked Mr Farnsworth to take back her thanks to Ms Montgomery for her report and the work that had been put in to achieve these results.

In response to a question from Cllr Currie, Mr Farnsworth informed the Committee that the Racecourse met with Police Scotland in January or February of each year to discuss the annual policing plan for the Racecourse, and that he would invite local Councillors to attend these meetings in future, in order to allow discussion on the enforcement of bye-laws which prevented drinking alcohol in public places in Musselburgh town centre.

Decision

The Committee agreed to note the report.

5. GENERAL MANAGER'S REPORT

Mr Farnsworth had submitted a report to provide the MRAC with an update on the general management of the Racecourse and any matters requiring the attention of the MRAC.

He noted his concerns over the condition of tarmac around the Racecourse and in the grandstand steppings area in particular, remarking that the deterioration had become significantly worse in the last six months, and was likely to constitute a Health & Safety risk in the near future.

The Chair asked how the services of Mr Houston had been arranged. Mr Farnsworth clarified that he was able to contact Mr Houston for advice, and his fees were recharged from the Council. The Chair asked whether the new operator would expect to carry out this work, Mr Farnsworth pointed out that the process of transfer had been lengthy, and the Racecourse's condition had depreciated since the open day for prospective bidders a year ago, and that the third party operators would expect the Racecourse to be in a good condition in order to reflect the rate of rent.

Cllr Currie advocated that it would be prudent to await the findings of Mr Houston before deciding whether work would need to be carried out in the long, medium or immediate term.

The Chair suggested that she could be delegated to make a decision after having sight of Mr Houston's report on the matter, and then oversee a rigorous procurement process, if necessary. In response to Cllr Currie's questions, Mr Farnsworth stated that deterioration of tarmac could be very rapid.

Mr Farnsworth spoke to paragraph 3.4 and 3.5 of the report, summarising that, due to the delay in the transfer to a third party operator, the MRAC would have to consider whether to renew or give notice on contracts with Heineken and Heritage Portfolio. He offered to ask both companies for a three month extension on the date for renewal/notice. Mr Grilli welcomed this option. Mr McCrorie stressed that any delegation of this matter should be passed to Mr Farnsworth in conjunction with the Chair and Mr Grilli.

Mr Anderson Green asked if all third party bidders were aware of the outstanding tribunal process as stated in paragraph 2.3. Mr Grilli stated that, generally, when a business was transferred to a new operator they would be supplied with all relevant employee information, assume responsibility for all contracts, and also the responsibility to complete any outstanding issues at that time. In response to a further question from Mr Anderson Green, Mr Grilli advised the Committee that it would not be appropriate to discuss the matter further. Mr Farnsworth noted his concerns that the new operator is not aware of the claim against the MRAC, but was reminded that apprehension regarding his personal employment status was not a matter for the MRAC.

Cllr Currie suggested that recommendation 2.3 (iii, below) should be deleted. The Chair asked the Committee to agree to note recommendation 2.3. LRS members called for a vote on whether to note the recommendation.

Vote

A vote was taken on the recommendation to note at paragraph 2.3 of the report.

For 4
Against 2

Decision

The Committee agreed:

- i) to delegate a decision on completion of repairs to the grandstand surface (subject to cost) prior to the handover to the 3rd party operator, and in the first instance, obtaining quotes to establish the cost of said repairs to the Chair and Mr Farnsworth,
- ii) to ask for a three month extension to the deadline of 30 September to give notice/not give notice to Heritage Portfolio Ltd and Heineken UK Ltd, and/or to delegate the decision to give notice/not give notice to Heritage Portfolio Ltd and Heineken UK in order to end these existing supplier arrangements on 31 March 2020 to the Chair in consultation with Mr Grilli and Mr Farnsworth,
- iii) to note that the employment tribunal to hear the claim against the MRAC for unlawful deductions from an employee's pay had been postponed to December 2019. ET Scotland had been asked to allocate 5 days for the hearing.

6. LICENCE AND PROCUREMENT UPDATE

Mr Grilli tabled a report, apologising for its lateness, and explaining that it had been drafted on Friday 20 September and updated since that time.

He drew the Committee's attention to the issue of a licence for horseracing from the BHA, which would remain in effect until 31 December 2019. This was, in part, due to the BHA receiving regular updates regarding the tender process. He reminded the Committee that the licence had been provided to MRAC and East Lothian Council, as had been the case since May 2018. An application was already underway to run from 1 January 2020 which could be put in the name of the new third party operator at a later date.

The date for handover to a third party operator was confirmed as 1 November 2019, subject to timescales. A recent meeting with staff had served as an opportunity for the team to note their concerns about the handover, and to be offered reassurance that the process would not be rushed. This was in order to allow the new operator to integrate fully with the Racecourse, with the right support provided, and ensure the operation of the MRAC was not compromised.

Mr Grilli revealed that the announcement of the preferred bidder would be made soon, and at this time the tender process was undergoing compliance checks. He recommended that the MRAC agreed to meet next week in order to bring forward the Audit Accounts and make the announcement regarding the preferred bidder.

With regards to the Audit Report, Mr Grilli advised that an updated report had superseded the draft mentioned in Mr Farnsworth's paper, heard earlier in the meeting, and the recommendation that MRAC should request legal advice regarding the allocation of legal costs had been removed.

The Chair thanked Mr Grilli for his report, remarking that the Racecourse was close to entering a new phase of existence.

Mr Miller-Bakewell asked about the compliance checks. Mr Grilli clarified that the checks were part of the tender process, in that the scoring for each bidder was double checked for accuracy. In response to further questions from Mr Miller-Bakewell, Mr Grilli stressed that the procurement advisory team in East Lothian Council worked Council-wide to ensure that scoring was completed fairly in each case.

The Chair indicated that there would be a 'standstill' period after the announcement of a preferred bidder. Mr Grilli explained that all bidders were required to submit financial statements in accordance with EU and UK legislation, and after the announcement of the preferred bidder, unsuccessful bidders were given a period of 10 days to appeal if they believed their scoring on any particular point had been incorrect.

The Chair asserted that the utmost care had been taken over the process, and that she was keen to ensure that staff were not informed via social media of the identity of the preferred bidder.

In response to a question from Mr Anderson Green, Mr Grilli confirmed there would be additional costs relating to the transfer, separate to the cost of the tender process.

Mr Anderson Green asked if a group would be formed to assist with the TUPE transfer. The Chair confirmed that she would be leading on this project as chair of the MRAC, and that she was considering how best to proceed at this time.

Mr Anderson Green proposed the following amendment to the recommendation to note the position:

that the MRAC should seek independent legal advice to review the allocation of legal costs associated with the tender process and its implementation between the Council and the Racecourse.

The amendment was seconded by Mr Miller-Bakewell.

Cllr Forrest stated his disappointment that he had not had sight of the draft Audit Report. The Chair reassured the Committee that no members should have been forwarded the draft Audit Report, and Mr McCrorie added that it would not be released until the Audit Accounts had been signed off by the MRAC Chair. The Chair and other members of the Committee asked if the LRS had been given copies of the draft report. Mr Anderson Green confirmed that neither he nor Mr Miller-Bakewell had received copies of the draft Audit Report. Cllr Currie noted that he would not be minded to approve a recommendation that would have a financial impact of this nature.

The Committee discussed the matter.

Mr Kennedy outlined the Audit process: three copies of the accounts would be signed by the Chair of MRAC and sent to the Auditors, who would then release the Audit Certificate, after which the Audit Report would be made available.

Mr Farnsworth attempted to summarise the situation, but was requested to stop by the Chair. Cllr Currie reminded the Committee that the Audit had been completed successfully and this should be viewed as a positive step. He reiterated his reservations regarding Mr Anderson Green's amendment.

Vote (Amendment)

That the MRAC should seek independent legal advice to review the allocation of legal costs associated with the tender process and its implementation between the Council and the Racecourse.

The amendment had been proposed by Mr Anderson Green and seconded by Mr Miller-Bakewell.

A vote was taken on the amendment.

For	2
Against	4

The amendment accordingly was not accepted by the MRAC.

Mr Anderson Green attempted to invoke Clause 21 of the Minute of Agreement between LRS and East Lothian Council, but was reminded that any invocation of Clause 21 would require to be set out in writing from the LRS to the Chair of the MRAC *POST MEETING NOTE: subsequent to the meeting, it was confirmed that the invocation would require to be sent to the Secretary of the MRAC, not the Chair as stated above*. Mr Anderson Green informed the Committee that he would write to the Chief Executive of the Council.

Mr Miller-Bakewell mentioned that it was important to ensure a smooth and accurate TUPE process. Cllr Currie pointed out that the purpose of TUPE was to protect the rights of individual members of staff, and as such it was not appropriate for discussion in a public meeting.

In response to further points made by Mr Miller-Bakewell, Mr Grilli assured the MRAC that East Lothian Council were experienced in contract transfers where the employer was not the Council, and that the process had been proved to function. All partners would be expected to work together. It was confirmed that neither the start nor the end date for a period of staff consultation was available at this time. Mr McCrorie added that a meeting with staff and a Trade Union representative had already taken place. Mr Grilli responded that a new operator would not ideally commence trading before the conclusion of a staff consultation, but there was a possibility of this occurring, adding that it was disingenuous for MRAC to ask questions of this nature out of context, and before the TUPE process had commenced. The staff consultation period was described as 'a reasonable amount of time.'

Cllr Currie maintained that officials of the Council would always act within statutory requirements and that any suggestion of this should not be levelled at Council staff.

Mr Miller-Bakewell asked if the meeting to announce the new third party operator could be held at the Racecourse to ensure that staff were informed timeously of the identity of the new operator.

Decision

The Committee agreed to note the report.

Sederunt: The Chair called for a brief recess before a meeting date was agreed, after which the Committee would discuss private business.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Chair informed the MRAC that after a short break they would exclude the public from item 7 containing exempt information by virtue of paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A of the Local Government (Scotland) Act 1973.

Sederunt: Mr Farnsworth, Ms Allen, Ms Sharp and Mr Kennedy left the meeting

7. PRIVATE MINUTE OF MEETING ON 25 JUNE 2019 FOR APPROVAL

The private minute was approved by the MRAC.

Signed

Councillor F O'Donnell
Chair of Musselburgh Joint Racing Committee