



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

**TUESDAY 28 JANUARY 2020
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

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

In Attendance:

Mr B Farnsworth, Racecourse General Manager
Mr D Kennedy, Racecourse Financial Controller
Ms S Montgomery, Racecourse Commercial Manager
Mr A McCrorie, Chief Executive, ELC
MS R Crichton, Committees Officer
Mr C Grilli, Service Manager, Legal and Procurement, ELC
Ms J Mackay, Senior Communications Adviser, ELC

Clerk:

Mrs L Gillingwater

Apologies:

None

Declarations of Interest

None

1. MINUTES OF MEETING ON 7 JANUARY 2020 FOR APPROVAL

The Chair announced that the Committee would approve the private minute from the meeting held on 7 January 2020 on conclusion of public business. She was happy to take amendments to the public minute at this time.

Referring to item 1 of the draft minute, Mr Miller-Bakewell stated that specific Standing Orders were not cited at the meeting. The Chair accepted this amendment; specific Standing Orders would be provided as a post-meeting note.

Referring to item 4, Mr Miller-Bakewell stated that Mr Carlo Grilli, Legal Advisor, had indicated that the lease of the Stables Café would be made available to the Committee. Mr Grilli refuted this point and stated that no undertaking had been made that the lease would be made available.

At item 5, Mr Miller-Bakewell informed the Committee that there were three instances where the number of staff to which his proposal of a £1000 bonus would apply was stated as being 15 persons in the minutes; he pointed out that he had not given a number, and had instead said 'all staff' to indicate that no staff member should be excluded. Alex McCrorie, Chief Executive, indicated that the Committee had agreed to the motion on the basis that fifteen staff members would be in receipt of the payment, a figure that had been mentioned on the day. Mr Farnsworth, Racecourse General Manager, stated that 15 staff members had been an estimate. The Chair accepted Mr Miller-Bakewell's comments; she would ask the clerk to check notes and for the figure of fifteen to be removed from Mr Miller-Bakewell's statements.

Decision

Subject to aforementioned amendments, the Committee agreed to approve the public minutes as a true record.

2. PROCUREMENT/GENERAL UPDATE

A report was submitted by the Chief Executive providing a general update on the procurement process with Chester. Mr Grilli spoke to the report, advising that there had not been a great deal of change in the procurement position. He stated that the handover date was still officially 1 March 2020, but, having taken on previous comments made by Mr Farnsworth regarding a more suitable handover date, this was being checked with Chester Racecourse. Mr Farnsworth advised that he had suggested 25 March 2020; the final jump fixture would take place on 20 March 2020, and Chester Racecourse could take ownership on the date for which entries for the next flat fixture on 31 March closed, which also coincided with the end of the Musselburgh Racing Associated Committee financial year.

Mr Anderson Green questioned whether there had been any major issues raised by Chester Racecourse. Mr Grilli responded that there had never been any major issues, and a process was being followed to ensure a smooth handover.

Mr Miller-Bakewell enquired about the progress of contract negotiations. Mr Grilli advised that officers were now looking to finalise the contract.

Mr Farnsworth questioned what additional financial costs may be associated with the transfer. Mr Grilli provided the removal of equipment and an IT switchover as examples of incidental costs which could be incurred.

The Chair asked that she be copied in on any further questions regarding procurement sent by Members to Mr Grilli.

Decision

The Committee agreed to:

- i. note the updated position on the hand over to Chester Racecourse;
- ii. note the update regarding the dual use of the Golf Course and the Racecourse; and
- iii. note the current position regarding the Stables Café.

3. RESURFACING WORKS – DILAPIDATIONS REPORT

In addition to the Harley Hadow dilapidations report included in the papers, Mr Farnsworth, tabled information with an up-to-date summary of the estimated cost of all works. Mr Farnsworth noted that it was obvious from the information and photographs that the tarmac was not in good condition and that the condition of the access road was very poor. He advised that £1,500 had been spent in October 2019 levelling the road, but reported that there were now multiple potholes present. He highlighted that the efficacy of any maintenance work carried out was shortened by the degenerating condition of the surface.

The Chair asked who made use of the access road. Mr Farnsworth advised that the golf course, racecourse, dog walkers and runners made use of the road. He estimated a cost of £10,000 to carry out proper maintenance on the access road, but noted that the same problems would be faced again in around five years' time. A phased approach would likely be required, as the total cost would be around £250,000 to tarmac all around the grandstand and the access road, etc. He indicated that some quotes for the work may be cheaper, but felt the quantity surveyor's quote was probably accurate.

Mr Farnsworth answered questions from Members. He clarified that it would cost £10,000 to maintain the access road, and it would cost £171,000 to tarmac the road, noting that the latter option would not require further maintenance costs. He listed priority areas: to address any health and safety issues first; to upgrade the worst areas around the grandstand; and to address the access road. Mr Farnsworth felt it was unlikely that Chester Racecourse would carry out the work because they would not own the site and would only work within their contract. He stated that it would be down to the Council and Common Good to ensure that the site was in a fit and proper state. Mr Farnsworth confirmed that the previous

planning application for the access road had been submitted as part of a package of work to be done. He advised that it had been unclear whether planning consent was required as there was an existing road in place, but the material used caused a change of colour which had an impact. He indicated that he would take advice on the need for planning permission.

A discussion took place on the issue of planning consent for a change of surface of the access road; Councillor Currie pointed out that a tarmac road would become a permanent feature, and would therefore require planning consent. He argued that the process needed to be followed before a commitment could be made by the Committee to finance the works. He questioned whether the works were required to be carried out as a matter of urgency and whether there was any indication of health and safety concerns. Mr Farnsworth responded that the Harley Haddow report graded the condition of the tarmac as being low, medium or high risk for further deterioration. He conceded that the tarmac was currently safe and could be walked upon, but warned it could be liable to accelerated deterioration once cracks had started developing.

Councillor Forrest suggested that the work to the road could alter the aesthetics of the golf course. The Chair assumed that the golf club would be consulted as part of the planning process.

Mr Farnsworth advised that he was looking to ascertain the Committee's appetite for having the work done, as he felt it would not be prudent to begin a planning application otherwise. Councillor Currie replied that the Racecourse should go through the planning process in the first instance, and that there would be 3-5 years to implement the works should permission be granted. He stated that Chester Racecourse may need to do their own assessments, based on the information before the Committee.

Mr Farnsworth raised concerns that there was a lot of work required, and that he was trying to protect the Racecourse and maintain its five-star status. He advised that work would be carried out on any area deemed to be a health and safety concern.

Mr Miller-Bakewell questioned whether the matter would be decided under delegated powers or whether by the Planning Committee. Mr Grilli advised that he was not in a position to determine how the application would be decided.

Councillor Forrest asked whether the General Manager had spoken to Chester Racecourse on the matter, and warned against making predictions on what the company may or may not wish to spend money on when Chester representatives were not present in the meeting.

The Chair put forward a motion that no decision would be taken in relation to the access road and no expenditure would be agreed by the Committee on repairs to the tarmac in other areas at this stage, pending the outcome of enquiries about planning permission. This proposal was seconded by Councillor Forrest.

The Chair moved to the vote on her proposal:

For: 4
Against: 2

Decision

The Committee agreed that no decision would be taken in relation to the access road and no expenditure would be agreed by the Committee on repairs to the tarmac, access road and other areas at this stage, pending the outcome of enquiries about planning permission.

4. HEALTH AND SAFETY REPORT (CONTINUED FROM THE MEETING OF 7 JANUARY 2020)

Members were reminded that the report submitted by the Racecourse Health and Safety Officer and General Manager to the meeting of the MRAC on 7 January had been continued in respect of Section 3.3 of the report – Racecourse Non-race day Activity.

Mr Farnsworth advised that since that meeting, he had met with Bill Axon and Ian Sills of Enjoy Leisure, to discuss the health and safety report, specifically the use of the Racecourse on non-race days. Ward councillors had also been invited to attend, but they were not available on that date. Mr Farnsworth indicated that Mr Axon had not accepted the report.

The Chair asked Mr Axon about his involvement with the process and whether or not he had been given the opportunity to make recommendations.

Mr Axon declared that he had not been given the opportunity to participate fully in the process. He advised that he had not objected to the independent health and safety inspection being carried out, and that he had been invited by Mr Farnsworth to choose between three independent assessors to undertake the inspection; he selected the local company. Mr Axon claimed that he had no input into the brief given to the assessors, and that he believed the brief was very one-sided. He had no further involvement in the process until the draft report was sent to him, at which point he requested that the professional health and safety advisers used by Enjoy Leisure (Midlothian Council) should check and comment on the report before meeting with the report author and Mr Farnsworth to discuss the findings. Mr Axon noted that the content and validity of the report was challenged by his advisers, and it was requested that a number of concerns should be addressed. A revised report was then sent to Mr Axon and his advisers, who confirmed that the requested changes had not been made and the concerns had not been addressed. Mr Axon was then advised that the unchanged document would be coming before the MRAC without further discussions on the matter taking place. He noted that Mr Farnsworth had been aware that the report was not acceptable to Enjoy Leisure prior to the meeting referred to above, on the basis that the proposed changes had not been implemented and thereby the concerns raised had not been addressed. He reiterated that Enjoy Leisure had had no input into the brief for the inspection, and that their only involvement had been reviewing the draft report provided following the inspection.

Councillor Currie observed that the matter could not be progressed unless there was joint agreement between the Racecourse and Enjoy Leisure, and that the matters raised by Enjoy Leisure's health and safety advisers would have to be taken into account. In his view, there was an issue with stray golf balls at a specific part of the course.

With reference to the previous MRAC meeting, at which Mr Axon was not present, the Chair apologised if he felt his reputation had been brought into question when he was not there to respond to the points raised.

Councillor Forrest asked for confirmation that on non-race days, the Racecourse was considered part of the golf course, and that if a ball was hit onto the Racecourse, it could be played from where it landed. Mr Axon confirmed this to be the case, noting that the golf course crossed the Racecourse in two places. He was concerned that the report had not addressed the issue of the Racecourse becoming part of the golf course on non-race days, and that a number of other matters had not been taken into account; for example, the report made mention of the location of yellow tees, but not the white tees.

Mr Axon referred to his attendance at a previous MRAC meeting, held on 18 September 2018, at which he had been requested to provide a report (to be discussed in private), and which had been approved by a majority of Committee members. He noted that following that meeting, he had been subject to personal accusations, both privately and publicly. He was concerned that the report had been shared outwith the Committee, including being sent to legal advisers.

The Chair confirmed that she had not sanctioned the sharing of the report outwith the Committee, and asked Mr Axon to provide her with details of the matter in writing in order that she could look into it further.

Decision

The Committee agreed to note the report and that a progress report would be presented to the Committee by the Council's Chief Executive and Service Manager – Legal and Procurement at the next meeting.

5. GENERAL MANAGER'S REPORT (CONTINUED FROM THE MEETING OF 7 JANUARY 2020)

Members were reminded that the report submitted by the Racecourse General Manager to the meeting of the MRAC on 7 January had been continued in respect of Section 2.4 of the report – Stables Cafe.

The Chair asked if any progress had been made as regards complaints made about the Stables Café and the proposal to transfer the cafe to the new operator. Mr Axon advised that he had written to Chester Racecourse in relation to the transfer, but had not yet received a response. He asked if he could have a note of the complaints in order to determine whether they could be addressed.

Mr McCrorie noted that representatives from Chester Racecourse had hoped to meet with Mr Axon the previous week, but that there was insufficient time to do so.

Mr McCrorie also questioned the number of days allocated for the employment tribunal (as set out in Section 2.5 of the report). The Chair confirmed that four days had been allocated for this matter.

Decision

The Committee agreed to note the report.

6. ALLOCATION OF FEES

A report was submitted by the LRS in relation to the costs associated with the appointment of Pinsent Masons LLP.

Mr Anderson Green presented the report, reminding the Committee of the importance of acting in the best interests of the Racecourse. He requested that the Committee should reconsider its decision that MRAC should pay 100% of the legal costs associated with the tender process, in view of the fact that the Council would benefit financially from the Racecourse fixtures. He proposed a recommendation to the effect that all professional fees associated with the tender process should be borne by East Lothian Council as the beneficiary of the continuing and enhanced rental stream. His proposal was seconded by Mr Miller-Bakewell.

Referring to paragraph 4 of the report, Councillor Currie questioned the phrase 'with no compensation for LRS'. He asked if there was an expectation on the part of the LRS that they should receive compensation. Mr Anderson Green explained that, historically, the LRS may have been entitled to a share of the value of fixtures, as they had been part of the Committee when the fixtures were secured. He indicated that he did not intend to pursue the matter, but argued that the LRS should be entitled to a share of the fixtures. He noted that that any surplus from the MRAC should be re-invested in the Racecourse, and that the LRS were acting in the best interests of the Racecourse. He claimed that through the new rental agreement, the Council would receive all the benefits, and he found it difficult to believe that the MRAC would agree to this.

Councillor Currie expressed concern that there could be a potential conflict of interest if the LRS were putting forward a proposal that would benefit them financially. He also objected to the inference that Committee members who were councillors were not acting in the best interests of the Racecourse.

Mr Anderson Green re-stated his position that it was wrong for the Council to reap all the benefits of the new arrangements. He accepted that in signing the new Minute of Agreement the LRS were relinquishing their rights to the value of fixtures. He called on all members of the Committee to act in the interests of the Racecourse.

Mr Miller-Bakewell highlighted the importance of this matter. He remarked that had Chester not been about to take over the running of the Racecourse, the BHA would not have granted another extension to the licence, and the Council would therefore be left with a 'stranded asset'. He questioned why the Racecourse was having to pay the costs of something that would benefit the Council, and over which it had no control. He was also concerned that the costs had risen from £50,000 to c. £300,000 without the agreement of the MRAC or the Racecourse management. As the MRAC was responsible for the Racecourse's finances, he felt that the Committee should challenge the allocation of the costs.

The Chair reminded the Committee that the LRS, Racecourse staff and the Council had all supported the appointment of the third-party operator, thereby acting in the best interests of the Racecourse. She moved to the vote on the recommendation proposed by Mr Anderson Green that all professional fees associated with the tender process should be borne by East Lothian Council as the beneficiary of the continuing and enhanced rental stream.

For: 2
Against: 4

The proposal that all professional fees associated with the Racecourse tender process should be borne by East Lothian Council therefore fell.

Sederunt: Mr Kennedy and Ms Montgomery left the meeting.

SUMMARY OF PROCEEDINGS

The Chair informed the MRAC that they would exclude the public from Items 7, 8 and 9, which contained exempt information by virtue of Paragraphs 1 and 6 (information relating to particular employees of the Authority, information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973, and approve the private business from the meeting on 7 January 2020.

Racecourse Rent Valuation

A private report relating to the Racecourse rent valuation, submitted by the Lothian Racing Syndicate, was noted.

HR Matters

A private report concerning a number of HR matters was approved.

Private Minute of the MRAC Meeting of 7 January 2020

The private minute of the meeting of 7 January 2020 was approved.