

# **EMIRATES TEAM NEW ZEALAND RESPONDS TO ALLEGATIONS IN THE MBIE AND COUNCIL LETTER OF JUNE 22**

**Auckland, New Zealand - 1st July 2020**

**Whomever has leaked to the NZ Herald the MBIE and Auckland Council letter to ETNZ and ACE has conveniently not provided the reply provided by ETNZ and ACE last week.**

ETNZ and ACE categorically deny any wrongdoing and consider that they have already addressed the concerns of MBIE and Council, and their advisor Beattie Varley.

For clarity, ETNZ and ACE set out below the relevant extracts from ETNZ's and ACE's joint letter to MBIE and Council last Friday.

## **On Health and Safety**

We have already reiterated our commitment to health and safety. On the issue of the number of on-water safety boats, ACE has for some time had safety concerns about the inappropriate expectations for volunteer marshals to be expected to exercise enforcement duties on the water. In our view, and based on the extensive experience available to us (including the Regatta Director Iain Murray), merely having an increased number of boats staffed by volunteers (without legal enforcement authority) to a number in excess of the established international norm (for instance AC 35 in Bermuda, the benchmark event under the HVA, Host Venue Agreement) does not alleviate this issue.

For the last two and a half years the concerns of ACE in relation to the dedicated on-water Police resources has been raised at JCEG meetings but a solution has last week been discussed in principle with the Police Commissioner under which there will be an increased police boat presence from that originally planned.

As a result of resolving the Police issue, together with the opportunity to further boost the number of support boats by utilising Coastguard boats with qualified personnel and medics on board) to assist with spectator management, we consider there is now an available solution which should

satisfy the Harbourmaster's requirements. However, ACE is currently awaiting final confirmation of the number of available police boats before presenting this proposed solution to the Harbourmaster.

ACE understands there was a regular on-water ops meeting involving the Harbourmaster on Wednesday which has in the past been attended by one of the [informants] on behalf of ACE but which no one attended. We are disappointed not to have been informed about this meeting so we could have had a representative attend.

The Harbourmaster's letter says that ACE is "delaying the commencement of marshal training" and "reassuringly the marshal training programme is due to start shortly", which gives the impression (we would hope inadvertently) that the programme has not yet commenced, which is totally incorrect. In fact, the RNZYS training programme commenced in October last year and continued for the balance of that year and the first few months of this year until it was suspended at the end of March due to the need to conduct the budget review referred to below in relation to 5.1(b) of your letter and the COVID -9 lockdown at the end of March. This is a comprehensive programme approved by Maritime New Zealand and is more than 50% complete. The programme has now recommenced after the suspension and the RNZYS has reaffirmed at a meeting with the Harbourmaster on Wednesday that it is confident of being able to provide the required number of trained and certified volunteers ahead of the commencement of racing.

The significant on-water experience (both as competitors and race organisers) of ETNZ personnel has been utilised in planning on-water operations and the recent initiative regarding the change in composition of on-water boats have resulted from this advice. It is the view of ETNZ and ACE that there is a need to significantly raise the standard of course and spectator control above that of racing in the last Auckland Volvo Ocean Race stopover, organised by the [informants], which was observed to be substandard.

The organisation and conduct of the racing and on-water operations will be the responsibility of the independent Regatta Director (in full consultation with the Harbourmaster and NZ Police and, of course, subject to their legal authority). After an initially appointed Regatta Director proved unsatisfactory during the early planning stages, ACE has been fortunate to secure the services of Iain Murray who was the Regatta Director for both AC 34 in San Francisco and AC 35 in Bermuda. Iain is internationally respected as the leading official in the world for this role and is well acquainted with the Waitemata Harbour having frequently raced here as a competitive sailor. In addition, Richard Slater is contracted as the Chief Umpire, a role he undertook in Bermuda working alongside Iain Murray. With these two experienced and independent officials in their respective roles and leading their teams ACE is well placed to deliver a safe and world class event on the

water.

We consider that your concerns in relation to the delivery of the on-water aspects of the Event are misplaced.

Please be specific about what the Hosts' H&S concerns are in relation to the on-land aspects of the Events so we can also address these concerns.

### **On the Event Investment Dashboard**

Prior to May 2020, every Event Investment Dashboard presented to the Event Steering Group was prepared by the [informants] under the direction of the [informant].

Due to a lack of confidence by the Board and the CEO regarding the financial management and budgeting of the [informants], and after Board members raising concerns with the quality and accuracy of financial information they were producing, in March this year the CEO of ACE directed that the ETNZ CFO, Shane McAlister (who joined ETNZ in September 2019), become involved in the financials of ACE and he was tasked with rebuilding the ACE financial budget. It was during this process, when he was asked to send the Event Dashboard to the MBIE auditors, that he discovered it could not be reconciled with ACE's General Ledger. It became obvious to him that the dashboard had been prepared by the [informants] with hard coding and no reconciliations, and Mr McAlister identified the inaccuracies in the previous Event Investment Dashboards and directed that the dashboard be corrected. He is satisfied that the dashboard for 31 May 2020 now accurately reconciles with ACE's financial records.

### **On the \$3,000,000 purported loan**

The \$3,000,000 has been shown on each Event Investment Dashboard (Project Management) for more than a year without any previous query from the Hosts, even though those Dashboards have been presented at and discussed at each ESG Meeting. There has been no attempt to conceal this aspect. Rather it has been clear and known to MBIE, Council and the [informants] the whole time.

The [informants] have previously been very clear with ACE that they considered it legitimate and provided examples such as F1 racing where the same approach has been taking on common design elements.

It is a valid charge in relation to the management and delivery of the Events for the significant time spent by ETNZ team members for Event related matters. When analysed, that time is in fact in excess of NZ\$6 million but has not been fully charged (and will not be fully charged) in order not to have a detrimental effect on ACE's budget. Further details of the time spent by ETNZ team members on Event related matters will be provided in due course.

It is acknowledged that the \$3,000,000 was assessed for work after the work was completed. But it had never been classified as a "loan", and we would

appreciate being provided with any documentation you hold from the Whistleblower or the [informants] that categorises it as a loan. The money in question was actually paid directly by MBIE to ETNZ, and never even flowed through ACE's bank account.

We believe that the reference to a "loan" that has been raised is a reference to a totally unrelated discussion between [name redacted] and [name redacted], where the prospect of an inter-company loan from ACE to ETNZ to alleviate cashflow was raised by [name redacted]. However, that proposal never came to anything, as it was not needed and was never implemented. If you have documentation or evidence to the contrary, we would be grateful if you would provide that to us.

In short, this loan discussion is unrelated to the ETNZ charges for the Event work done by its staff on the creation of the concept and design for the new class of the yacht to be used in the Events (a radical new foiling monohull concept) and the Class Rule itself.

The payment in this regard is permitted by clause 6 of the HVA, and we would appreciate your clarification on Monday as to whether you disagree with that position and why, or whether your concern is to substantiate the accuracy of the \$3,000,000 amount.

### **On the Hungarian Bank Account Fraud**

The email scam which resulted in the payment to a fraudulent Hungarian bank account was immediately disclosed by [name redacted] to MBIE ([name redacted]) after its discovery and an assurance was given that ACE still had sufficient funds for the delivery of the Events, and that it would not be seeking any further financial assistance from the Hosts.

The scammed funds simply needed to be replaced by other revenue at ACE. The fraud/theft was reported to the NZ Police who alerted the relevant international authorities with all appropriate steps being instigated through Kiwibank and Bell Gully, solicitors, to attempt to recover the funds. The email scam is addressed further below.

### **On the Lack of Record keeping and unwillingness to provide information.**

A wealth of information has been provided to Beattie Varley, at times under difficult circumstances due to the COVID 19 lockdown.

Much of the information now being requested involves confidential contracts and material which should be reviewed on site at our base.

### **On any breach of the HVA**

We have fully disclosed the nature of our operation and how we operate dynamically to Beattie Varley. We are not like a standard corporate, and the nature of our operations means that we need at times to remain flexible and

to adjust quickly to sometimes quickly changing circumstances.

We do not accept that the matters raised in the Beattie Varley Report are individually or cumulatively material adverse events in relation to the management and delivery of the Events.

However, as advised, we remain willing to continue to cooperate with Beattie Varley and to answer their queries, and to work with MBIE to reach a solution to deal with the concerns expressed (including through this letter).

### **Our concluding comments to MBIE and Council**

In summary, when the full circumstances are understood we believe that the concerns of the Hosts can be satisfied and ACE/ETNZ are not in breach of their obligations under the Host Venue Agreement.