

Beattie Varley Limited

Financial Investigation - Forensic Accounting - Support for Litigators

Beattie Varley Limited

**America's Cup Event Limited
&
Team New Zealand Limited**

**Investigation / Audit into certain obligations under
the Host Venue Agreement**

20 August 2020

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Introduction

1. On 13 March 2020, Beattie Varley was asked by the Ministry of Business, Innovation and Employment (“MBIE”) to carry out an audit/investigation of America’s Cup Event Limited (“ACE”) and Team New Zealand Limited (“ETNZ”) to enable an assessment of whether ACE had met its obligations under the Host Venue Agreement (“HVA”) entered into by ACE, ETNZ, the Auckland City Council and the Crown (acting through MBIE) on 4 April 2019.
2. Under the HVA, MBIE had agreed to pay ACE NZ\$40,000,000 (“the Event Investment”) as a contribution towards running certain events, namely the Christmas Race, the Prada Cup and the 36th America’s Cup match (together, “the Events”). At the time we were approached, MBIE had made payments totaling \$26,000,000, now increased to \$29,000,000 (all numbers exclusive of GST).
3. Under Clause 14.4 of the HVA, ACE represents, warrants and undertakes that it will use the Event Investment solely for meeting the costs that arise with the management and delivery of the Events. For its part, ETNZ had sole responsibility for conducting the sporting campaign for the Defence.
4. Further, under Clause 24.3 of the HVA, ACE and ETNZ are required to maintain true and accurate records in connection with the use of the Event Investment and the carrying out of the Event sufficient to enable the Crown to meet its obligations under the Public Finance Act 1989 and the Public Records Act 2005 and retain records for at least 7 years after termination or expiry of this agreement.
5. Under Clause 24.3, ACE and ETNZ are also required to permit the Crown, or its agent, auditors or other advisors to access, from time to time (but not during the Event) any of ACE’s or ETNZ’s premises and personnel, and any of ACE’s or ETNZ’s relevant records as may reasonably be required, to verify that ACE and ETNZ have complied with their respective obligations under the HVA.
6. Prior to our involvement, the Hosts had been approached by a Whistleblower who had expressed serious concerns with various operational and governance matters within ACE. The Whistleblower had documents which it said supported its concerns. MBIE asked us to meet with the Whistleblower and consider the information it had in its possession.
7. We were asked by MBIE to review the relevant records of ACE and ETNZ and trace the uses to which Crown funds had been put and consider whether ACE and ETNZ were meeting their record-keeping obligations. MBIE advised that it required money to be traced and compared against invoices and other primary records.

The Event Spending Schedule

8. The first documents were provided by ACE on 20 April 2020. One was a schedule that recorded that \$29M had been contributed by the Crown (effective 31 March 2020, the date to which this report relates) and then expended on a range of expenses (grouped into categories) totaling \$25.4M and recorded as "*ACE Campaign Spend*". The schedule also listed four categories of expenditure / income labelled as "*Activity Outside Event Funding*" including a fraud matter dealt with later in this report. We refer to the schedule as the "*Event Spending Schedule*".
9. We have tested \$21.1M of the \$25.4M *Ace Campaign Spend* (i.e. 83%) and the four "*Activity Outside Event Funding*" categories. MBIE should note that we have not pursued information in respect of the \$4.3M balance in spending.

Our Interim Report

10. At a preliminary stage of our enquiry, on 9 June 2020, ACE wrote to us stating (inter alia) that it had provided *considerable information* in furtherance of the audit and was returning to its full programme, requiring its full attention. It invited us to submit an audit report to you and advised it would discuss any remaining matters of concern directly with you.
11. The communication from ACE effectively meant we could not pursue documents that we still required. Nor could we seek explanations from ACE / ETNZ personnel based on a developed view of all relevant documentary material. Equally, it impacted on an opportunity to assess the information received from the Whistleblower against information from ACE.
12. On 20 June 2020, we provided you with our Interim Report. Subsequently, ACE acknowledged that its approach to the provision of information had been unhelpful and that more fulsome disclosures would have helped to address the concerns we had raised. It advised that it was prepared to provide information that it considered went beyond its strict contractual obligations, in order to address our concerns.
13. Beginning on 9 July 2020, ACE provided a significant quantity of additional information, including extensive explanations about the various categories of expenditure. Had we received this information in April or May, we would not have needed to raise many of the issues disclosed in the interim report.
14. The detailed explanations we received allowed us to determine a number of issues without the need to seek face to face meetings with ACE / ETNZ personnel. We have appreciated the assistance given since the interim report. On 11 August 2020, we met with ACE Directors and the CEO to discuss a few remaining matters.
15. We now provide our final report. It was issued to MBIE and ACE in draft on 14th August 2020 and we have considered the comments received in reply. Where appropriate, this final report reflects the feedback we received.

Summary Conclusions

16. Subject to our findings in respect of the *AC36 Event & Class Design* expenditure and the money lost to a third-party fraudster, we are of the opinion that the expenditure incurred was to meet costs arising with the management and delivery of the Events. We have not seen evidence that ACE/ETNZ misapplied the Event Investment.
17. Whether the \$3.0M expended on *AC36 Event & Class Design* is a qualifying expense under the HVA is a matter of contractual interpretation and cannot be determined through this audit. We note:
 - a. ACE's position is that they are costs that arise with the management and delivery of the Events and so qualify.
 - b. MBIE's position is that such an expense was not contemplated as being within the management and delivery of the Event at the time of the HVA and that the Protocol does not support this expenditure being an Event expense.
18. If any part of the \$2.8M lost to the fraudster is considered a breach of the HVA (and we do not express a view on if it is a breach) then it was not an intentional one. We note ACE / ETNZ's advice that it does not intend for any residual loss from the fraud to reside within the Event Investment nor impact on the \$40M of funding to be provided by the Crown.
19. In respect of *AC36 Event & Class Design* expenses (Appendix A) and *Management and Administration* expenses (Appendix B) that ETNZ recharged to ACE, we have accepted that the costs were initially incurred by ETNZ. But the lack of an appropriate time-recording system within ETNZ prevented any objective verification of the amount that was ultimately recharged to ACE. The failure to maintain a contemporaneous and documented record that would allow objective verification warrants criticism at a governance and management level. It attracts an increased criticism given ACE's Event costs are funded to a significant amount by taxpayers.
20. In our interim report we advised that there were material relationships in place with third parties that were not documented, or which operated verbally, or were still under negotiation. We also advised of an agreement with a media and TV production service provider that did not prescribe the services to be provided. ACE subsequently provided extensive information relating to these relationships and agreements and we have referred to those in the appendices to this report. We refer you to those. In respect of our enquiry, our concern was simply to establish support for payments made to the third parties and we have been able to satisfy ourselves on that aspect.
21. Under clause 24.3 of the HVA, ACE and ETNZ are required to maintain true and accurate records in connection with the use of the Event Investment and the carrying out of the Event sufficient to enable the Crown to meet its obligations under the Public Finance Act 1989 and the Public Records Act 2005. We do not believe that ETNZ's failure to

maintain a system allowing objective verification of time-recharged (and ACE's acceptance of that failure when it paid ETNZ) necessarily prevents the Crown from meeting its obligations under the Public Finance Act but we refer the matter back to MBIE for consideration. Subject to that referral, the records we have reviewed show an accurate recording of the relevant expenditure.

22. Under clause 24.3 of the HVA, ACE and ETNZ must permit the Crown, or its agents, auditors or other advisors to access any of ACE's or ETNZ's relevant personnel and records as may reasonably be required to verify that ACE and ETNZ have complied with their respective obligations under the HVA. Subsequent to the issuing of our interim report we received a significant quantity of information from ACE/ETNZ which greatly added to the information that ACE had provided previously. We were given the opportunity to speak with any ACE/ETNZ personnel that we needed to and ultimately, we were able to meet with the former ETNZ CFO on pivotal issues concerning the \$3.0M recharge.
23. The categories of expenditure reviewed by us are reported on in individual appendices attached to this report. Each appendix includes our specific conclusions and we refer MBIE to those.



Gib Beattie
Director



David Osborn
Director