

19 July 2017

Michael Jackson
c/o Cox Yeats Attorneys

By email

Wade Ogilvie
c/o Cox Yeats Attorneys

By email

cc: Brian Acker S.C.
The Arbitrator

By email

Dear Sirs

RE: POINT WATER SPORTS CLUB
Our Ref: Carla Roberts/CR/DUR7/0001 and DUR8/0001

On 17 July 2017 at 5:37pm your client PYC published a video on its Facebook page entitled **Notice from PYC Commodore to all PYC members and interested parties in the Vetchies beach saga.**

Our clients have viewed the video and have asked us to place on record, as we hereby do, that the Commodore of PYC in that video misrepresented our clients' position in the arbitration proceedings and actively perpetuated the dissemination of incorrect information and/or presented information without the proper context to PYC's members and other viewers of that video, including but not limited to the following statements:

- **that six individuals formed PWC**

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The PYC Commodore failed to disclose to PYC's members and other viewers that the six individuals who registered PWC together did so on behalf of, as duly authorised representatives of and with the knowledge of DUC, DSBC and PYC pursuant to an agreed strategy to amalgamate the clubs in due course.

- **that PWC agreed to a change of directors of PWC at the instance of PYC because of threatened legal action**

DUC and DSBC did not agree to the change of PYC's representatives on PWC's board of directors pursuant to any threat of legal action and do not recall any such threat having been made. PYC revoked the mandate of its former representatives on PWC's board of directors and replaced them with new representatives, a process which had to be subject to compliance with PWC's corporate governance procedures given that PWC is a separate legal entity. The PYC Commodore's complaint in the video in this regard is also inconsistent with and contradicts his suggestion that PWC was registered by six individuals acting at their own behest rather than as duly authorised representatives of their respective clubs.

- **that Durban Paddleski Club ("DPC") is not entitled to a directorship of PWC**

The PYC Commodore failed to disclose the reasons for DUC and DSBC's view that DPC is not entitled to be represented on PWC's board of directors, which are well known to him pursuant to the pleadings in the arbitration and the myriad correspondence exchanged on the subject. The PYC Commodore also omitted the important fact that DUC and DSBC have communicated to you (without reply from you) that they would have no objection to PYC including DPC's members in the pool of members entitled to vote for PYC's two representatives on the PWC board, alternatively PYC allowing DPC to take up one of PYC's two seats on the board. With a maximum of 70 to 80 members who will become members of PWC (on DPC's own version), it is neither fair nor reasonable nor equitable for DPC to have the same representation on the board as DUC or DSBC – or PYC, for that matter.

- **that the PWC refers to leasehold land instead of freehold land**

DUC and DSBC have instructed us (as you are aware) to delete references to the nature of the transaction with the developer from our draft MOI because referencing the transaction in the MOI is not necessary in law. The PYC Commodore failed to inform his members that this is not a matter which is required to be incorporated in the MOI and, in any event, is not an issue that could ever be decided by the arbitrator in the arbitration proceedings.

- **that our draft MOI envisages the PWC directors receiving remuneration**

The PYC Commodore has intentionally misrepresented this fact. The first draft of the MOI presented to you 15 months ago included, in error, a provision that directors are entitled to receive remuneration. That provision was corrected in the version updated in July 2016 and does not appear in our draft MOI put up in the arbitration. The PYC Commodore also conveniently omitted to inform PYC's members and other viewers that DUC and DSBC have constantly proposed amendments to our draft MOI in an effort to accommodate your client's proposals and in the spirit of the clubs working together to create a sustainable PWC.

- **that it is ironic that DUC and DSBC are paying legal bills to defend a position which sees their demise in favour of a new independent company**

The PYC Commodore inferred that the creation of an independent company is unplanned and/or has unthought of negative consequences. The PYC Commodore failed to acknowledge that this vision is consistent with a strategy agreed by PYC, DUC and DSBC to amalgamate the clubs and their members into one entity to preserve water sports and to ensure a better chance of survival of water sports at the Point. The PYC Commodore failed to disclose in the video that up until the change of mandate within PYC just over a year ago, the three clubs including PYC shared this vision, and that the requirement for DUC and DSBC to seek legal advice emanated directly from PYC's change of position.

- **that PYC received a document from PWC in the arbitration**
The PYC Commodore misrepresented this to PYC members and other viewers. PWC is not represented in the arbitration and PYC did not (to our knowledge) receive any document from PWC in the course of the arbitration. DUC and DSBC did file a counterclaim on 14 July 2017 in which they reiterated (confirming a position already made clear to PYC and DPC in an earlier plea) the legal position that only the members of a non-profit company can amend its MOI by way of a special resolution in terms of the Companies Act No. 71 of 2008. Our clients have never alleged, as the PWC Commodore stated, that PWC's board is authorised to amend the MOI. It has always been our clients' position that any amendment to the MOI is subject to the approval of the individual members of the three clubs.

We call on your clients:

1. to take down the offending video from PYC's Facebook page;
2. to publish a statement correcting the misrepresentations and misstatements made to members and to the general public in that video and in general; and
3. to cease and desist from disseminating and/or perpetuating the dissemination of incorrect information to members and to the general public; and
4. to present accurate information to members and to the general public within its proper context.

Yours sincerely

**CARLA ROBERTS
BARKERS**