

NEW ZEALAND / SPORT

Yachting NZ Olympic selection 'debacle' was waiting to happen, windsurfing veteran says

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Dana Johannsen, Sports Correspondent



New Zealand Olympic kite foiler Lukas Walton-Keim (C). Photo: International Kiteboarding Association

When kite foiler Lukas Walton-Keim was finally named in New Zealand's Olympic team, he expressed relief at the conclusion of a "stressful" process. The drama and emotion was exactly what a windsurfing veteran, and former lawyer, had warned would happen two years earlier.

Even allowing for the fact it was written in the particular language of a legal opinion, Bruce Trotter's view was clear.

Yachting NZ's Olympics selection criteria "renders our sailors powerless and lacks psychological safety", the former lawyer wrote.

Trotter, a "grandmaster" windsurfer, was asked to provide a legal opinion to the Windfoiling NZ class association in July 2022 on behalf of its athletes.

In the interests of being constructive, the document, which warned of "significant problems" with the policy, was later shared with Yachting NZ.

Nearly two years on, Trotter is more forthright.

"The nomination criteria is dogshit," he tells RNZ.

Trotter alleges the poor drafting of the document, along with "deeply troubling process issues" and a "complete disregard" for best practice, are the root cause of **several messy selection disputes** that have played out behind the scenes.

Late last month the **Sports Tribunal upheld an appeal by kite foiler Lukas Walton-Keim**, finding the selectors had relied on "one or more errors of fact" in their deliberations. While the tribunal found Yachting NZ had implemented its criteria properly, it ordered the national body to reconsider its decision in light of the corrected facts.

Yachting NZ eventually reversed its decision late last week, after further to-ing and fro-ing between Walton-Keim's team and the selectors to reach an 11th hour resolution.

The New Zealand Olympic Committee (NZOC) on Monday confirmed the selections of **Walton-Keim and women's kite foiler Justina Kitchen**, rounding out the NZL Sailing Team for Paris.

RNZ understands Kitchen, who suffered a serious knee injury in September 2023, also had a lengthy behind-the-scenes battle to secure selection.



Women's kite foiler Justina Kitchen will also compete in Paris after a late selection. Photo: Sailing Energy

While the selection battles reached a positive outcome for both sailors, the issues exposed will likely reverberate beyond this year's Olympics.

There remains widespread disillusionment within the sailing community about Yachting NZ's handling of its selections for the Paris Games, after leaked documents suggested one of the star crews picked for the Games had not met the required performance standard.

Several past and present members of the NZL Sailing Team also allege there are "glaring inconsistencies" in the way the national body initially applied its "emerging talent" criteria.

Trotter says the groundswell of people speaking out is borne out of frustration that Yachting NZ do not appear to have heeded the lessons from the string of reviews into New Zealand's high performance environments over the last six years.

"We got the right outcome in the end; all classes that qualified will be going to the Olympics - that's brilliant," says Trotter, a leading figure from windsurfing's heyday.

"But this kind of debacle, it can never be repeated. Nobody wants to see this happen again in 2028."

'Suspended disbelief'

As the NZOC steadily drip-fed the selection announcements for the sailing team, there was a growing sense of bewilderment in sailing circles.

The chatter first began with the selection of the star pairing of Jo Aleh and Molly Meech in the 49erFX class.

While there was no doubting the pedigree of the duo, who between them have three Olympic medals, there had been concerns they may be a casualty of Yachting NZ's traditionally hardline approach with its nominations.

New Zealand's sailors must clear an even higher bar than the **NZOC's already lofty "top 16" criteria** to be nominated for selection. Under its primary selection criteria, Yachting NZ will only nominate athletes deemed capable of winning a medal.

Sailors must achieve a top 10 placing in at least one selection regatta or a medal placing in a world championship during the current Olympic cycle to be eligible for consideration under this criteria.

Aleh and Meech, who teamed up at the beginning of 2022, recorded a 34th and 12th placing in their two designated selection regattas. Their best placing at a world championship - and only top 10 finish at the time of selection - was a sixth at the 2023 world championships in The Hague.

So, when the pair were named in the team in April, there was confusion about how Yachting NZ's selectors had managed to **"shoehorn" the 49erFX crew in under the criteria.**

"It's absolutely the right thing to do to select Jo and Molly," says one former top sailor, "but no one can understand how [the selectors] managed to get around the criteria."



Jo Aleh and Molly Meech at the 49er FX Sailing World Championships in 2023. Photo: PHOTOSPORT

In response to questions about Aleh and Meech's nomination, Yachting NZ chief executive David Abercrombie told RNZ last month that the organisation does not comment on individual selections, but confirmed "all sailors and/or crews nominated by Yachting NZ to the NZOC met the requirements of the nomination criteria".

The selection of Aleh and Meech was not in itself considered controversial. But when further perceived inconsistencies began to arise, particularly with application of the "emerging talent" clause, whataboutism began to take hold in sailing circles.

The "emerging talent" clause provides a secondary pathway for athletes who do not meet the primary objective, but are considered a good prospect of winning a medal at the 2028 Olympics in Los Angeles.

Under this criteria, sailors need to finish in the top 16 nations at one of the selection regattas to be eligible for consideration.

Walton-Keim, who finished 12th country at the European Championships last year after recovering from a knee injury, was seeking selection under this clause. He was initially denied by Yachting NZ, despite his results being of similar standard to others who had been nominated under the secondary objective.

Those other "emerging" athletes included his 35-year-old training partner Kitchen, who reignited her Olympic dream in 2019 after a seven-year hiatus from top-level sailing.

Trotter was "thrilled" to see the clause used to select the likes of Kitchen, board sailor Veerle ten Have and Greta Pilkington in the Ilca 6, but says those selections highlighted "obvious inconsistencies".

"YNZ has expected everyone in the sport to suspend their disbelief with the selection of some sailors, so no one can quite work out why they were so hard-headed in their approach with Lukas," he says.

Another member of the sailing community, who did not want to be identified due to their close relationship with a current athlete, says they have some sympathy for Yachting NZ's position.

"I feel a bit sorry for [Yachting NZ] to be honest. They're probably feeling like they're damned if they do, damned if they don't. You know, previously they've been very harsh with their criteria and people have complained. Now they're showing some flexibility and people still complain.

"What YNZ's got is a trust problem and unfortunately, once you've lost that, it's hard to get back."



Lukas Walton-Keim with partner and fellow Olympian Eliza McCartney Photo: Andrew Cornaga / Photosport

A lack of consistency in approach was among several grounds for appeal put forward by Walton-Keim's team at the Sports Tribunal last month, but the tribunal panel did not entertain this argument.

In its full written decision published last week, the tribunal said it was not its role to "embark on a collateral enquiry into what may have occurred" in other cases, rather it was charged with determining whether the selectors had correctly followed the criteria in Walton-Keim's case only.

"If other athletes were given special consideration going beyond what was permissible under the Criteria, it could not be an answer for the appellant to say that he should have (wrongfully) received the same special consideration," the decision read.

"A further point is that the Tribunal did not hear from the other athletes named by the appellant. They were not parties to the proceeding, and they were not called to give evidence. In circumstances such as that, the Tribunal would normally be very

hesitant to embark on a collateral enquiry into what may have occurred in their cases."

The decision noted that Yachting NZ denied "that any special consideration was inappropriately given to other sailors".

It was also argued by Walton-Keim that the selectors were not experts in kite foiling, they did not attend any selection regattas, they did not keep minutes or give written reasons for their decision, and did not adequately inform Walton-Keim on the subjective factors he would be judged on.

The tribunal, for the most part, rejected these arguments outright.

Rather, Walton-Keim's win hinged on a very narrow point on the strength of the fleet in the event in which he met the required performance standard. The tribunal referred the decision back to the selectors to review its decision in light of the corrected facts.

"The Tribunal's overall impression of the evidence ... is that the YNZ High Performance team wanted to give the appellant every opportunity to improve his results, so that he would have the best chance of qualifying for the Paris Olympics. YNZ had invested time and resources in the appellant, and it is hard to see why they would want to keep him in the dark about what he would need to do to achieve his goals," the decision read.



Yachting NZ CEO David Abercrombie Photo: Andrew Cornaga / www.photosport.nz

In a statement provided to RNZ, Abercrombie says the tribunal decision validated the approach taken by selectors.

"Yachting New Zealand is satisfied that proper process was followed during the Olympic nomination process, a view shared by the New Zealand Olympic Committee and the Sports Tribunal of New Zealand in its recently published decision, which concluded that Yachting New Zealand did not fail to implement or follow any express provision of the selection criteria."

Sound policy or canine excrement?

Trotter believes the tribunal process could have been avoided entirely with a more well-defined policy written in plain language.

He says the emerging talent clause stood out as being problematic from the outset. RNZ has seen correspondence between Trotter and Yachting NZ officials in October 2022, which shows he highlighted potential issues that could arise.

"It was plain as day two years ago this was where we would end up," says Trotter, who stresses he is no longer a practising lawyer.

He describes the emerging talent clause as "a massive circular nonsense".

"There's never been an explanation on what the factors are that make you an emerging talent," says Trotter.

"If you get selected then by definition you must be an emerging talent, but if you don't then they say you're not and therefore ineligible to be selected. It's a Blackadder plot."

In his evidence to the Sports Tribunal, Yachting NZ selector Grant Beck said he took emerging talent to mean "an athlete who, upon entry to an Olympic event, has shown quick progression through the ranks, and has demonstrated an ability to produce strong results, such as winning individual races in a world class event, or gaining a podium place on occasion".

Trotter's key concern with the Olympic nomination criteria was that, in his view, it breached Yachting NZ's duty of care to its athletes as it provides the selectors with absolute discretion.

"If you look at the criteria as a reflection of how Yachting NZ is communicating to its sailors, they're kind of saying, 'We can do anything that we want, good luck,'" he says.

In his correspondence with the national body in October 2022, Trotter explained the criteria presented a legal problem for Yachting NZ due to the lack of accountability and transparency.

"There is no practical right of appeal because the selectors have so much discretion they can never be wrong. In short, it is nearly impossible to win an appeal - and that means the selectors can never be held to account," Trotter wrote.

Citing the findings of an [inquiry into Cycling NZ and High Performance Sport NZ in 2022](#), Trotter wrote that the problem was further compounded by the fact "the Sports Tribunal is viewed as being over deferential to selectors".

The "one-sided criteria, drafted entirely in YNZ's favour" creates a lack of transparency, he added.

"There is too much potential for bias and favouritism to invade a selector's decision-making, not to mention the possibility that some sailors (or even entire classes) can be 'ghosted' or 'lived' if they are seen to be difficult."



Yachting NZ high performance director Ian Stewart Photo: Supplied

In response to Trotter's email, Yachting NZ high performance director Ian Stewart acknowledged the concerns raised and said he would share the document with the organisation's selection committee.

Stewart said the subjectivity component of the policy "supports sailor welfare and recognises our duty of care".

"We recognise that selection, no matter how well it is carried out, is a 'wellbeing' pinch point in all sports. Sailor and coach engagement with the Olympic selectors, drafting and consulting on the Criteria document, defining the selection timeline and identifying selection events are all key elements in conveying transparency and clarity," Stewart wrote.

"Our programme challenge is to always stay well connected to our sailors and coaches. We recognise a lot of issues can be avoided with good, open, and regular communications. Our objective is to create a safe environment for sailors where they can be heard."

In response to questions raised by RNZ, Abercrombie says Yachting NZ "strongly refutes" any suggestion it has failed in its duty of care to athletes.

"The current nomination criteria were developed following an athlete-led review after the Tokyo Olympic Games and will again be reviewed after Paris," he says.

"Deeply troubling" processes

Several members of the sailing community have contacted RNZ to raise issues with how the selection process was managed, pointing to "serious conflicts of interest".

Grant Beck, whose son Logan Dunning-Beck was campaigning in the 49er class, was serving as a selector. Beck is also on the Yachting NZ Olympic Committee - the sub-committee set up to provide a check and balance on the selectors' decisions.

Yachting NZ avoided a potentially messy situation after Dunning-Beck suffered a broken leg in March just two days out from the final selection regatta, ending his and his teammate Oscar Gunn's Olympic hopes.

A Yachting NZ press release says Dunning-Beck and Gunn were at the time "neck-and-neck" with rival crew Isaac McHardie and Will McKenzie **in the race for the sole Olympic berth**.

While Beck was not a selector in the 49er class, one former top sailor says his presence on the selection panel showed a "gob-smacking lack of insight" from Yachting NZ into what constituted proper process.

Trotter says he warned the national body about potential problems that may arise with "some of the selectors that had been appointed" but was reluctant to single out individuals to RNZ.

"There are deeply troubling process issues here," he says.

"When you look at the issues going on in Yachting NZ, it fundamentally always boils down to poor leadership."

Trotter says he was concerned to learn that several selectors were also on the YNZOC.

"The YNZOC's purpose is to review the decision-making of the selectors. If there are selectors who are also on the YNZOC, how can there be an effective check and balance when they are also in the room?" he says.

"In other words, how can the system review the system?"

Abercrombie did not address questions about process issues and failure to implement best practice guidelines with its selections.

But the issue of the two kite foiling selectors - Beck and former Finn sailor Andy Maloney, who is now a member of Team New Zealand - also serving on the YNZOC was raised at Walton-Keim's Sports Tribunal hearing.



Former Finn sailor Andy Maloney is one of two kite foiling selectors. The other is Grant Beck. Photo: PHOTOSPORT

Both selectors attended a YNZOC meeting in April this year, in which Walton-Keim's non-nomination was discussed. The tribunal did not find anything in the attendance of the two selectors to warrant a finding of a breach of natural justice.

"The Tribunal accepts that best practice may have been for the selectors to have left the meeting room immediately after they had spoken to their recommendation and answered any questions, but there is no evidence of any impropriety on their part that could potentially have affected the validity of YNZOC's decision," the decision read.

The human cost

Trotter says while sailing officials may feel attacked by his public comments, the real casualties in the fallout of Yachting NZ's "poor policy and poor process" are the athletes.

"[Walton-Keim and Kitchen] have arrived in Marseille, potentially battered and bruised from the selection process, and are now having to rely on the very organisation that has caused these issues."

Others, like Aleh and Meech, have unwittingly been caught in the crossfire as their selections were called into question due to a lack of transparency.

Then there are former members of the NZL Sailing Team still clinging to "historical hurts" at having missed out on Olympic selection for past Games due to a hardline approach previously taken by Yachting NZ.

At Monday's announcement Walton-Keim, while careful with his words, hinted at the toll the past few months have taken on him.

"I haven't felt like a kiter for the last few weeks, so to get back into sailing and doing what I actually like to do is exciting," he told media over a video conference from the Olympic sailing venue.

"It's been stressful, but it's not the first thing we've had to overcome."



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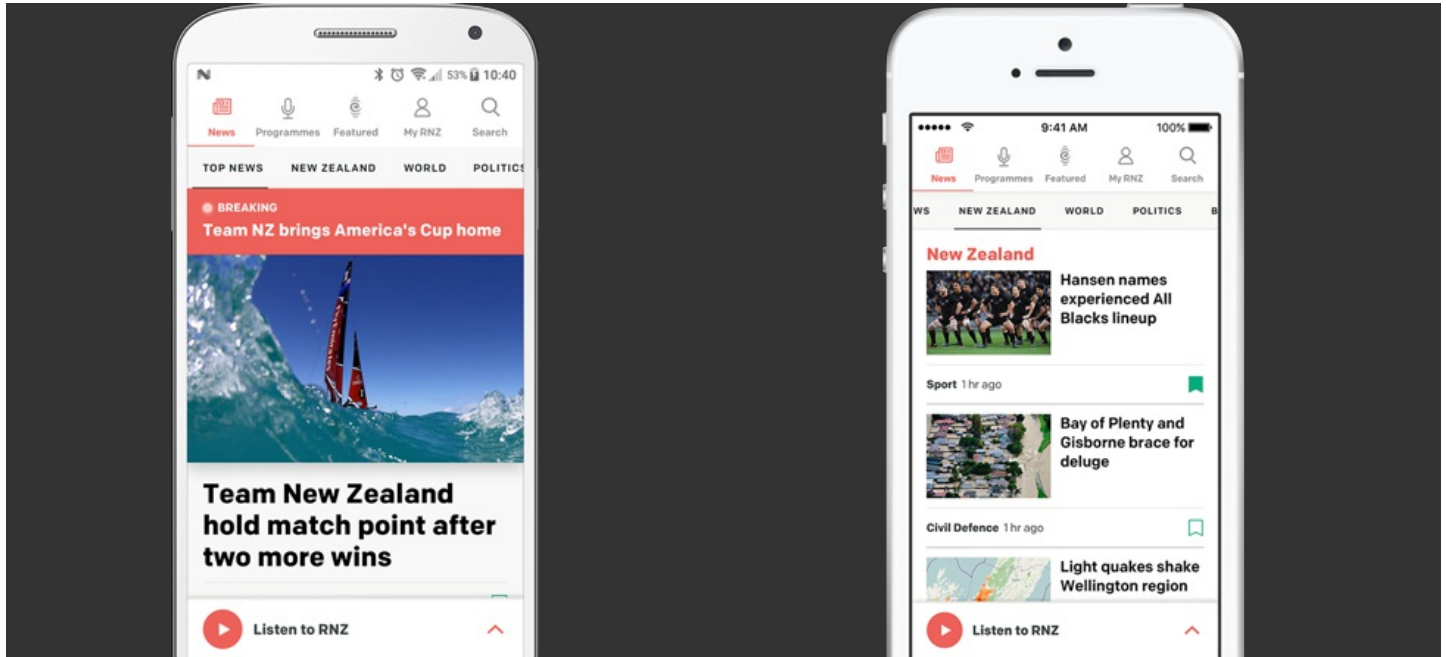


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