

Notice of Annual General Meeting and Explanatory Memorandum

Mackay Sugar Limited ACN 057 463 671

Notice of Annual General Meeting

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

Location	Mackay Entertainment Centre, Gordon Street, Mackay
Date	Wednesday 26 October 2011
Time	4.00 p.m. (AEST)

Ordinary business

Welcome

Item 1: Minutes

To confirm the minutes of the last Annual General Meeting of 8 December 2010, and the minutes of the Special General Meeting held 10 April 2011.

Special business

Item 2 – Amendments to the Company's constitution (Resolution 1)

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.'

Further information about this proposal is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors recommend that you vote in favour of this resolution.

Item 3 – Additional amendments to the Company's constitution (Resolution 2)

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

Further information about this proposal is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors recommend that you vote in favour of this resolution.

Item 4 – Additional amendment to the Company's constitution (Resolution 3)

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

Further information about this proposal is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors recommend that you vote in favour of this resolution.

Ordinary business

Item 5: Financial Statements

To receive and consider the Financial Statements, the reports of the Directors and Auditors for the financial year ended 31 May 2011.

Item 6: Re-election of Mr A R Bartolo (Resolution 4)

To consider and if thought fit, pass the following ordinary resolution:

'That Anthony Robert Bartolo, a Director, who will retire by rotation at the close of the meeting in accordance with Rule 16.2 of the Company's Constitution, being eligible, is re-elected as a Director of the Company.'

Information about the candidate is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors (with Mr A R Bartolo abstaining) recommend that you vote in favour of this resolution.

Item 7: Re-election of Mr V Germanotta (Resolution 5)

To consider and if thought fit, to pass the following ordinary resolution:

'That Vincenzo Germanotta, a Director, who will retire by rotation at the close of the meeting in accordance with Rule 16.2 of the Company's Constitution, being eligible, is re-elected as a Director of the Company.'

Information about the candidate is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors (with Mr V Germanotta abstaining) recommend that you vote in favour of this resolution.

Item 8: Board limit (Resolution 6)

To consider and if thought fit, to pass the following ordinary resolution:

'That the number of Directors to be appointed to the Board of the Company be limited to five Grower Directors and two Non Grower Directors.'

Further information about this proposal is set out in the Explanatory Memorandum which accompanies this Notice of Meeting.

The Directors recommend that you vote in favour of this resolution to comply with new legal requirements.

Item 9: Directors' remuneration (Resolution 7)

To consider and if thought fit, to pass the following ordinary resolution:

'That in accordance with Rule 15.4 of the Constitution, the Directors be paid out of the funds of the Company as remuneration for their services, such sum accruing from day to day as the Shareholders determine, to be divided among them in such proportion and manner as they agree or in default of agreement, equally. This sum is to be fixed at \$458,400, the Directors' remuneration approved by shareholders at the 2009 Annual General Meeting.'

The Directors abstain, in the interests of good corporate governance, from making a recommendation in relation to this resolution.

Item 10: Other business

To consider and decide on such matters as are brought forward by the Directors relating to the affairs of the Company, or are brought forward by any shareholder, who has given to the Directors TEN (10) DAYS' previous notice at least of his or her intention, by leaving a copy of such notice specifying the matters proposed to be raised at the Registered Office of the Company.

(Note: A copy of any notice must be lodged at the Registered Office by 4.00 p.m. Friday 15 October 2011).

Voting entitlements

Pursuant to Regulation 7.11.37 of the Corporations Act, the Board has determined that a shareholder's voting entitlement at the Annual 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 21 October 2011.

Restrictions on Voting

Resolution 7 – The Company will disregard proxy votes cast by a member of the Key Management Personnel or a closely related party of such a member, in contravention of section 250BD of the Corporations Act.

Further details regarding proxy voting are set out in the proxy form accompanying this Notice of Meeting.

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

Dated: 26 September 2011

Issued by authority of the Board:



Donna Rasmussen
Company Secretary
Mackay Sugar Limited

Notes

- (a) Subject to the Corporations Act, including section 250BD, 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 annual general meeting issued by the Company. It deals with the following resolutions which will be put forward for the consideration of shareholders at the annual general meeting which will be held on Wednesday 26 October 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.

Ordinary Business

Item 1: Minutes

The minutes of the last Annual General Meeting of 8 December 2010, and the minutes of the Special General Meeting held 10 April 2011 are to be carefully read by each Director, and if they are found to be an accurate record of the meetings, are to be confirmed by the Directors.

Special Business

Item 2: Amendments to the Company's constitution (Resolution 1)

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.

Item 3: Additional amendments to the Company's constitution (Resolution 2)

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.

Item 4: Additional amendment to the Company's constitution (Resolution 3)

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.

Ordinary Business

The Explanatory Notes have been prepared to assist Shareholders with their consideration of the resolutions to be put to the Annual General Meeting.

Item 5: Financial Statements

The Corporations Act requires that the report of the Directors, the Auditor's report and the financial report be laid before the AGM. In addition, section 23.2 of the Company's Constitution provides for such reports and statements to be received and considered at the meeting. Apart from the resolutions set out in the Notice of Meeting, neither the Corporations Act nor the Company's Constitution requires a vote of Shareholders at the AGM on such reports or statements, however Shareholders will be given ample opportunity to raise questions with respect to these reports and statements at the meeting.

In addition to asking questions at the meeting, Shareholders may address written questions to the Chairman about the management of the Company, or to the Company's Auditor which are relevant to:

- (a) the content of the Auditor's Report to be considered at the meeting; or
- (b) the conduct of the audit of the annual financial report to be considered at the meeting.

Any written questions must be submitted to the Company Secretary on or before 4.00 p.m. on 15 October 2011 to:

By post:
The Company Secretary
Mackay Sugar Limited
PO Box 5720
Mackay Mail Centre Qld 4741

By fax:
The Company Secretary

(07) 4953 8340

Item 6: Re-election of Director - Mr Anthony Robert Bartolo (Resolution 4)

Mr Bartolo a Grower Director, was appointed to this role in April 2010. In accordance with Rule 15.2 of the Constitution, the company may by postal ballot in the manner determined by the Board from time to time, appoint Mr Bartolo as a Grower Director. As Mr Bartolo was nominated unopposed the Board did not conduct a postal ballot in the interests of costs. The Directors instead propose that this appointment be ratified by resolution.

Resolution 4 proposes the election of Mr Bartolo as Director of Mackay Sugar Limited. If elected under Resolution 4, Mr Bartolo will then be subject to the director retirement provisions under the Constitution.

Mr A R Bartolo (Grower Director)

Mr Bartolo is a third generation farmer and was elected to the Board as a Grower Director in April 2010. He has been a Partner at DGL Accountants since 1999, specialising in taxation and business advice to primary producers, and was granted Fellowship of CPA Australia in 2007.

Mr Bartolo's previous roles include Chairman of the CPA Mackay Committee, Board Director of the Mackay Show Association, and adviser to one of the largest cane harvesting co-operatives in the region.

Directors' recommendation

The Directors recommend that Shareholders vote in favour of this resolution.

Item 7: Re-election of Director - Mr Vincenzo Germanotta (Resolution 5)

Mr Germanotta a Grower Director, was appointed to this role in November 2004. In accordance with Rule 15.2 of the Constitution, the company may by postal ballot in the manner determined by the Board from time to time, appoint Mr Germanotta as a Grower Director. As Mr Germanotta was nominated

unopposed the Board did not conduct a postal ballot in the interests of costs. The Directors instead propose that this appointment be ratified by resolution.

Resolution 5 proposes the election of Mr Germanotta as Director of Mackay Sugar Limited. If elected under Resolution 5, Mr Germanotta will then be subject to the director retirement provisions under the Constitution.

Mr V Germanotta (Grower Director)

Mr Germanotta has been an elected Grower Director since November 2004. He has been growing cane in the Mackay district for more than 33 years. He was elected as grower representative to Mackay Area Productivity Services Board in June 2004 and is currently a Mackay Sugar representative and Deputy Chairman of Mackay Area Productivity Services Pty Limited.

Directors' recommendation

The Directors recommend that Shareholders vote in favour of this resolution.

Item 8: Board limit (Resolution 6)

Section 201P of the Corporations Act requires that Directors must not set a Board limit unless the proposed limit has been approved by general meeting of the Company. Section 201N of the Corporations Act states that if a company's constitution provides that the maximum number of directors is a specified number then any number determined by directors that is lower than the specified number is a board limit. The Constitution provides that the Board is to be constituted by five Grower Directors, and a minimum of two and maximum of four Non Grower Directors. Therefore, given that the Board currently constitutes five Grower Directors and two Non Grower Directors, this is considered to be a board limit and must be approved by the passing of Resolution 6.

The effect of Resolution 6 is to limit the number of Directors to be appointed to the Board of the Company to five Grower Directors and two Non-Grower Directors. The Directors are proposing Resolution 6 to comply with new legal requirements.

Directors' recommendation

The Directors recommend that Shareholders vote in favour of this resolution.

Item 9: Directors' remuneration (Resolution 7)

According to Rule 15.4 of the Company's Constitution, the Directors are to be paid out of the funds of the Company as remuneration for their services as Directors, such sum accruing from day to day as the Shareholders determine, to be divided among them in such proportion and manner as they agree or in default of agreement, equally. The Directors remuneration for their services as Directors is by fixed sum, proposed to be fixed at \$458,400, the Directors' remuneration approved by shareholders at the 2009 Annual General Meeting.'

The Directors abstain, in the interests of corporate governance, from making a recommendation in relation to this resolution.

Item 10: Other business

To consider and decide on such matters as are brought forward by the Directors relating to the affairs of the Company, or are brought forward by any shareholder, who has given to the Directors TEN (10) DAYS' previous notice at least of his or her intention, by leaving a copy of such notice specifying the matters proposed to be raised at the Registered Office of the Company.

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 'Former Grower' in rule 3.2 be amended by deleting the words '*upon completion of the steps in rule 5.1*' as they are 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;*
 - (ix) *a Former Grower; and*
 - (x) *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(d)) be deleted and replaced with the following text (to have regard for proposed numbering):
- '(i) *was not issued or transferred 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'.
- 20 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.
- 23 That the following definitions contained within rule 3.2 of the Current Constitution be deleted as they are redundant:
(c) *Conversion Proposal*;

- (d) *Cooperatives Act;*
- (e) *Diversification Initiative;*
- (f) *Former Grower Share;*
- (g) *Grower Share; and*
- (h) *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)(ix);
 - (b) deleting the full stop at the end of paragraph 5.2(a)(x) and relacing it with '*; and*'; and
 - (c) adding the following clause below the current clause 5.2(a)(x):
'(xi) 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.'*
- 3 That new rule 5.3(c) be inserted:

'(c) An Employee has a Prohibited Shareholding Interest if Investment Shares held by that Employee when amalgamated with Investment Shares held by any other Employee or Employees exceed 5% of all Investment Shares on issue in the Company.'

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'.