

CONSTITUTION

OF

CROWS NEST ENVIRONMENTAL LTD

ABN:

A company limited by guarantee

Incorporated in Queensland

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1. BACKGROUND

The Company has been created to fill a need within the Crows Nest community for an altruistic organisation that is able to organise and focus community fundraising efforts for the benefit of the community.

2. IDENTITY

The name of the Company is Crows Nest Environmental Ltd.

3. INTERPRETATION

3.1 The replaceable rules contained in the Act apply to Crows Nest Environmental Ltd, except to the extent that they are displaced or modified (either expressly or by implication) by a provision of this constitution.

3.2 In this constitution, defined words and phrases are shown with initial capitals. Except to the extent a contrary intention appears:

Act means the *Corporations Act 2001* (Cth).

Board means the board of Directors elected and appointed under clause 10.1.

Crows Nest Shire Community means the area defined by the boundaries of the Crows Nest Shire, as it existed before the 15 March 2008 amalgamation.

Director has the meaning defined in section 9 of the Act.

Member means a natural person whose membership of Crows Nest Community Solutions has been entered in the register of Members as an initial member or in accordance with clause 6.

Regulations means the *Corporations Regulations 2001* (Cth).

Secretary means a company secretary appointed in accordance with the Act and clause 20.1.

4. OBJECTS

4.1 The objects of Crows Nest Environmental Ltd are to:

- a) The protection and enhancement of the natural environment or of a significant aspect of the natural environment;
- b) To receive donations, gifts, grants and other contributions solely for advancing the environmental purposes of the organisation;
- c) To establish, organise and oversee community and volunteer activities and programs and to obtain and manage assets solely for advancing the environmental purposes of the organisation.

4.2 A manner which benefits the community specifically includes, but is not limited to:

- a) Relieving distress due to natural disasters such as floods and bushfires only to the extent

that the activity supports environmental recovery or restoration.

- b) Protecting fauna and flora
- c) Support of wider education programs including ecological and habitat protection.

4.3 The assets and income of Crows Nest Environmental Ltd shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.

4.4 Conduit Clause:

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the organisation and not be influenced by the preference of the donor. The organisation will not pass a donation of money or property to other organisations, bodies or persons as a condition of a donation.

5 ELIGIBILITY FOR MEMBERSHIP

A person will only be eligible for membership if that person is a continuing director of Progressive Community Crows Nest Ltd or Crows Nest Community Solutions Ltd or is a continuing Trustee of the Crows Nest Community Trust.

6 MEMBERSHIP REGISTER

The Secretary must, on approval by the Board of a new Membership, enter the person's name in the register of Members and, on the name being so entered, the person becomes a Member.

7 TRANSFER OR CESSATION OF MEMBERSHIP

7.1 A right, privilege or obligation that a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of membership.

7.2 A person ceases to be a Member if it:

- (a) resigns from membership of Crows Nest Environmental Ltd;
- (b) becomes bankrupt; or
- (c) ceases to be eligible for membership.

7.3 Where a person ceases to be a member, the Secretary must make an appropriate entry in the register of Members recording the date on which the membership ceased.

8 ANNUAL MEMBERSHIP FEE

The annual membership fee is such amount as may be determined by the Board from time to time and is payable at such times and in such manner as determined by the Board.

9 MEMBERS' GUARANTEE

Each Member guarantees that it will contribute towards the payment of the debts and liabilities of Crows Nest Environmental Ltd or the costs, charges and expenses of the winding up of Crows Nest Environmental Ltd up to a limit of \$5.

10 BOARD

10.1.1 The Board consists of between two and twelve Directors appointed in accordance with clause 11 or 12.

10.1.2 Each elected Director, subject to this constitution, holds office until the conclusion of the second annual general meeting following the date of the person's election, but is eligible for re appointment.

10.1.3 In the event of a casual vacancy arising on the Board in respect of a Director who had been previously elected pursuant to 11.1, the Board may appoint a replacement Director for the remaining term for which the person being replaced had been appointed.

11 APPOINTMENT OF THE BOARD

11.1 Nominations of candidates for election to the Board:

- (a) must be made in writing, signed by an authorised representative of a Member and accompanied by the written consent of the candidate (which may be endorsed on the nomination form); and
- (b) must be delivered to the Secretary not less than 8 weeks before the date fixed for the annual general meeting.

11.2 The candidates elected to the Board under clause 11.1 take office at the close of the annual general meeting.

11.3 One half, or the nearest whole number below half, of the elected Directors (that is, those Directors not appointed pursuant to clause or 12.1) retire at the close of each annual general meeting. Those to retire will be those who have been longest in office since their election, but as between those with periods of service of equal length, those to retire will be, unless they otherwise agree, be determined by drawing lots.

- 11.4 All appointed Directors retire at the close of each annual general meeting.
- 11.5 If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are deemed to be elected and the vacant positions remaining may be appointed by the Board in accordance with clause 12.1.
- 11.6 If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- 11.7 If the number of nominations received exceeds the number of vacancies to be filled, a ballot must be held in accordance with clause 11.8:
- 11.8 The election of the Board is to be conducted by postal ballot in accordance with the following rules:
- (a) The Secretary must ensure that each Member receives a ballot paper not less than six weeks before each annual general meeting.
 - (b) The ballot paper must specify the closing date for return of ballots, which must be at least four weeks after the date on which the ballot paper has been received by all Members.
 - (c) Ballot papers not received by the Secretary by the closing date are to be disregarded.
 - (d) Each Member is entitled to one vote
 - (e) Election of the Directors not entitled to be appointed under clause 11.8(d) will be on the basis of each Member voting for up to that number of candidates. Each such candidate voted for by a Member is deemed to have received the number of votes to which the relevant Member is entitled under clause 11.8(d). The Directors are chosen by taking in order the candidate who received the highest number of votes, the next highest number and so on until each position is filled.
 - (f) If, after following the procedure in clause 11.8(e), there are two or more candidates for a remaining position with an equal number of votes, a further ballot for that unfilled position only must be held amongst those Members present at the annual general meeting using the same method as set out in clause 11.8(e). If, after that further ballot, there are two or more candidates with an equal number of votes, the position will be filled by drawing lots amongst the candidates with the equal highest number of votes.

12 APPOINTMENT OF ADDITIONAL DIRECTORS

12.1 The Board may appoint additional Directors:

- (a) in accordance with clause 10.1; and
- (b) to fill a casual vacancy in accordance with clause 10.3.

13 ELECTION OF CHAIR, DEPUTY CHAIR

13.1 At the first meeting of the Board after each annual general meeting, the Board must elect from amongst its members:

- (a) a Chair; and
- (b) a Deputy Chair, who in the absence or unavailability of the Chair may exercise the powers of the Chair.

14 VACANCIES ON THE BOARD

A vacancy in the office of a Director occurs if the person:

- (a) dies;
- (b) resigns the office;
- (c) is removed from office pursuant to the Act;
- (d) becomes an insolvent under administration within the meaning of the Act;
- (e) is disqualified from office under Part 2D.6 of the Act;
- (f) is absent without the consent of the Board from all meetings of the Board held during a period of 6 months.

15 INDEMNITY

15.1 To the extent permitted by law and without limiting the powers of Crows Nest Environmental Ltd, Crows Nest Environmental Ltd must indemnify each person who is, or has been, a Director or Secretary of Crows Nest Environmental Ltd against any liability that results from facts or circumstances relating to the person serving or having served in that capacity:

- (a) incurred at any time, whether before or after this clause comes into effect, to any person (other than Crows Nest Environmental Ltd or a related body corporate), which does not arise out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
- (b) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or in connection with any application in relation to such proceedings in which the court grants relief to the person under the Act.

15.2 Except in relation to liability for legal costs (which is dealt with in clause 15.3), Crows Nest Environmental Ltd must not provide the indemnity referred to clause 15.1 in respect of:

- (a) a liability owed to Crows Nest Environmental Ltd or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or

- (c) a liability that is owed to someone (other than Crows Nest Environmental Ltd or a related body corporate) that did not arise out of conduct in good faith;

15.3 Crows Nest Environmental Ltd must not provide the indemnity referred to in clause 15.1 in respect to legal costs incurred in defending an action for liability if the costs are incurred:

- (a) in defending or resisting civil proceedings in which the person is found to have a liability for which they could not be indemnified under clause 15.2; or
- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the Court to be established; or
- (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

15.4 Clause 15.3(c) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

15.5 Crows Nest Environmental Ltd is not required to indemnify a person as provided for in clause 15.1 to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.

15.6 The benefit of each indemnity given in clause 15.1 continues, even if the clause is later modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

15.7 To the extent permitted by law and without limiting the powers of Crows Nest Environmental Ltd, the Directors may authorise Crows Nest Environmental Ltd to, and Crows Nest Environmental Ltd may, enter into any insurance policy for the benefit of a person who is, or has been, a Director or Secretary of Crows Nest Environmental Ltd against any liability that results from facts or circumstances relating to the person serving or having served in that capacity: The benefit of each indemnity given in clause 15.1 continues, even if the clause is later modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

- (a) incurred at any time, whether before or after the time this clause comes into effect, to any person (other than Crows Nest Environmental Ltd or a related body corporate), which does not arise out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
- (b) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted, or in connection with any application in relation to such proceedings in which the court grants relief to the person under the Act.

15.8 Crows Nest Environmental Ltd must not pay, or agree to pay, a premium for a contract

insuring a person who is or has been an officer or auditor of Crows Nest Environmental Ltd against a liability arising out of:

- (a) conduct involving a wilful breach of duty in relation to Crows Nest Environmental Ltd; or
- (b) a contravention of sections 182 or 183 of the Act.

16 MEETINGS OF THE BOARD

16.1 A quorum for meetings of the Board consists of

- (a) 2 Directors; or
- (b) $\frac{1}{2}$ of the total number of Directors Appointed to the Board whichever is the greater.

16.2 The powers and functions of the Board are not affected by any unfilled vacancy in its membership, provided a quorum is maintained.

16.3 The Board will meet when and as it may determine. The meetings are to be convened by the Chair, provided that a special meeting of the Board must be called on the written request of at least three Directors.

16.4 Not less than 14 days notice must be given of any meeting, unless all Directors agree to waive such notice. The notice must specify the date, time and place of the meeting and the agenda of the meeting. The non-receipt of a notice by a member or the accidental omission to give notice to a Director will not invalidate the proceedings of the meeting. Meetings may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.

16.5 Questions arising at a meeting of the Board will be determined by a majority of the votes of the Directors present at the meeting. Each Director present (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

17 POWERS OF THE BOARD

17.1 The Board, subject to the Act, the Regulations, this constitution (including the objects) and to any resolution passed by a general meeting of Members:

- (a) must control and manage the affairs of Crows Nest Environmental Ltd;
- (b) may exercise all such functions as may be exercised by Crows Nest Environmental Ltd, other than those functions that are required by the Act, the Regulations or this constitution to be exercised only by the Members in general meeting;
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of Crows Nest

Environmental Ltd;

- (d) must act in accordance with any resolution passed by a general meeting of Members, including priority, and determination of, or changes to:
 - (i) Crows Nest Environmental Ltd key statements, including its values, vision, mission or goals; and
 - (ii) the Crows Nest Environmental Ltd strategic directions;
- (e) must act in accordance with the Crows Nest Environmental Ltd Charter of Governance as amended from time to time.

17.2 The powers of the Board under clause 17.1 include, without limitation, the power to:

- (a) do all such acts as may be necessary to fulfil all or any of the objects of Crows Nest Environmental Ltd;
- (b) establish committees and other groups and to define their objects, responsibilities, means of accountability and operating boundaries;
- (c) accept or reject nominations for Membership;
- (d) discipline Members, including suspending or withdrawing Accreditations;
- (e) raise, by means of Membership fees, levies, public appeals and any other fundraising means, the funds necessary to fulfil the objects of Crows Nest Environmental Ltd;
- (f) employ staff on such terms and conditions as it may determine;
- (g) acquire all accommodation, plant, equipment and materials of any kind that it may require;
- (h) purchase, take on lease, exchange, hire or otherwise acquire an interest in any real or personal property in the name of and for the purposes of Crows Nest Environmental Ltd;
- (i) make investments and operate banking accounts and make deposits in financial institutions, and determine the method of operating the accounts of Crows Nest Environmental Ltd; and
- (j) determine policies, procedures and guidelines for Crows Nest Environmental Ltd.

18 GENERAL MEETINGS

18.1 An annual general meeting of Members must be held each year in accordance with the requirements of the Act.

18.2 In addition to any other business that may be transacted at an annual general meeting, the business of an annual general meeting is to:

- (a) confirm the minutes of the last preceding annual general meeting and of any general meeting held since that meeting;
- (b) receive from the Board reports on the activities of Crows Nest Environmental Ltd during the last preceding financial year;

- (c) announce the results of the postal ballot for the election of members of the Board;
- (d) announce any appointments to the Board made by Members under clause 11.8(d);
- (e) receive and consider the annual financial report, auditor's report and any other reports that are required to be submitted to Members under the Act;
- (f) appoint an auditor; and
- (g) fix the auditor's remuneration.

18.3 In addition to the annual general meeting, the Board may, whenever it thinks fit, and must upon a requisition made in accordance with s 249D of the Act, convene a general meeting of Crows Nest Environmental Ltd.

19 PROCEDURE AND QUORUM

19.1 The Secretary must, except where the Act or this constitution requires a meeting to be convened sooner, at least two months before the date fixed for the holding of the general meeting cause to be sent by prepaid post to each Member at the Member's address appearing in the Register of Members, a notice specifying the place, date and time of the general meeting and the nature of the business proposed to be transacted, and whether it is intended to propose any special resolutions.

19.2 A general meeting may be called or held using any technology that the Board reasonably considers, having regard to all the circumstances, is appropriate and will enable Members attending the meeting a reasonable opportunity to hear and be heard.

19.3 A quorum for general meetings consists of equal to or more than 25% of the Members.

19.4 The persons entitled to vote at the general meeting are the Members present at that meeting and each Member present has one vote.

19.5 The Chair is to preside over general meetings. In the event that the Chair is unable, or unwilling, to preside, the Deputy Chair is to preside. If both the Chair and Deputy Chair are unable, or unwilling, to preside, the meeting must appoint an acting Chair. The presiding person has both a deliberative and, upon an equality of votes, a casting vote.

19.6 A question arising at a general meeting is to be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the person presiding that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of Crows Nest Environmental Ltd, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

19.7 At a general meeting, a poll may be demanded by the person presiding or by any Member present at the meeting.

19.8 Where a poll is demanded at a general meeting, the poll shall be taken:

- (a) immediately in the case of a poll which relates to the election of the person to preside at the meeting or to the question of an adjournment; or
- (b) in any other case, in such manner and at such time before the close of the meeting as the person presiding directs, and the resolution of the poll on the matter is deemed to be the resolution of the meeting on that matter.

20 SECRETARY

20.1 The Board must appoint and employ, on such terms and conditions as it may determine, a Secretary to fulfil such responsibilities as are prescribed, including.

- (a) the functions and responsibilities of the Secretary prescribed by this constitution or the Act;
- (b) keeping minutes of:
 - (i) all elections and appointments of Directors;
 - (ii) the names of Directors present at a Board meeting or a general meeting;
 - (iii) the names of Members present at a general meeting; and
 - (iv) all proceedings at Board meetings and general meetings

20.2 Minutes of proceedings at a meeting are to be signed by the person presiding at the meeting or by the person presiding at the next succeeding meeting.

21 GIFT FUND

21.1 In this constitution 'tax deductible gifts' means gifts of money or property to which Subdivision 30-A of the Income Tax Assessment Act 1997 (Cth) applies and includes any money received because of such gifts.

21.2 The Company will maintain a Gift Fund called Crows Nest Environmental Ltd Gift Fund:

- (a) which will be used only for the principle purpose of the Company;
- (b) all gifts and deductible contributions of money or property for that purpose are made to it;
- (c) any money received because of such gifts or deductible contributions is credited to it; and
- (d) it does not receive any other money or property.

21.3 All tax-deductible gifts received by or on account of Crows Nest Environmental Ltd as moneys must be deposited in a bank account or accounts in the name nominated by the resolution creating each fund e.g. 'Crows Nest Environmental Ltd Gift Fund'.

21.4 The Board may invest the whole or any part of the Gift Fund in such forms of investment as it may determine and all such investments must be made in the name of 'Crows Nest Environmental Ltd Gift Fund'.

21.5 Crows Nest Environmental Ltd must not use money or property held in the Gift Fund other than for the objects set out in the resolution by which the Gift Fund was established.

22 AUDITOR

22.1 The Members must at the annual general meeting each year appoint an auditor to hold office until the next annual general meeting, such appointment to be made at such fee or otherwise or on such terms and conditions as the Members may determine.

22.2 The Board must:

- (a) create proper accounting and other records to be kept and must distribute to Members a copy of each profit and loss account and balance sheet (including every document required by law to be attached to it) accompanied by a copy of the auditor's report as required by the Act; and
- (b) submit to each annual general meeting of Crows Nest Environmental Ltd a balance sheet and profit and loss account up to a date not more than 6 months before the date of the meeting.

23 CUSTODY AND INSPECTION OF BOOKS

All records, books and other documents relating to Crows Nest Environmental Ltd must be kept in the custody of and under the control of the Secretary and must be made available for inspection free of charge by duly appointed representatives of Members.

24 AMENDMENT OF CONSTITUTION

This constitution may be amended by special resolution of Members in general meeting. Notice of any motion to amend the constitution must be received by the Secretary at least three months prior to the general meeting.

25 COMMON SEAL

- 25.1 The common seal of Crows Nest Environmental Ltd must be kept in the custody of the Secretary.
- 25.2 The common seal must not be affixed to any instrument except by the authority of the Board and the affixing of the common seal must be attested by the signatures either of two Directors or of one Director and the Secretary.

26 WINDING UP OF CROWS NEST COMMUNITY SOLUTIONS LTD OR THE GIFT FUND

- 26.1 In the event of Crows Nest Environmental Ltd being wound up, then, any surplus assets remaining after the payment of Crows Nest Environmental Ltd's liabilities must be transferred to another organisation in Australia which is a charity with a similar purpose to the Company for the purposes of any Commonwealth Taxation Act.
- 26.2 The Members of Crows Nest Environmental Ltd must use all reasonable endeavours to ensure that charity with a similar purpose to the Company to which any surplus assets are transferred for the purposes of clause 26.1 has objects similar to Crows Nest Environmental Ltd.
- 26.3 If the Company is wound up or if the endorsement (if any) of the Company as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, shall be transferred to a charity with a similar charitable purpose to which income tax-deductible gifts can be made.
- 26.4 The Members must use all reasonable endeavours to ensure that the fund, authority or institution to which any surplus assets of the Crows Nest Environmental Ltd Gift Fund are transferred pursuant to clause 26.3 has objects similar to Crows Nest Environmental Ltd.