



**MINUTES OF THE ADJOURNED 2020 TOM NPC ANNUAL GENERAL MEETING  
HELD ON WEDNESDAY 9 DECEMBER 2020 AT 18:00  
AT KELVIN GROVE, 144 CAMPGROUND ROAD, NEWLANDS**

**1. WELCOME AND OPENING**

- 1.1** TOM NPC Board Acting Chairperson, Tim Jobson opened the 2020 TOM NPC AGM and welcomed all present.
- 1.2** Race Director, Debra Barnes, confirmed that all Protocols for the 2020 TOM NPC AGM had been followed including the postponement of AGM and the timelines leading up to the 2020 Annual General Meeting on 9 December 2020.
- 1.3** Tim Jobson requested condonation from the meeting for the postponement. No objections were raised from any of the members present.
- 1.4** A moment of silence was observed for the TOM members or families and specifically Mick Winn (founding chairperson of Comrades Marathon) who passed away in 2020, as well as those who endured severe hardship due to COVID-19.

**1.5 Attendance in person:**

Ken Andrew  
Tim Cubitt  
Kevin Harlock  
Jakes Jacobs  
Achmat Jacobs  
Gareth Littlewood  
David Maralack  
Owen Martin  
Ian Nixon  
Elizabeth Short  
Andrew Smith  
Mark Wagenheim  
Norrie Williamson  
Warren Hurd  
Franklin Smith

Harold Berman  
Helen Du Plessis  
Sonia Harlock  
Denise Johannes  
Awie De Swart  
Kevin Lodge  
Adnaan Mohamed  
Henry Jones  
Christopher Readman  
Stefanie Schultzen  
Phyllis Tooley  
Spencer Wheaton  
Malcolm Salida  
Joanne Van Der Valk

John Brimble  
Francois Gouws  
Farieda Williams  
Paul Leader  
Abdul-Muizh Lewin  
Eugene Marais  
Brent Morgenrood  
Grant McPherson  
Kashief Sardien  
Esme September  
Bill Tooley  
Nancy Will  
Shahmieg Allie  
Shaun Starck

**Attendance via Zoom:**

Axel Ritterhaus  
Paul Carter  
Max & Greta Brock  
Peter Taylor  
David Hofmeyr  
Michael Mortley  
Chris Goldschmidt  
Stephen Starck

Deon Gouws  
Ruth Leverton  
David Heyneke  
Jeremy Clampett  
Jacques Rijkmans  
Gordon Laing  
Anthony Abrahamson

Michael Schouw  
Julia Starck  
Paul Murphy  
Stephen Granger  
Randall Turner  
Lionel Klassen  
John Mosdell

**Directors:**

Mr Timothy Jobson (Acting Chair)  
Mr Lionel Samuels  
Mr Allan Ryninks

Mr Safwaan Lewis  
Mr Hilton Kearns  
Mr Barry Matthew

Mr William Swartbooi  
Ms Thozama Koli

**Office:**

Ms Debra Barnes (Race Director)  
Ms Lindy-Joy Dennis  
Ms Grace Pambana

Mr Gary Sing  
Ms Patiswa Gqetywa  
Ms Nicky Windsor (Virtual Office Exec)

Mr Grant Bolters  
Ms Sharon Meyer

**External:**

Mr Ralph Letcher; Ms Juanita Jacobs (Advantage Accountants - Auditor)  
Bennett Bailey (Voting Presiding Officer)

## Apologies:

Jules Fenn  
Michael Suskin  
Naeem Mather  
Marius Richter

Nic Louw  
Gavin Anderson  
Rodney Maharage

Gerhard Koornhof  
Sean Lavery  
Graham Bentz

## 2. 2019 TOM NPC AGM MINUTES

2.1 The following amendments were requested at the AGM:

2.1.1 **Spencer Wheaton** mentioned there were several members who had attended the 2019 AGM, but were not listed under attendance namely:

Spencer Wheaton, Kevin Lodge, Paul Murphy, Jakes Jacobs, Joanne Van Der Valk,

2.1.2 Item 10.1 – Spencer Wheaton advised that Board members were incorrectly listed, and that Harold Berman should be removed and Safwaan Lewis added as Director.

2.1.3 Item 10.2.2 – Spencer Wheaton advised that Safwaan Lewis to be removed and Harold Berman added. He however, mentioned that Harold Berman stepped down after previous AGM mid-term.

2.1.4 Item 10.4.2 – Spencer Wheaton advised that Safwaan Lewis is to be added there as he was nominated and confirmed by Celtic Harriers to enter a new term.

2.1.5 **Kevin Harlock** was listed as attendee; however, he was not there and had sent an apology.

2.2 Acceptance of the 2019 AGM Minutes was proposed by Helen Du Plessis and seconded by Franklin Smith.

2.3 There were no matters arising from the 2019 AGM Minutes.

2.4 Video presentation of the 2019 race highlights.

## 3. PRESENTATION OF THE BOARD REPORT

3.1 The TOM acting Chair, **Tim Jobson** presented the TOM NPC Board Report on behalf of the TOM NPC Board.

3.2 **Allan Ryninks** presented the Independent Investigative Report giving members a brief background on how incidents occurred and what procedures were followed in terms of reaching a conclusion. All matters arising from Board Report were to be tabled after the Financial Report was presented.

## 4. TOM NPC 2020 FINANCIAL REPORT

4.1 TOM NPC Director, Head of FinComm, **Safwaan Lewis**, read the Financial Report.

4.2 The following were highlighted:

4.2.1 The 2020 Financials are vastly different to all other years due to the cancellation of the race in April 2020 due to COVID-19.

4.2.2 Income reduced by R20m due to loss of sponsorship of R14,5m, cancellation of expo/finish of R4m, reduced t-shirt sales of R800 000,00, no hospitality packages were able to be sold which reduced income by a further R690 000,00 and TOM had committed to refunding runners for medal engraving and parking income of R400 000,00.

4.2.3 Safwaan Lewis pointed out that there was a slight discrepancy in the Board Report and the figure quoted there of R191 250 for sponsorship received from Western Cape Government includes VAT. The amount excluding VAT was R166 000,00 and that is what is reflected in the financial statements.

4.2.4 Safwaan Lewis repeated what had been mentioned in the Board Report regarding the non-refund of entry fees. TOM had received just over R13m in entry fees which makes up for the bulk of the 2020 revenue, the balance being sundries and disbursement income. At the time of the cancellation an amount of R9 756 454,00 had already been spent on operating expenses, facilities, goods, and services. In addition, contracts had been concluded, deposits paid for further goods and services (i.e., goodie bags, t-shirts, medals, timing services, medical services, etc). If TOM had refunded the entry fees to runners, the organisation would have been exposed to a loss of a large portion of reserves and the TOM Board would not have fulfilled its fiduciary responsibility in this regard. Wherever possible TOM negotiated cancellations and refunds for deposits from suppliers; however, the Board honoured contracts with local suppliers which enabled the organisation to provide t-shirts to entrants. Some of the goods & services, such as medals, goodie bags, medical and timing services as well as some of the fencing costs paid, have been carried over to the 2021 race as pre-payments. The total of pre-payments which will apply to future races will be R1,8m.

- 4.2.5 The decision to distribute t-shirts to runners also came with an additional budget expense. This included delivery costs of R409 000,00, labour of R60 000,00 and packaging costs of R94 000,00. Unfortunately, the cost to deliver t-shirts to overseas entrants was prohibitive and would have exceeded R1,4m.
- 4.2.6 Variance in income which amounted to R445 468 under Cost of Sales was due to the recommendation by our Auditor to reduce the carrying value of our stock (i.e., books) to recover costs over a 3-year period. Despite the reduction in value, the books are still being sold at more than its original production price.
- 4.2.7 Other income was made up of large discounts received on expenses (e.g., CTICC for venue hire) and as these were one of the costs, where we were able to fully recover our deposit, no discount was received as there were no expenses incurred.
- 4.2.8 Expenditure was down by R20m which included operational marketing, client services, prize money and venue hire services as these were not incurred due to the race cancellation. Also, when comparing with 2019 expenditure we should also bear in mind that this included costs for the 50<sup>th</sup> celebration expenses.
- 4.2.9 Finance income was lower in 2020, and this was due to lower interest rates and less income was kept in long-term investments for a shorter period due to cash flow requirements.
- 4.2.10 Our TOMI expenses were also lower as there was no Runners' Village due to the race cancellation and no relay was budgeted for in 2020.
- 4.2.11 Nett deficit for the year was R644 069.
- 4.2.12 The Financial Position at year-end:
  - Organisation still maintained a healthy reserve of R20 900 864,00 which was made up of Fixed Assets of R6 725 436,00, Inventories of R898 548,00 (made up of sale of books, t-shirts, and other memorabilia), Debtors of R414 366,00 and cash in the bank of R19 151 501,00.
  - Current liabilities were substantially less than 2019 and were made up of accounts payable of R3 911 458,00 (medals, t-shirts, legal fees, marketing, other suppliers and 2019 disputed accounts) and accruals of R2 377 530 (WPA levies and licenses, t-shirt/book distribution costs, parking and medal refunds, payroll accruals, VAT, and other accruals)

4.2.13 **Safwaan Lewis** mentioned below several matters which had come out of the recent Independent Investigative report which are relevant to the financial statements:

- 4.2.13.1 Appointment of Company Secretary – confirmed that THEMIS Commercial Legal Advisors had been appointed.
- 4.2.13.2 Appointment of Auditor – Safwaan Lewis read an extract from Independent Report (item no 4) and the response from the auditor (Advantage Accountants). A decision was taken this year that the unabridged financials would be posted on TOM website this year so it would not be necessary to request them.

### 4.3 Matters arising from the Financial Report and Investigative Report:

- 4.3.1 **Grant McPherson** queried the Property, plant and equipment amount of R6 725 436,00 and requested a breakdown of this amount. Safwaan Lewis shared the breakdown as follows:
  - Ottery property: R1 770 163,00
  - Heathfield property: R4 861 273,00
  - Fixtures & fittings, computer & other fixed assets: R94 000,00
- 4.3.2 **Grant McPherson** queried what the plans for the Ottery premises were. Safwaan Lewis replied that TOM is in the process of marketing the property, however, an offer received was well below the market value. The Board has taken a decision in the meantime to prepare a portion of property to rent it out and utilise the balance of the property as storage space. This will reduce storage costs elsewhere. TOM would, however, continue to market the property and when a reasonable offer was received, TOM would consider selling the property.
- 4.3.3 **Mark Wagenheim** queried the Investigative Report tabled by Allan Ryninks and whether some matters were still being investigated or not yet concluded. He added that if this was correct, is the report that was issued, an interim report? **Tim Jobson** replied that the report from the team of independent investigators had been finalised, accepted by the Board and it had been published. There are, however, additional matters that have been raised and which the new board would need to clarify. **Safwaan Lewis** also mentioned that the recommendations from the independent investigators would need to be put in place by the new board and there was additional information, which was outside the scope of the original investigation, which was requested and subsequently that information had been given to the investigators. He mentioned they may issue an addendum to the report, however, the initial report had been finalised.

- 4.3.4 Allan Ryninks** confirmed that consideration would be that any findings that came from the report which would need further attention, would be handed over to a new team of investigators suitable for that requirement and that would be taken from there. This would obviously be under the mandate of the new board going forward. **Mark Wagenheim** mentioned he had read in a report that a request had been raised to certain people and at the time those questions were not answered and asked if these would still be answered.
- Safwaan Lewis** confirmed that he had responded to those questions, as they had been directed to two members of FinComm and the information requested had been forwarded to the independent investigators. The TOM Board originally felt that it was outside of the scope of the original investigation, however, all the information that was asked for was provided.
- 4.3.5 Allan Ryninks** mentioned that once the independent investigators had concluded and finalised the next report, it would be published like the first report, however, he did mention that the past team would not be involved in this investigation as this is a separate mandate.
- 4.3.6 Kevin Harlock** queried the provision for accrual relating to WPA and asked for this to be expanded upon. Safwaan Lewis responded, advising that it reflected the total calculated amounts provided to us by WPA for the temporary licences collected from runners as well as the race levy. He added that several meetings had been held with WPA as TOM's initial stance was that runners should be refunded for their temporary licence, however, WPA had a different view on that, and an agreement was reached that they would give TOM the relevant proof for the purchase of those licences from ASA. The second point was race levies – **Safwaan Lewis** commented that as the custodian of the funds of the TOM NPC, the Board Members seek to protect TOM's funds and those of its members at all costs – TOM's initial stance was that if the race never took place, there should not be a race levy. WPA again had a different view and whilst we agreed with much of what they said, we made a proposal to pay a portion of the race levy and we are awaiting their response to that proposal. **Kevin Harlock** replied saying maybe he had been misunderstood – was TOM saying that the money received from entrants for the temporary licences was going to be reimbursed to the entrants and not WPA. **Safwaan Lewis** replied that this was incorrect, after having consulted with WPA, TOM had agreed to pay to WPA, the temporary licences. **Kevin Harlock** then asked on the matter of the levy and asked for clarification because a precedent had been set where levies had already been paid on other races. **Safwaan Lewis** responded that every race and its management were entitled to negotiate and have discussions with WPA independently – he could not speak for other races, only on behalf of TOM NPC.
- 4.3.7 Jakes Jacobs** responded on behalf of WPA, mentioning that WPA had requested meetings with TOM on numerous occasions. A meeting was held where the finance team agreed they would pay the 2019 outstanding amounts and they were paid in September 2020. **Jakes Jacobs** also advised that TOM had agreed that they would pay the temporary licences by Friday 4 December 2020 and mentioned this had not been paid to date. TOM did make an offer to pay the levy on a percentage basis, however, WPA advised you cannot go against the rules and to date this amount was still outstanding.
- 4.3.8 Safwaan Lewis** responded to **Jakes Jacobs** on the payment of the temporary licences advising that TOM had made it quite clear that we were prepared to pay the temporary licences on confirmation that the licences had been purchased from ASA and TOM is yet to receive that information. We have however, received a statement from ASA for the purchase of temporary licences in January and June 2020 but there is no indication which licences these were for. So, it is incorrect to say we would agree to pay on the Friday 4 December 2020, as TOM did not hold up the agreement. **Jakes Jacobs** advised he did not come to this meeting to fight; he had just mentioned the facts that WPA had not been paid and had raised the issue.
- 4.3.9 Norrie Williamson** mentioned that we are all part of the sport in this country which is funded through the provinces and questioned why TOM would want to undermine WPA. Money was taken from athletes based on 10% levy and a cost of temporary licences. Organisation had held back the funds and this is not negotiable, and we should act with integrity and therefore fully pay to WPA as this is the basis on which the money was taken from the athletes.
- 4.3.10** With regards to the Independent Investigative report, **Norrie Williamson** proposed that an independent hearing with an independent person from outside the province, evaluate allegations in the report as well as the findings as it is critical that the new board should be focused on putting a race on and not being further distracted, and proposed a deadline of four months from now, by when they must report back. **Tim Jobson** noted **Norrie Williamson's** views regarding the levy payable. He added that Norrie's proposal was noted with regards to the independent report, but it would have needed to have been submitted as a proposal for resolution at this meeting. **Tim Jobson** added, in terms of meeting protocols, that this request be noted, and placed on record.
- 4.3.11 Safwaan Lewis** responded to some of **Norrie Williamson's** comments. Firstly, on the integrity of the board regarding holding back the payment to WPA, if that were the case, we would have not accrued for this as an expense, adding that everything the Board does is in the interest of our members and according to our financial procedures and policies.

- 4.3.12 Safwaan Lewis** confirmed that the amount is due and payable. Secondly, focusing on 2021 race rather than the independent investigations report, is obviously what the board would like to focus on, and thirdly, as far as an independent hearing, the Board only felt it was necessary if there had been serious governance issues or if the findings of the report were widely disputed.
- 4.4 Appointment of Auditor:** **Tim Jobson** proposed Advantage Accountants be appointed as Auditor for TOM for 2021 and asked for meeting approval on this proposal.
- 4.4.1 Grant McPherson** expressed his concern and commented that TOM had employed investigators to conduct an investigation and that they had come back with a firm recommendation, but the recommendations are ignored. He added that this did not engender any confidence that TOM was taking the findings of the report seriously. He added that the auditor should not be in the room to be appointed, so that this could be discussed openly. Grant McPherson indicated he felt bullied, and he did not understand why.
- 4.4.2 Spencer Wheaton** echoed that sentiment adding it was dangerous not to take note of the recommendation and whilst this might be acceptable, we should be seen to do the right thing, and this was one of these opportunities.
- 4.4.3 Safwaan Lewis** responded and advised that TOM had made enquiries regarding an alternative auditor, and should the meeting want to propose we vote for a change of auditor the Board would respect this request.
- 4.4.4 Tim Jobson** confirmed in terms of TOM's MOI the auditor had to be appointed at the AGM.
- 4.4.5 Shaun Starck** mentioned the finding was not against the auditor, but rather whether the auditor should compile the financial statements and conduct the audit. **Safwaan Lewis** confirmed that TOM's current auditors do not compile the financial statements, but rather TOM's office does, and that TOM's auditors merely audit them. He reread the recommendation by the independent investigators for clarity to all present at meeting.
- 4.4.6 Juanita Jacobs** confirmed the process, that the NPC should prepare financials to trial balance, that another company prepares the financials and then the auditor checks those financials.
- 4.4.7 Tim Jobson** asked the meeting if there was sufficient information available to either vote for or against the current auditor – Advantage Accountants for another year or that TOM look at the alternate recommended auditor.
- 4.4.8 Safwaan Lewis** reiterated that in terms of TOM's MOI we are required to go with a full audit and the auditor needed to be appointed at the AGM. If there was a proposal that we separate certain duties and appoint a separate firm, that falls outside of the AGM and MOI, so unless there was a proposal that was tabled, it should be recorded and if the members would like the duties separated, the Board would be obligated to investigate this.
- 4.4.9 Tim Jobson** asked the members by show of hands who was comfortable to go with board proposal to appoint Advantage Accountants for the new financial year, however in terms of procedure the board can look at the processes involved. A member of the online audience suggested that Advantage Accountants excuse themselves from the meeting to complete the discussion.
- 4.4.10 Ralph Letcher** from Advantage Accountants advised he was happy to excuse himself from the meeting and that Juanita would stay to audit the counting of the votes of the new members of the board. **Ralph Letcher** explained that the preparer of the financials was indeed TOM, Advantage Accountants collaborate & circulate the figures, TOM makes the changes and Advantage Accountants verify the figures are correct. It is quite common for an entity of this size to not have two companies involved. **Safwaan Lewis** further commented that the financial manager, who is the preparer of the reports, is fully qualified to prepare those reports.
- 4.4.11** The matter of voting for existing auditor versus the new auditor continued to be discussed at length with proposed voting taking place without knowing the other auditor. Comments followed from **Jakes Jacobs** and **Malcolm Salida** mentioning that before voting could have been made, the members had the right to know who the proposed alternate auditor was. **Safwaan Lewis** responded that the proposed new auditor was Swemmer Macinnes Inc. who had previously been the auditors for TOM about six years ago. He also reiterated to the members that it was quite clear in the MOI that the Board may propose to reappoint the existing auditor and was now asking the meeting to approve the Board's proposal. After a recount of votes, it was recorded that the current auditor, Advantage Accountants, have been appointed for the current financial year ending June 2021.
- 4.5 Harold Berman** inquired that if information was brought to the investigative auditors, would they amend the report. There were two items which concerned him, details were incorrect and although he had already requested TOM office to make the changes, to date he had had no reply. The two amendments to the Report, requested were as follows:
- 4.5.1 Harold Berman managed the memorabilia stand:** Harold disputed this and advised he did not manage the memorabilia stand. At the TOM Expo in 2019, he assisted in selling a few of the 50<sup>th</sup> anniversary books and such monies were handed to the TOM office staff, who were appointed to manage the stand.

- 4.5.2 Harold Berman** was never involved in the reconciliation, counting, storing, or banking of the money. He feels this is a bad reflection on him and would like this changed.
- 4.5.3 Mr Berman** was also engaged by TOM as an independent contractor. Harold disputed this and commented that he has never been engaged as an independent contractor and would appreciate being provided proof thereof. The only reward that Harold Berman did receive in his history with TOM was receiving money for announcing. This report covers the period 2017 to 2019. He added that in 2018 and 2019 he had received nothing and never asked. In 2017, the GM/CEO asked where his invoice was, and he replied saying he never invoiced unless he is asked.
- The GM requested that he send her an invoice as they wanted to close off their books. An invoice was submitted, he was paid and the people who approved the invoice were both on the Finance Committee, namely Mr Safwaan Lewis and Mr Rodney Maharage.
- 4.5.4 Tim Jobson** advised Harold Berman that the above two comments / requests had been recorded and advised that those are both salient points which must be brought to a revision for updates to be made to the report.
- 4.5.5 Safwaan Lewis** added that the comments Harold Berman was referring to was not in the Investigative Report, but rather in the annexures to the report. Safwaan Lewis agreed with Harold Berman that he was not involved with the memorabilia and that in relation to point 2, in respect of any monies received by board members, there were no allegations made against Harold. However, where questions were asked about previous board members receiving monies, that information was made available to investigators.
- 4.5.6 Harold Berman** responded to Safwaan Lewis's comment regarding receiving monies, that if TOM wanted to be transparent all directors who received monies in the past, should be recorded.
- 4.5.7 Safwaan Lewis** agreed that all directors who have received monies in the past should be noted and recorded.

## 5. CONFIRMATION OF DIRECTORS AS NOMINATED / ELECTION OF NEW DIRECTORS:

- 5.1** Bennett Bailey was appointed as Presiding Officer to oversee the electoral process.
- 5.2** Ballot papers used for voting were handed to members and online members voted using the prepared online form.
- 5.3 Tim Jobson** announced the list of current directors representing 3 bodies i.e Celtic Harriers, Western Province Athletics and Ordinary Members:

### **Celtic Harriers:**

Mr Rodney Maharage – term ended at 2020 AGM.  
 Mr Hilton Kearns – 1<sup>st</sup> Year of term ended at 2020 AGM; 2<sup>nd</sup> Year of Term starts at 2020 AGM.  
 Mr Barry Matthew – 1<sup>st</sup> Year of term ended; 2<sup>nd</sup> Year of term starts at 2020 AGM.  
 Mr Safwaan Lewis – 1<sup>st</sup> Year of term ended; 2<sup>nd</sup> Year of term starts at 2020 AGM.

### **Western Province Athletics:**

Ms Thozama Koli – Term ended at 2020 AGM (she had been nominated by WPA to continue as a TOM Director)

### **Ordinary Members:**

Mr William Swartbooi – Term ended at 2020 AGM.  
 Mr Timothy Jobson – 1<sup>st</sup> year of Term ended at 2020 AGM (Has chosen to step down at the 2020 AGM.)  
 Mr Allan Ryninks – Term ended at 2020 AGM. (Completion of 2<sup>nd</sup> year; taken over from Kathy Mc Quaide)  
 Mr Lionel Samuels - Term ended at 2020 AGM. (Co-opted for 1 year)  
 Mr. Paul Murphy – Term ended at 2020 AGM (Co-opted for 1 year)

The intention was to have 12 directors (4 from each body), they would be an overlap of year 1 & 2 so there would be continuity of board members. However, this year there were quite a few stepping down or whose terms have ended.

- 5.4** The remaining TOM NPC Directors, who are confirming their second year are as follows:

### **Western Province Athletics:**

None

### **Celtic Harriers:**

Mr Safwaan Lewis – 2<sup>nd</sup> year of term starts at 2020 AGM.  
 Mr Barry Matthew – 2<sup>nd</sup> year of term starts at 2020 AGM.

### **Ordinary Members:**

Mr Graham Bentz – 2<sup>nd</sup> year of term starts at 2020 AGM.

5.5 Confirmation of the appointment of Directors who have availed themselves to serve a 2-year term:

<b>Celtic Harriers:</b>	<b>Western Province Athletics:</b>	
Mr Siphos Evans	Ms Thozama Koli	Mr Aubrey Isaacs
Mr Hilton Kearns (serving 2 <sup>nd</sup> year of 2Yr term)	Mr Keith Temmers	Mr Paul Murphy

5.6 Nominations received for the appointment of 3 Ordinary Members:

Mr Awie De Swart	Mr Allan Ryninks
Mr James Evans	Ms (Elizabeth) Liezel Short
Dr Neil Garrod	Mr William Swartbooi
Dr Bertus Le Roux	Ms Sue Ulyett

- 5.7 **Tim Jobson** advised the meeting, that ballot papers and information had been prepared and at late notice an email had been received from Sue Ulyett advising that she and James Evans would be withdrawing their nominations for appointment as directors. The meeting was hereby informed that these two nominees had withdrawn.
- 5.8 **Safwaan Lewis** informed the meeting that TOM Board had obtained legal advice before the meeting and Sue Ulyett's withdrawal stands, however, Mr James Evans had not withdrawn his nomination himself and somebody is not entitled to withdraw on someone else's behalf as this would infringe on Mr Evans's rights and therefore Mr Evans's nomination still stands.
- 5.9 **Bennett Bailey** confirmed to the meeting that there were seven (7) candidates up for nomination.
- 5.10 **Tim Jobson** briefed the attendees on the different colour ballot pages: yellow page was for the Members' Votes; blue page was the Clubs' votes and green page was for a Proxy vote.
- 5.11 **Tim Jobson** clarified that Sue Ulyett had sent an email to himself and Debra Barnes and had cc'd James Evans. James Evans would have seen that email, however, did not reply to the contrary. Therefore, technically as per advice received, James Evans had not personally withdrawn his nomination, so potentially if he is voted and rescinds his withdrawal then he would be able to be a director.
- 5.12 **Bennett Bailey** advised as presiding officer, that his duty was to preside over the votes. These matters should have been clarified beforehand and confirmed that a third party cannot withdraw a vote on behalf of someone else.
- 5.13 **Norrie Williamson** requested clarity that the proxy votes had already been received and if so, what would happen if there were votes for Sue Ulyett? Bennett Bailey advised those votes would be disqualified. Tim Jobson clarified the process of how the online attendees voted, single form with two paths i.e., who are you, contact details, etc and who you voted for and therefore there are some members who have already voted for Sue Ulyett and/or James Evans. Norrie Williamson asked the Chair if those members who had voted online be given an opportunity to re-vote. Tim Jobson advised that some members had already voted, however, they might not be online now and queried how they would be able to allow all those who voted online the opportunity to re-vote.
- 5.14 **David Maralack** queried whether it is procedurally correct to allow voting prior to a meeting as technically a vote needs to take place at an AGM? Safwaan Lewis responded that the opinion received from the legal team was any votes made online for Sue Ulyett be regarded as spoilt votes and in terms of TOM MOI and section 64.9 of the Companies Act, no matter can be put to a vote unless a quorum is present at the meeting where such vote will be taken. The meeting decided that voting would take place at the meeting and those members present online would be given the opportunity to re-vote using the google sheets.
- 5.15 Comments from online platform re: voting procedure:
- **Jeremy Clampett:** There is nothing that can be done about proxy votes. They will have to stand and are not invalid. The fact that one of the nominees withdrew should not disrupt the process.
  - **Chris Goldschmidt:** We are voting for 3 positions, continue with the votes and if the online votes will affect the result, then debate how to let them reallocate the vote for Sue Ulyett.
  - **David Hofmeyr:** Disagreed that online votes should be discarded.
  - **Jeremy Clampett:** Suggested that we not accept the legal opinion and regard the votes for withdrawn candidate as a spoilt vote.
  - **Chris Goldschmidt:** Companies Act is clear that virtual attendees form part of the quorum.
  - **Randall Turner:** Only consider the online votes if any of them have voted for the 2 people who have made themselves unavailable.
  - **Jeremy Clampett:** It is not online voting; it is proxy votes.
  - **Chris Goldschmidt:** Disagreed with Jeremy Clampett as Proxy votes are cast by someone on your behalf.
  - **Gordon Laing:** The online votes are votes they are not proxy votes, as this was specifically not allowed.

- 5.16 Tim Jobson** confirmed the final voting procedure agreed by the meeting. The google sheet for online members had been cleared, the name of Sue Ulyett had been removed, James Evans was left on the nomination list and all online attendees were requested to recast their vote. All votes delivered prior to the start of the meeting and voting procedure were taken as null in void.
- 5.17 Norrie Williamson** expressed his concern on how members were supposed to approve financial accounts that are or were still under investigation.
- 5.18 Safwaan Lewis** confirmed that the financial statements were not under investigation and did not understand his concern.
- 5.19 Allan Ryninks** confirmed the members were not voting on the content or any transactions that had taken place on the audited financial statements but were voted on the completion of them and the auditing process. He concurred that there were details contained in the financial statements that need to be investigated.
- 5.20** He added that questions had been raised and not yet answered, however, the information in response to those questions had been provided. This information has not been collated yet and will only be answered with a new report via the instruction of the new board. This does not affect the audit; the audit is still valid and anything that comes out of the investigation can be amended through transactional elements such as accruals.
- 5.21 Safwaan Lewis** advised a procedure matter before the voting for new board members was concluded, the Financial Report and Annual Financial Statements needed to be proposed and seconded by the meeting. The adopted Annual Financial Statements were proposed by **Franklin Smith** and seconded by **Shameegh Allie**.
- 5.22** Comments from online platform re: voting procedure:
- **Deon Gouws** expressed his sadness that it had come to this as he had been part of the Two Oceans “family” since his first voyage in 1986. He had earned 29 ultra-medals - nearly half of them traveling from London to Cape Town over the years. He added that the Board has clearly lost all credibility and he had lots of sympathy for the views of esteemed members such as **Norrie Williamson** which are essentially swept away. He expressed his fear for the future of this event and hope that he is proven wrong.
  - **Chris Goldschmidt** responded to **Deon Gouws**, that as much as he understood his concerns, he believed that Allan Ryninks’ response was correct.
  - **Peter Taylor** agreed with the sentiments expressed by Deon Gouws, adding that he had 32 voyages and had abstained from voting.
- 5.23 Bennett Bailey** read the nomination results and announced the new directors:
- Allan Ryninks
  - Elizabeth Short
  - William Swartboo

## 6. GENERAL

### 6.1 TOM 2021 Update

- 6.1.1** Debra Barnes gave a summary / timeline on the cancellation of the 2020 race.
- TOM was far ahead in the planning of the 2020 event.
  - The day before lockdown was announced, TOM announced that the race would be cancelled.
  - It was a very difficult decision to make and TOM, partners, the event industry, and the Western Cape were still feeling the effects of the cancellation.
- 6.1.2** It is unlikely that we will be able to host the traditional mass race as we know it for the foreseeable future, however, it does give us the opportunity to look at various opportunities to engage with the runners. Going forward we need to look at different opportunities to survive in a world where COVID-19 may always be around. How do we innovate? How do we position ourselves that we are able to retain our stature? How do we respond to things that are completely unplanned? What do the runners want?
- 6.1.3** Sponsors are repositioning how they spend their money and digital has become the next best thing.
- 6.1.4** What can we do to keep the runners excited and want to participate in the Two Oceans Marathon?
- 6.1.5** Given the current restrictions, the proposed Plan would include:
1. Ultra-Marathon Challenge of the Champions
  2. 21.1km National Charity Challenge Virtual Series
  3. Two Oceans Marathon Regional Series

**6.2 Matters arising from the floor:**

**6.2.1 Mark Wagenheim** requested further details regarding the resignation of **Rodney Maharage**.

**6.2.2 Tim Jobson** confirmed that **Rodney Maharage** had resigned as Chairman of the TOM NPC and as of this AGM he also has not made himself available as a Director.

**6.3** In conclusion **Tim Jobson** on behalf of the board thanked TOM partners:

- Western Province Athletics
- Western Cape Government
  - o Department of the Premier
  - o Department of Cultural Affairs & Sport
  - o Wesgro
- City of Cape Town
- Athletics South Africa
- Sponsor - Coca Cola SA/Peninsula Beverages
- Sponsor – Astron Energy (Caltex)
- Sponsor - Tsogo Sun
- TOM Office staff

There was no further business to discuss, and the meeting ended @ 21h41.

**Signed: Chairperson**

**Date:**



W C Swartbooij (Chairperson)

7 October 2021