

Notice of Special General Meeting and Explanatory Memorandum

Mackay Sugar Limited ACN 057 463 671

Notice of Special General Meeting

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Notice is given that a Special General Meeting of Mackay Sugar Limited (**Mackay Sugar** or **Company**) will be held at:

Location	Mackay Entertainment Centre, Alfred Street, Mackay
Date	Tuesday 12 April 2011
Time	4.00 p.m. (AEST)

Special business

Resolution 1 – Amendments to the Company's constitution

To consider and, if in favour, pass the following resolution as a special resolution:

'That the deletions, insertions and changes to the current constitution as set out in Schedule 1, be immediately adopted.'

Resolution 2 – Additional amendments to the Company's constitution

'That the changes to the current constitution as set out in Schedule 2, be immediately adopted.'

Resolution 3 – Additional amendment to the Company's constitution

'That the change to the current constitution as set out in Schedule 3, be immediately adopted.'

Voting entitlements

Pursuant to Regulation 7.11.37 of the Corporations Act, the Board has determined that a shareholder's voting entitlement at the Special General Meeting will be taken to be the entitlement of the person shown in the register of members as at 5.00 p.m. (AEST) on 6 April 2011.

Restrictions on Voting

No restrictions on voting apply to the items of business in this Notice of Meeting.

Dated: 14 March 2011

Issued by authority of the Board:



Donna Rasmussen
Company Secretary
Mackay Sugar Limited

Notes

- (a) A member who is entitled to attend and cast a vote at the meeting is entitled to appoint a proxy.
- (b) The proxy need not be a member of the Company. A member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- (c) If you wish to appoint a proxy and are entitled to do so, then complete and return the attached proxy form.
- (d) A corporation may elect to appoint a representative in accordance with the *Corporations Act 2001* (Cth) in which case the Company will require written proof of the representative's appointment which must be lodged with or presented to the Company before the meeting.
- (e) If you have any queries on how to cast your votes then call Donna Rasmussen on 4953 8241 during business hours.

Explanatory memorandum

Mackay Sugar Limited ACN 057 463 671

This explanatory memorandum is to be read with the notice of special general meeting issued by the Company. It deals with the following resolutions which will be put forward for the consideration of shareholders at a special general meeting which will be held on Tuesday 12 April 2011 at 4.00 p.m. (AEST).

This explanatory memorandum should be read in its entirety. If shareholders are in any doubt as to how they should vote on the resolution, they should seek advice from their professional advisors.

Resolution 1: Amendments to the Company's constitution

Background

- 1 Resolution 1 is proposed as a special resolution. Therefore, in order for it to be passed, at least 75% of the votes cast by Mackay Sugar's shareholders will need to be in favour of the resolution.
- 2 The outcome of resolution 2 is conditional on resolution 1 being passed. If resolution 1 is not passed, the result of resolution 2 will be void.
- 3 Schedule 4 contains a reference table to explain all changes proposed by Resolution 1.
- 4 The Board endorses the proposed amendments to the Constitution. The proposed rules to be amended or deleted will ensure that the Constitution reflects the current status of the Company, and that the Company complies with the Corporations Act. The new rules proposed will give shareholders more flexibility to hold Investment Shares in the Company.

Directors' recommendation

- 5 For the reasons set out in paragraph 4, the Directors believe that the constitutional changes should be made.
- 6 Accordingly, the Directors recommend that all shareholders vote in favour of Resolution 1.

Resolution 2: Additional amendments to the Company's constitution

Background

- 7 Resolution 2 is conditional on resolution 1 being passed. If resolution 1 is not passed, the result of resolution 2 will be void.
- 8 Resolution 2 is proposed as a special resolution. Therefore, in order for it to be passed, at least 75% of the votes cast by Mackay Sugar's shareholders will need to be in favour of the resolution.
- 9 Schedule 4 contains a reference table to explain the changes proposed by Resolution 2.
- 10 The Board supports the inclusion of employees as Investment Shareholders of the Company. Their inclusion as Investment Shareholders will assist the long term growth of the business and provide for a variety of investors to be able to invest in the Company.

Directors' recommendation

- 11 For the reasons set out in paragraph 10, the Directors believe that the constitutional changes should be made.

12 Accordingly, the Directors recommend that all shareholders vote in favour of Resolution 2.

Resolution 3: Additional amendment to the Company's constitution

Background

- 13 Resolution 3 is not conditional on either resolution 1 or resolution 2 being passed.
- 14 Resolution 3 is proposed as a special resolution. Therefore, in order for it to be passed, at least 75% of the votes cast by Mackay Sugar's shareholders will need to be in favour of the resolution.
- 15 Schedule 4 contains a reference table to explain the changes proposed by Resolution 3.
- 16 The Board supports the reduction of the quorum for a general meeting from 200 Voting Shareholders to 150 Voting Shareholders. The reduced quorum means that it will be easier for the Company to convene a general meeting.

Directors' recommendation

- 17 For the reasons set out in paragraph 16, the Directors believe that the constitutional change should be made.
- 18 Accordingly, the Directors recommend that all shareholders vote in favour of Resolution 3.
- 19 A copy of the Amended Constitution (as if the amendments were made by Resolutions 1, 2 and 3 had been passed) is also **attached** for the assistance of shareholders.

Information meeting

- 20 Following the Special General Meeting, an Information meeting will be convened to discuss the following matters:
- (a) Financial update;
 - (b) Cogeneration project;
 - (c) North Queensland milling rationalisation opportunities;
 - (d) Preparation for the 2011 crushing season; and
 - (e) General business.

Definitions

A number of capitalised terms are used throughout this notice of annual general meeting and explanatory memorandum. Except to the extent the context otherwise requires:

Term	Definition
AGM	means annual general meeting.
Amended Constitution	means the constitution of the Company as amended by the passing of Resolutions 1, 2 and 3.
Board	means the board of Directors.
Company or Mackay Sugar	means Mackay Sugar Limited ACN 057 463 671.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Current Constitution	means the current constitution of the Company.
Directors	means the directors of the Company.
Special Resolution	has the meaning given to that term in the Corporations Act.

Schedule 1 (Referenced to Resolution 1)

Deletions, insertions and changes to the Current Constitution

Resolution 1

- 1 That a number of small typographical errors in regard to the words 'Voting Share' and 'Voting Shareholder' be amended throughout the Current Constitution so that the words are in accordance with the definitions contained in rule 3.2.
- 2 That the defined term '*Diversification Initiative*' be deleted from rule 3.2 as it is redundant.
- 3 That rule 4.1 be deleted and replaced with the following text:

'4.1 Voting Shares

- (a) *Holders of Voting Shares are entitled to the following rights:*
 - (i) *the right to receive notice of and to attend general meetings of the Company; and*
 - (ii) *the right to vote at a general meeting of the Company, on the basis of one vote for each shareholder (maximum of one vote per person) regardless of the number of shares held.*
 - (b) *Upon the allotment of shares relating to a Fundraising Event, holders of Voting Shares will be entitled to the following rights:*
 - (i) *the right to receive notice of and to attend general meetings of the Company; and*
 - (ii) *the right to vote at a general meeting of the Company, on the basis of one vote for each Investment Share held.'*
- 4 That rule 4.2 be deleted and replaced with the following text:

'4.2 Investment Shares

- (a) *Holders of Investment Shares are entitled to the following rights:*
 - (i) *the right to receive notice of and to attend general meetings of the Company;*
 - (ii) *the right to receive dividends as determined from time to time by the Directors to be payable equally to the holders of shares; and*
 - (iii) *the right in a winding up or reduction of capital of the Company to participate equally in the distribution of the surplus assets of the Company.*
- (b) *Upon the allotment of shares relating to a Fundraising Event, the rights attaching to Investment Shares will not be altered.'*

- 5 That the definition in rule 3.2 of '*Investment Shares*' be amended so that the wording opposite states '*means the shares issued in the capital of the Company which entitle the holders to the rights set out in rule 4.2.*'.
- 6 That rule 5 be deleted in its entirety as Grower Shares and Former Grower Shares have been converted to Investment Shares. Additionally, as a consequence, all rules after rule 4 are to be renumbered, so that, for example, rule 6 becomes current rule 5 with renumbering to pick up all internal rule renumbering amendments necessary.
- 7 That the words '*Upon registration of the Company and completion of the steps in rule 5.1,*' be deleted from rule 6.1 as they are redundant.
- 8 That schedules 1 to 5 of the constitution be deleted as they are redundant.
- 9 That the words '*Schedule 5*' in rule 4.3 be deleted and replaced with the words '*rule 4.1(b)*'.
- 10 That rule 6.2 (to be renumbered rule 5.2) be deleted and replaced with the following text:

'Investment Shares

- (a) *Investment Shares may be held by any of the following Permitted Shareholders:*
- (i) *Growers;*
 - (ii) *a person who is collectively with another or others, a Grower;*
 - (iii) *a shareholder of a corporation which is a Grower;*
 - (iv) *a shareholder of a corporation which collectively with another or others is a Grower;*
 - (v) *a primary or default beneficiary of any discretionary trust which is a Grower;*
 - (vi) *a primary or default beneficiary of any discretionary trust which collectively with another or others is a Grower;*
 - (vii) *a unitholder of any unit trust which is a Grower;*
 - (viii) *a unitholder of any unit trust which collectively with another or others is a Grower; and*
 - (ix) *a Self Managed Superannuation Fund of which a Permitted Shareholder is a member, so far as it is permitted by law.*
- (b) *Subject to rule 5.3, a Permitted Shareholder may only transfer their Investment Shares to other Permitted Shareholders.*
- (c) *If a person who has ceased to be a Permitted Shareholder disposes of all of his/her or its Investment Shares, that person is unable to acquire further Investment Shares unless they again become a Permitted Shareholder.'*
- 11 That rule 6.3(c)(i) to (iii) in the Current Constitution (to be renumbered rule 5.3) be deleted and replaced with the following text (to have regard for proposed numbering):
- '(i) *was not issued those shares in accordance with rule 5.1(a), 5.1(c), 5.2(a), 5.2(b) or 5.2(c); or*
 - (ii) *is not a Permitted Shareholder.'*

- 12 That the words '*Grower or Former Grower*' be deleted from rule 12.6 in the Current Constitution (to be renumbered rule 11.6) and replaced with '*Permitted Shareholder*'.
- 13 That the following definition be included (in alphabetical order) within rule 3.2 of the Current Constitution:
'Permitted Shareholder has the meaning in rule 5.2(a).'
- 14 That the following definition be included (in alphabetical order) within rule 3.2 of the Current Constitution:
'Self Managed Superannuation Fund has the meaning given to that term in the Superannuation Industry (Supervision) Act 1993 (Cth).'
- 15 That rule 16.1 (to be renumbered rule 15.1) be deleted in its entirety as the number of Initial Directors has already been reduced and the rule is now redundant.
- 16 That the definition of '*Initial Directors*' be deleted from rule 3.2.
- 17 That rule 19.2 (to be renumbered rule 18.2) be amended by:
 - (a) the addition of the following sentence after the words '*taken into account*':

'If the Grower Directors cannot agree upon which Grower Director will retire in accordance with rule 18.1, the Grower Director to retire will be determined by ballot.'; and
 - (b) the deletion of the words '*Subject to rule 15.1*'.
- 18 That rule 21.1(b) (to be renumbered rule 20.1(b)) be amended to reduce the quorum at a Directors' meeting to four Directors, by deleting the word 'Five' and replacing it with the word 'Four'.
- 19 That:
 - (a) the first sentence in rule 28.1 (to be renumbered rule 27.1) be deleted and replaced with the following text:

'(a) The Directors may:
 - (i) *pay any interim and final dividends that, in their judgment, the financial position of the Company justifies;*
 - (ii) *rescind a decision to pay a dividend if they decide, before the payment date, that the Company's financial position no longer justifies the payment; and*
 - (iii) *pay any dividend required to be paid under the terms of issue of a share.'*; and
 - (b) the second sentence in rule 28.1 (to be renumbered rule 27.1) be renumbered as 27.1(b).
- 21 That rule 28.3 (to be renumbered rule 27.3) be deleted in its entirety as the ability for the Board to pay interim dividends to shareholders has been incorporated in the new rule 28.1 (to be renumbered rule 27.1).
- 22 That rule 28.4 (to be renumbered rule 27.4) be deleted in its entirety as dividends are no longer payable out of the profits of the Company under the Corporations Act.
- 20 That the following definitions contained within rule 3.2 of the Current Constitution be deleted as they are redundant:

- (a) *Conversion Proposal;*
- (b) *Cooperatives Act;*
- (c) *Former Grower;*
- (d) *Former Grower Share;*
- (e) *Grower Share; and*
- (f) *Ten Year Production History.*

Schedule 2 (Referenced to Resolution 2)

Additional amendments to the Company's constitution

Resolution 2

- 1 That rule 5.2(a) (newly renumbered as a result of the changes made in Schedule 1) be amended by:
 - (a) deleting the word '*and*' at the end of paragraph 5.2(a)(viii);
 - (b) deleting the full stop at the end of paragraph 5.2(a)(ix) and relacing it with '*; and*'; and
 - (c) adding the following clause below the current clause 5.2(a)(ix):
'(x) an Employee.'
- 2 That the following definition be included (in alphabetical order) within rule 3.2 of the Current Constitution:

***'Employee** means a person who:*
 - (a) *is a full time employee of the Company or its subsidiaries pursuant to a contract of services; and*
 - (b) *has been employed by the Company or its subsidiaries for a continuous period of not less than two years.'*

Schedule 3 (Referenced to Resolution 3)

Additional amendment to the Company Constitution

Resolution 3

That rule 14.2(a) (to be renumbered rule 13.2(a) in the event that Resolution 1 is passed) be amended to reduce the quorum at a general meeting to 150 Voting Shareholders by replacing the number '200' with the number '150'.