

**COMPANIES ACT, 71 OF 2008**

**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY WITH  
MEMBERS**

**NAME OF COMPANY: THE POINT WATER SPORTS CLUB NPC**

**REGISTRATION NUMBER: 2013/156978/08**

## 1. **Adoption of the Memorandum of Incorporation**

1.1 The Company is a pre-existing company. The Company wishes to amend its existing memorandum of incorporation by replacing it with this Memorandum of Incorporation.

1.2 This Memorandum of Incorporation is in a form unique to the Company as contemplated by section 13(1)(a)(ii) of the Act.

1.3 This Memorandum of Incorporation was adopted by a special resolution by its Members on the [date to be inserted by board once MOI adopted at convened board meeting].

## 2. **Definitions**

In this Memorandum of Incorporation:

2.1 "AGM" means an annual general meeting of the Company in terms of the Act;

2.2 "Act" means the Companies Act, 2008 together with the Companies Regulations, 2011, as amended or substituted from time to time;

2.3 "Auditors" means the Company's auditors from time to time, if any;

2.4 "Board" means the board of Directors as constituted from time to time;

2.5 "Business Day" means a day which is not a Saturday, Sunday or public holiday in the Republic of South Africa;

2.6 "CIPC" means the Companies and Intellectual Property Commission established under the Act;

2.7 "Clubhouse or Clubhouse site" means the clubhouse of the Company owned or rented from time to time and occupied by the Members.

2.8 "Company" means The Point Water Sports Club NPC, registration number 2013/156978/08;

2.9 "DUC" means the Durban Undersea Club, a not for gain Association;

2.10 "DUC member" means a member of the DUC;

2.11 "Developer" means Durban Point Development Company Proprietary Limited, registration number 2001/010065/07;

2.12 "Director" means a director of the Company from time to time;

2.13 "Income Tax Act" means the Income Tax Act, 1962, as amended from time to

time;

- 2.14 "Member" means an entity whose name appears in the Members' register of the Company, and who shall have all of the rights and obligations of a Member of a non-profit company as defined in the Act;
- 2.15 "Memorandum of Incorporation" means this Memorandum of Incorporation, as amended from time to time;
- 2.16 "Point Precinct" means the Durban Point Precinct being the area of land which the Developer is developing at Durban's Point;
- 2.17 "Restricted Matter" means a restricted matter as set out in 28;
- 2.18 "DSBC" means the Durban Ski Boat Club, a not for gain Association;
- 2.19 "DSBC member" means a member of the Durban Ski Boat Club;
- 2.20 "Vetch's Beach" means the beach between the north harbour wall up to Moyo pier.
- 2.21 "Water Sport Clubs" or "Clubs" means the Durban Ski Boat Club and the Durban Undersea Club or any Club adopted as a Member in the future.

### 3. **Interpretation**

- 3.1 A reference to an article in this Memorandum of Incorporation will be by reference to that article's distinguishing number.
- 3.2 A reference to a section by number refers to the corresponding section of the Act.
- 3.3 Words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act.
- 3.4 Unless the context otherwise requires, any words importing the singular shall also include the plural and *vice versa*, and words importing any one gender shall include other genders.
- 3.5 In the event of a conflict between a rule of the Company and a provision of the Constitution of any of the Members, the matter will be referred to the Members' Committees, which Committees will sit to see if they can mutually agree a resolution to the conflict. In the absence of such mutual agreement being reached by the Committees of the Members, the conflict as between the Members and the Company shall be resolved by way of referral to the deadlock procedure provided for further herein.

3.6 The headings have been inserted for convenience only and shall not be used for or to assist or affect the interpretation of the content.

#### 4. **Introduction**

4.1 The Water Sport Clubs each occupied clubhouses adjacent to Vetch's Beach in terms of leases with the Developer, which leases have been cancelled.

4.2 The Developer required each of the Water Sport Clubs to relocate their clubhouses as part of the Developer's development proposal for the Point Precinct.

4.3 The Developer has agreed to provide a Clubhouse Site (initially a temporary site and thereafter a permanent site) available to the Company and the Members have agreed to relocate their Clubhouses to the Clubhouse site (initially temporary and thereafter permanently) as members of the non-profit Company in whose favour the leases with the Developers have been concluded.

4.4 The Company fitted out and equipped the temporary Clubhouse Site and the Clubs/Members intend to combine their Clubhouse facilities (at this point in time an indivisible 50% right to occupation of the permanent premises), and accordingly the Company and/or the Clubs will be responsible and shall fit out the permanent Clubhouse Site.

4.5 For so long as the Members agreed to operate the premises as a combined Clubhouse Site, same shall be operated under the control of the Company in accordance with the provisions set out herein and given effect to from time to time by due authority of the Board.

4.6 In order for the smooth functioning of the Company in its housing of its Members being the individual water sports clubs, namely the DUC and DSBC, it is recorded that:

(a) Both DUC and DSBC shall be Members of the Company with equal representation at board level of the Company; and

(b) Both DUC and DSBC shall continue to be responsible for their respective water sports disciplines and shall be treated fairly and afforded fair and reasonable accommodation within the Clubhouse, the Clubhouse site and in respect of the facilities both available and required by them;

(c) Each of the Members shall, pursuant to a budget for the Company being agreed in respect of the conduct of the duties set out in clause 4.4 and 4.5 hereinbefore, contribute equitably towards such budget.

(d) For so long as the PWC controls for and on behalf of the Clubs, the shared facilities of the Clubhouse and Clubhouse Site, the Clubs shall strive to ensure parity in member numbers in respect of the Clubs and members income insofar as same relates to the costs, collection of revenue and expenditure of the PWC in its management and control of the shared facilities.

(e) PWC and the individual Clubs per their representation within the PWC shall strive to ensure that there is fair and equitable space utilisation and space allocation of the shared facilities of the Clubhouse and Clubhouse Site, and the

Members shall co-operate in such respect as far as possible and specifically in respect of the establishment, operation and management of common facilities for the mutual benefit of the Members of the PWC.

- (f) The Clubs shall further strive for so long as the PWC operates and manages the shared facilities of the Clubhouse and Clubhouse Site on behalf of the Clubs to achieve a reasonable parallel between members' subscriptions, classifications and categories.
- 4.7 To enable the Company to function in accordance with its goals and purpose as expressed in 4.4 and 4.6(c), the DUC and DSBC shall contribute equitably towards the costs to be incurred by the Company in the performance of its purpose.
- 4.8 The PWC shall at all times, in the conduct of its business and in particular in the adoption of resolutions to give effect to the purposes expressed in paragraphs 4.4 and 4.5 above, keep in mind the provisions of clause 4.6 and its sub-clauses in the adoption of all or any necessary resolutions taken by the Board of PWC to give effect thereto.
- 4.9 The principles set out herein shall bind the Company and its Members.

## 5. **Non-Profit Company**

- 5.1 The Company is a non-profit company, as defined in section 1 of the Act, with Members.
- 5.2 The Company is governed by:
  - (a) the unalterable provisions of the Act that are applicable to non-profit companies;
  - (b) the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum of Incorporation; and
  - (c) the provisions of this Memorandum of Incorporation.

## 6. **Objects**

- 6.1 The principal object of the Company is to provide and operate premises and facilities, including but not limited to, a Clubhouse and Clubhouse facilities for the use and enjoyment of the Company's Members, being the water sports clubs, DUC and DSBC.
- 6.2 The further objects of the Company are:
  - (a) to ensure that proper safety standards are implemented and complied with in respect of the premises and the use thereof by the Member Clubs and their constituent members; and
  - (b) generally, to do all such other things as may be expedient to further the interests of the Company and the objects for which it has been formed.

## 7. **Powers of the Company**

- 7.1 The Company is a juristic person that has all the legal powers and capacity of an individual except to the extent that:
- (a) a juristic person is incapable of exercising any such power, or having any such capacity; or
  - (b) this Memorandum of Incorporation or the Act places restrictions on the powers of the Company.

## 8. **Restrictions on the Powers of the Company**

In addition to observing the limitations imposed on the Company by Schedule 1 of the Act, the Company:

- 8.1 must carry out its activities in a non-profit manner and with an altruistic or philanthropic intent;
- 8.2 must have at least four directors, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person shall directly or indirectly control the decision making powers of the Company.
- 8.3 must refrain from carrying on any activity which is intended to directly or indirectly promote the economic self-interest of any Director or employee other than by way of reasonable remuneration;
- 8.4 must utilise its funds and apply all of its assets and income solely for the objects for which it has been established;
- 8.5 is prohibited from directly or indirectly distributing any of its funds to any person otherwise than in the course of undertaking any activity in furtherance of its objects;
- 8.6 is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility of the donation in terms of section 18A of the Income Tax Act;
- 8.7 is prohibited from accepting a donation from a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(CA)(I) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) which imposes conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;
- 8.8 may not pay to any employee, office bearer, incorporator or other person remuneration which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates and which is generally considered reasonable in relation to the services rendered or which would economically benefit any person in a manner which is not consistent with the Company's objects;

- 8.9 must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator, Director or person appointing a Director of the Company, except:
- (a) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;
  - (b) as reasonable payment of, or reimbursement for, expenses incurred to advance an object of the Company;
  - (c) as payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
  - (d) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - (e) in respect of any legal obligation binding on the Company; and
  - (f) no such payment shall be made unless the Company, prior to incurring such cost or obligation to pay, has approved the incurrence by the Company of such cost or obligation by way of a Special Resolution of the Board.
- 8.10 save as allowed by item 5(4) of Schedule 1 of the Act, the Company must not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a Director, or to a director of an inter-related company, or to a person related to any such director; and
- 8.11 may not use its resources directly or indirectly to support, advance or oppose any political party.

## 9. **Memorandum of Incorporation and Rules**

- 9.1 Save as set out in 28, this Memorandum of Incorporation may be altered or amended in accordance with the provisions of section 16 of the Act, provided that any such amendment shall be submitted to the Commissioner for the South African Revenue Service for approval. The Company must deliver a copy of any alterations to the Memorandum of Incorporation to each of its Directors and to the Commissioner for the South African Revenue Service.
- 9.2 The Board may make, amend or repeal rules relating to the governance of the Company, provided that those rules are not inconsistent with the Act, the Income Tax Act or this Memorandum of Incorporation. A copy of the rules must be delivered to each of the Directors. In the event of a conflict between a rule of the Company and a provision of the constitution of a Water Sport Club, the rules of the Company will prevail to the extent of the conflict and will apply to all members.

## 10. **Membership**

- 10.1 The Members of the Company acknowledge that there shall be no further Members of the Company unless such Members:
- (a) are a recognised and established Club, operating on a non-profit basis, in the arenas of water sport, water sport training, coaching and development and related activities, the promotion of marine conservation and research into marine environment or such similar activity, not already forming an activity of the existing Members: and
  - (b) the members of the constituent Member Clubs of the Company have a Special General Meeting conducted in accordance with such Clubs' constitutions and agree to the addition of such Club or entity as an additional Member of the Company.
- 10.2 The Board shall from time to time, by simple resolution, determine Rules that set out:
- (a) rights of access to and use of the facilities of the Company by the members of the DUC and DSBC; and
  - (b) the standards of conduct and behaviour and rules applicable to all persons, specifically including but not limited to, members of the DUC, DSBC, guests of such Clubs or the Company regarding the use of the Clubhouse and facilities.
- 10.3 Each Member shall be entitled to a number of votes equivalent to the number of Directors nominated by it to the Board of Directors of the Company, from time to time.
- 10.4 No Member may sell, transfer or assign its rights of membership or any entitlement in terms thereof.

## 11. **Access to Company Records**

Each Member has the right to inspect and copy without charge the records listed in section 26(1) of the Act.

## 12. **Annual General Meetings**

- 12.1 The Company must hold an AGM once in every calendar year.
- 12.2 The business to be conducted at an AGM shall be the consideration of the Directors' report, the annual financial statements of the Company, any matters laid before the meeting by the Directors and any matters raised by Members with or without advance notice to the Company.

## 13. **Other Members' Meetings**

- 13.1 Meetings of Members, other than the AGM, may be called by the Board at any time.
- 13.2 As provided for in section 61 of the Act, the Board must call a Members' meeting if one or more written and signed demands for such a meeting are

delivered to the Company; and each such demand describes the specific purpose for which the meeting is proposed; and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

14. **Notice of Members' Meetings**

The Company must deliver a notice of each Members' meeting to all of its Members at least 15 business days before the meeting is to begin. The notice shall be transmitted electronically to each Member to an address specified by a Member at the commencement of membership or such other address as is notified by a Member to the Company from time to time, in a manner and form such that the notice can conveniently be printed by the recipient. Every notice must contain the information listed in section 62(3) and, if applicable, section 63(3) of the Act. In addition a notice transmitted electronically must comply with regulation 7(4) of the Act.

15. **Electronic Participation in Members' Meetings**

The Company may conduct a Members' meeting entirely by electronic communication or it may provide for one or more Members, or proxies of Members, to participate by electronic communication in all or a part of the meeting as provided for in section 63 of the Act.

16. **Quorum for Members' Meetings**

A Members' meeting may not begin until at least the Chairman and one Director of the Board representing each of the Members is present at the meeting in person or by proxy.

17. **Postponement of a Members' Meeting**

17.1 If within twenty minutes of the appointed time for a meeting a quorum is not present the meeting will automatically be postponed for one week. In such event it shall not be necessary to give further notice of the meeting unless the location for the meeting is different from the location of the postponed meeting.

17.2 The period of twenty minutes specified in 17.1 may be extended by the chairman presiding at the meeting for a reasonable period on the grounds that:

(a) exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of the Members to be present at the meeting; or

(b) one or more particular Members have been delayed, have communicated an intention to attend the meeting and those Members together with others in attendance, would constitute a quorum.

17.3 If at the appointed time for a postponed meeting to begin a quorum is not present the Members present in person or by proxy will be deemed to constitute a quorum. Provided each Member is equally represented in person or proxy. Should the Chairman not be present, the postponed meeting directors forming a quorum equal member representation shall elect a chairman from the directors to chair the postponed meeting.

## 18. **Appointment of the Chairman**

The Chairman of the Board shall be elected by the Board at the first board meeting of each year. The Chairman's appointment shall endure for a year unless the Chairman should resign or become ineligible to hold office in which event, as soon as is reasonably possible thereafter, the board shall elect a further Chairman to complete the term of office of the vacating Chairman.

The role of Chairman should alternate annually between a Director of each members, duly elected at the AGM by the Directors, unless there is a unanimous decision of the Directors to re-elect the existing Chairman. Notwithstanding re election of a Chairman, no Chairman shall serve longer than 5 years.

## 19. **Role of the Chairman**

The Chairman of the Board will chair meetings of Members and of Directors. If the chairman of the Board is not present or if he recuses himself, the Members or Directors present or represented by proxies may choose another one of the Directors or one of the Members to chair the meeting. Should a meeting occur where the balance of the member representivity is unequal, one or more of the directors shall stand down until representation of the members is equal

## 20. **Members' and Directors' Resolutions**

20.1 For an ordinary resolution to be approved it must be supported by more than 50% of the voting rights exercised on the resolution.

20.2 For a special resolution to be approved it must be supported by not less than 75% of the voting rights exercised on the resolution.

20.3 As provided for in section 60(1) of the Act an ordinary resolution in writing signed by more than half of the Members and a special resolution in writing signed by three quarters or more of the Members entitled to vote on the matter in question within twenty business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of Members. The written resolution may be signed in counterparts. Likewise, an ordinary resolution or special resolution capable of being adopted by Directors at a meeting of the Board shall be capable of being adopted by such

Directors if such resolution is signed by the requisite number of Directors and will have the same effect as if such resolution had been approved by voting at a meeting of Directors. Such written resolution may likewise be signed in counterparts.

- 20.4 As is provided for further herein, Directors shall be appointed directly and it is not necessary for them to be appointed at any Members' meeting save that the Company shall be notified no less than 15 working days in advance that it is the intention of one of the Members to nominate and directly appoint a Director in replacement for any of its already nominated and existing Directors where a vacancy has arisen.

## 21. **Member and Director Proxies**

- 21.1 Any Member/Director entitled to attend and vote at a meeting of Members/Directors is entitled to appoint a proxy to attend, speak and to vote in his stead. Where reference is made to a Member herein, same refers to all Directors representing such Member.
- 21.2 The instrument appointing a proxy must be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a juristic person, under the hand of an officer or agent authorised by the juristic person.
- 21.3 A proxy need not be a Director of the Company.
- 21.4 A proxy appointment remains valid for whichever is the earlier of:
- (a) one year after the date upon which it was signed;
  - (b) any longer or shorter period expressly set out in the appointment;
  - (c) the date upon which it was cancelled by the Member by delivering a copy of the revocation instrument to the proxy and to the Company; or
  - (d) the end of the meeting at which the proxy was intended to be used if the proxy was appointed in response to an invitation to appoint a proxy issued by the Company.
  - (e) upon the adoption of a Resolution or any other form of decision by the Board finalises any specific purpose or authority granted in the proxy, such that the further use of such proxy or the authority granted therein becomes redundant.
- 21.5 A copy of the instrument appointing a proxy must be delivered to the Company at least 48 hours before the commencement of the meeting at which the proxy is intended to be used. Where the proxy is one which qualifies in terms of paragraph 21.4(a) and/or (b) above it shall not be necessary for the proxy to be so produced before each and every meeting of the Company where such proxy appointment is to act.
- 21.6 A specimen form of a proxy for a specific purpose is set out in Schedule 1.

## 22. **Verification of Right to attend Meeting**

A person who wishes to attend or participate in a Members' meeting whether as a member or as a proxy for a Member must present reasonably satisfactory identification to the chairman of the meeting. In order for the Member or proxy to participate in the meeting the chairman must be reasonably satisfied that such person's right to participate and vote at the meeting has been reasonably verified.

**23. Election of Directors**

23.1 There shall not be less than four and more than eight Directors of the Company.

23.2 The Members shall each be entitled to nominate and directly appoint an equal number of Directors, and nominate and appoint any replacement for any Director originally appointed in terms of this 23.2 who subsequently ceases to hold office, as follows:

(a) DUC Members, by ordinary resolution, up to 4 Directors; and

(b) DSBC Members, by ordinary resolution, up to 4 Directors;

But at no time shall either Member enjoy a numerical supremacy in voting and accordingly Directors' votes shall be limited so that each Member shall only enjoy an equivalent number of Directors' votes as the other.

23.3 The Company shall, from time to time, by ordinary resolution of its Directors determine the number of Directors which each of the Members shall be entitled to nominate and directly appoint up to the maximum reflected in 23.1 above.

23.4 The term of office of each Director shall be one year but a retiring director may be re-elected, provided that his office shall cease earlier:

(a) if he is placed under curatorship or otherwise becomes incapacitated to the extent that he is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time;

(b) if he is declared delinquent by a Court or placed under probation under conditions that are inconsistent with continuing to be a director of a company, in terms of section 162;

(c) if his appointment is revoked by the Member who appointed him under 23.2;

(d) if he resigns his office in writing to the Company; or

(e) if he becomes disqualified under the Act from holding the office of director of a company.

23.5 Notwithstanding what is set out in this clause 23 above, no Director shall be re-elected where he has served as a Director of the company for an uninterrupted period of five years.

**24. Proceedings of Directors**

- 24.1 Any Director may call a meeting of the Board at any time on not less than 5 days written notice unless such shorter notice is condoned by the Directors in writing unanimously.
- 24.2 There shall not be less than one Director representing each of the Members.
- 24.3 Questions arising at any meeting shall be decided by a majority of votes and each Director shall have one vote. If there is an equality of votes the chairman shall not have a second or casting vote.
- 24.4 A meeting of the Board may be conducted by electronic communication or one or more of the Directors may participate in a meeting by electronic communication.
- 24.5 Any resolution that could be voted on at a meeting of the Board may instead be voted upon or adopted by written consent of the majority of the Directors given in person or given by electronic communication in the form of email, provided each of the Directors has received notice of a matter to be decided.
- 24.6 The Directors may delegate any of their powers to committees which may include persons who are not Directors, provided that any such person must not be ineligible or disqualified to be a Director.
- 24.7 Subject to 24.1 and 24.2, the Directors may meet together for the despatch of business, adjourn or otherwise regulate their meetings as they think fit.

## 25. **Powers of the Directors**

- 25.1 The Company shall be managed by the Directors, who may exercise all the powers of the Company.
- 25.2 The Directors shall make the rules governing the Clubhouse, Clubhouse site and facilities from time to time with due regard for the requirements of the two member Clubs and their members.
- 25.3 The Directors shall not be entitled to receive any remuneration from the Company in respect of the performance of their duties as Directors.
- 25.4 The Directors shall, unless otherwise resolved by the Board, be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Directors provided the nature of such expenses is pre-approved at Board level prior thereto or subsequently ratified by a simple majority of the Board. SARS rates of reimbursement to apply.

## 26. **Water Sports Club Committees**

- 26.1 DUC and DSBC shall form their own Water Sport Club committee or committees as the case may be.
- 26.2 DUC and DSBC shall be responsible for dealing with matters exclusively concerning its Club members affiliated with a specific water sport, including without limitation:

- (a) the pursuit of the water sports disciplines practised by the Members affiliated with it, the organisation and staging of water sports and social events for the benefit of the Members affiliated with it, and the financing thereof, where required; and
- (b) the rules and regulations in respect of the conduct of such disciplines and which rules and regulations shall include a commitment in the exercise of such discipline, to abide by and comply with the rules of the Company regards the participants in such disciplines enjoyment of the Clubhouse, Clubhouse site and facilities.

## 27. **Deadlock**

- 27.1 Where a proposal is brought to the Board by a Member seeking the Board make a decision on a club or water sports discipline making use of or being allocated specific facilities within the Clubhouse, Clubhouse site or Club facilities, and such request be put to the vote at Board level and such vote result in an equality of voting or a deadlock then the parties shall attempt to resolve the issue as follows:
  - 27.1.1 The parties shall, within seven (7) days of the deadlock vote, agree that the Member making the proposal via any member of such Member and at least one of its Directors shall meet with at least one nominated representative member of the other Member and at least one of such Member's Directors on the Board of the Company to see if in discussion, an amicable, mutually agreeable and beneficial solution/resolution can be arrived at and if so, the two representative Directors of the Members shall retake such agreed resolution back to the Board for adoption as a formal resolution of the Company.
  - 27.1.2 In the event that no agreement can be arrived at in respect of the procedure outlined in 27.1.1 above, then the matter shall be determined as follows:
    - 27.1.2.1 If the matter is of a financial or accounting nature, the matter shall be referred to an independent senior Accountant of no less than ten (10) years standing as agreed between the parties within seven (7) days of the parties or a party noting a dispute, failing which, such person shall be appointed by the Institute of Chartered Accountants; and
    - 27.1.2.2 Should the matter be procedural or legal in nature, the matter shall be referred to an independent senior Attorney of no less than ten (10) years standing and failing the parties agreeing such attorney within seven (7) days from the date of noting of such dispute, the Attorney shall be nominated by the KwaZulu-Natal Law Society.
    - 27.1.2.3 Should the matter be an operational matter then the parties shall nominate an appropriate independent expert of no less than ten (10) years standing and failing agreement as to such expert then such expert shall be nominated by the KwaZulu-Natal Law Society on request by either party.
  - 27.1.3 In acting in determining any dispute or deadlock the Accountant, Attorney or expert, as the case may be, shall act as an expert and not as an Arbitrator and shall be entitled at their discretion to instruct the procedure to be followed to

resolve such deadlock in the most expedient and efficient way as such expert shall declare.

27.2 Notwithstanding the provisions set out herein with regards to the resolution of deadlock or equality of voting, no Restricted Matter shall be resolved by way of referral to any of the provisions set out in this clause 27.

28. **Restricted Matters**

28.1 None of the following actions may be taken or done or be allowed to be taken or done with respect to the Company without the prior written consent of the Members who hold at least 75% of the voting rights in the Company:

- (a) any variation, amendment or alteration to the Memorandum of Incorporation;
- (b) the alienation of the Clubhouse Site; or
- (c) any matter which requires a special resolution in terms of the Act.

29. **Annual Financial Statements**

29.1 The annual financial statements of the Company must be prepared within six months after the end of the Company's financial year. The annual financial statements must be:

- (a) audited or independently reviewed; and
- (b) approved by the Board and be signed by a Director on behalf of the Board;
- (c) presented to the first Members' meeting after the statements have been approved by the Board.

29.2 A copy of the annual financial statements must be posted to each Member or sent by e-mail.

30. **Annual Return**

The Company must file an annual return by lodging Form COR 30.1 and COR 30.2 with the Commission within thirty business days after the anniversary of its incorporation.

31. **Notices sent by e-mail**

31.1 A Member who has provided the Company with an electronic address will be deemed to have authorised the Company to use that address for the purpose of giving notices and delivering documents.

32.2 A document that is transmitted by e-mail must be accompanied by a cover page setting out:

- (a) the name of the Company, its address and telephone number;

- (b) the name of the person to whom it is addressed;
- (c) the date of transmission.

**32. Winding up**

32.1 Upon the winding up or deregistration of the Company:

- (a) no past or present Director of the Company or person appointing a Director is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
  - (b) the entire net value of the Company must be distributed to one or more of:
    - (i) any other recreational club with similar objects to the Company which is approved by the Commissioner for the South African Revenue Service in terms of section 30A of the Income Tax Act;
    - (ii) a public benefit organisation or organisations which have been approved in terms of section 30 of the Income Tax Act;
    - (iii) any institution, board or body which is exempt from tax under the provisions of section 10(1)(c)(i) which has as its sole or principal object the carrying on of any public benefit activity;
    - (iv) any department of state or administration in the national, provincial or local sphere of the government of the Republic of South Africa contemplated in section 10(1)(a) of the Income Tax Act;
- as determined by the Board as constituted at or immediately before the winding up or deregistration of the Company.

32.2 To the extent that either of the Clubs continue to exist and will exist pursuant any winding-up of the Company, either Club shall, for the purposes of this clause 32, constitute a suitable organisation as defined in terms of 32.1(b)(i); (ii) or (iii) and the Board shall look to distribute the net value of the Company, or its assets to such Clubs prior to distributing to any third party.

**Schedule 1 – Proxy**

**THE POINT WATER SPORTS CLUB NPC  
REGISTRATION NUMBER: 2013/156978/08  
("The Company")**

**PROXY**

I, .....

of .....

being a Member of the Company, appoint

.....

and/or .....

and/or the chairman of the meeting as my proxy to vote for me and on my behalf at a meeting of the Members of the Company to be held on the ..... day of ..... 20.....

and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution No.			
Resolution No.			
Resolution No.			

Indicate instructions to the proxy by way of a cross in the space provided above. If no instruction is given to the proxy the proxy may vote as the proxy thinks fit.

Indicate whether or not the proxy may delegate the proxy's authority to act on your behalf to another person \_\_\_\_\_Yes \_\_\_\_\_No.

A Member entitled to attend, speak and vote at the meeting is entitled to appoint a proxy or proxies to attend, speak and vote on the Member's behalf. A proxy need not be a Member.

The appointment of a proxy may be revoked by a written notice of cancellation given to the Company and to the proxy. A later inconsistent appointment of another proxy will also have the effect of cancelling this proxy.

The appointment of the proxy will be suspended to the extent that the Member chooses to act directly and in person.

The Member may issue a written notice to the Company directing the Company to copy to the proxy any notice which the Company is obliged to give to the Member.

The appointment of a proxy must be in writing and must be dated and signed by the Member.

Date \_\_\_\_\_

Signature \_\_\_\_\_