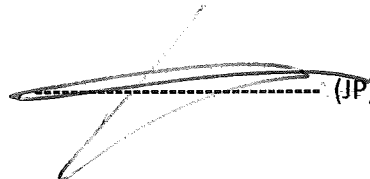


CONSTITUTION
OF
ESTUARY CARE FOUNDATION SA INCORPORATED

Adopted 11 /7 /2016

This is the annexure marked "A" referred to in the statutory declaration of Catherine McMahon made on the 27 July 2016 before me



(JP)

Pauline Janette Mannix JP # 23752
A Justice of the Peace for
South Australia

27 July 2016

CONSTITUTION OF ESTUARY CARE FOUNDATION SA INCORPORATED

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1. NAME OF ASSOCIATION

1.1. Name

The name of the incorporated association is "**Estuary Care Foundation SA Incorporated**" ("the Foundation").

2. DEFINITIONS AND INTERPRETATION

2.1. Definitions

Act means the *Associations Incorporation Act (SA) 1985*;

ADI means an authorised deposit -taking institution within the meaning of the *Banking Act (Cwth)*;

Board means the managing Board of the Foundation;

Board Member means a member of the Board;

By-laws means the by-laws of the Foundation or any of its advisory panels or committees, established by the Foundation;

Chairperson means the Board Member holding the position of chairperson of the Foundation;

Community Assets means public, private and community property including homes and infrastructure in proximity to the Port River and Barker Inlet Estuary shoreline;

Ecological Services means the benefits the community obtains from ecosystems as defined by the Millennium Ecosystem Assessment and include regulating services, supporting services, provisioning services and cultural services;

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*;

Estuarine Species means species associated, in the past or present, with the healthy ecological function and services of the Port River and Barker Inlet Estuary, including seagrasses, grey mangroves, fish, crustaceans, shellfish and molluscs, invertebrates, sea birds and shorebirds;

General Meeting means a general meeting of the Board Members convened in accordance with these Rules;

Marine Pests means introduced marine species and marine species of uncertain origin that pose a threat to the ecology of the Port River and Barker Inlet Estuary and are identified in the National System for the Prevention and Incursion of Marine Pest Incursions;

Powers means the powers of the Foundation as set out in clause 4.1;

Prescribed Association has the meaning given to it in the Act;

Regulations means the regulations to the Act;

Rules means the Rules of the Foundation as amended from time to time;

Special Resolution means a resolution of a General Meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and passed in accordance with the Act;

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State means the State of South Australia.

2.2 Interpretation

In these rules:

- (a) Neuter includes masculine and feminine;
- (b) Singular includes plural and vice versa;
- (c) Reference to a person includes a natural person, corporation and partnership, body corporate association, governmental or local authority or agency or other entity and vice versa;
- (d) Headings do not affect interpretation;
- (e) Reference to legislation includes the legislation as amended, any substituted legislation, any sub-ordinate legislation under that legislation and any orders or regulations under that legislation;
- (f) Another grammatical form of a defined word or expression has a corresponding meaning;
- (g) Reference to a clause or paragraph is to a clause or paragraph of this Constitution;
- (h) References to "including" means without limitation.

3. PURPOSES OR OBJECTS OF FOUNDATION

3.1. The purposes or objects of the Foundation

The purposes or objects of the Foundation are:

- (a) to conserve, protect, enhance and promote the ecology and ecological services of the Port River and Barker Inlet Estuary in South Australia;
- (b) to conserve, protect and restore the habitat of estuarine species of the Port River and Barker Inlet Estuary including terrestrial, intertidal and aquatic habitats;
- (c) to enhance the capacity of the Port River and Barker Inlet Estuary to undertake carbon sequestration and contribute to State, national and global carbon abatement;
- (d) to support, undertake, facilitate or monitor eco-engineering approaches to safeguard community assets, the habitat of estuarine species and the shoreline of the Port River and Barker Inlet from rising sea levels;
- (e) to collaborate with stakeholders connected to the Port River and Barker Inlet Estuary, including local residents, industry and corporations, Commonwealth and State Governments and local Councils, community organisations and like associations and organisations in pursuance of the objects and purposes of the Foundation;
- (f) to support the participation of schools, universities, education and training organisations in the conservation, protection and restoration of the Port River and Barker Inlet Estuary in South Australia;

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- (g) to support legislative protection by the State and Commonwealth Governments for the Port River and Barker Inlet dolphins, migratory shorebirds and EPBC Act protected flora and fauna;
- (h) to operate as a non-profit foundation and to raise funds and obtain donations, grants, bequests or material support for the benefit of the objects and purposes of the Foundation;
- (i) to foster and promote research into matters pertaining to the conservation, protection, restoration and carbon sequestration of the Port River and Barker Inlet Estuary in South Australia;
- (j) to provide information and education to the community and stakeholders into matters relating to the conservation, protection, restoration, carbon sequestration and abatement of the Port River and Barker Inlet Estuary in South Australia;
- (k) to sponsor awards, grants or prizes in any competition or other activity which is to promote the conservation, protection, restoration, carbon sequestration and abatement of the Port River and Barker Inlet Estuary in South Australia;
- (l) to support, undertake or facilitate eradication programmes for the removal of marine pests, feral fauna and flora or other threats to the Port River and Barker Inlet Estuary in South Australia;
- (m) to promote or to oppose in a non-party political manner legislative or other measures affecting the interests or objects of the Foundation;
- (n) to connect with organisations involved in estuarine habitat restoration and where appropriate support like projects in South Australia;
- (o) in furtherance of the purposes and objects of the Foundation to take such action as the Foundation may from time to time consider proper.

4. POWERS OF FOUNDATION

4.1. The powers of the Foundation

For the purposes of carrying out its purposes or objects, the Foundation may:

- (a) acquire, hold, deal with, lease and dispose of, any real or personal property; and
- (b) administer any property on trust; and
- (c) open and operate ADI accounts; and
- (d) invest its moneys—
 - (i) in any security in which trust moneys may, by Act of Parliament, be invested; or
 - (ii) in any other manner authorised by the rules of the Foundation; and
- (e) borrow money upon such terms and conditions as the Foundation thinks fit; and
- (f) give such security for the discharge of liabilities incurred by the Foundation as the Foundation thinks fit; and
- (g) appoint agents to transact any business of the Foundation on its behalf; and
- (h) enter into any other contract it considers necessary or desirable; and
- (i) seek or receive donations, grants, gifts and property of any kind; and

- (j) engage or dismiss any staff or worker for the Foundation upon such terms as the Foundation thinks fit; and
- (k) retain or engage skilled professional or technical advisers or other persons the Foundation desires to employ in connection with the object of the Foundation and to pay such fees or remuneration as may be thought expedient; and
- (l) carry on any business not inconsistent with the purposes and objects of the Foundation for the benefit of the Foundation and take or defend any legal proceedings; and
- (m) enter into contracts or arrangements with Ministers, Departments or units of the Commonwealth or State Governments or local Councils to provide goods or funds or other assistance or services which will be of benefit to the purposes or objects of the Foundation; and
- (n) prepare, edit, print or publish any periodicals, reports or other documents and film, televise or otherwise record, issue, acquire or circulate books, papers, periodicals, gazettes, circulars and other educational or literary undertakings or films or records in whatsoever media treating on or bearing upon any research undertaken or made known in connection with the activities of the Foundation; and
- (o) provide education and disseminate literature relating to the Foundation and its purposes and found, aid, maintain and endow fellowships, scholarships and bursaries for the remuneration and support of under-graduates or graduates or others in research work or persons engaged in studying principles involved in any of the purposes and objects of the Foundation whether on its own account or as administrator of a trust fund for those purposes; and
- (p) impose any charges or fees appropriate for services and publications provided by the Foundation; and
- (q) make and enforce by-laws, regulations or policies for the control and management of the Foundation; and
- (r) affiliate with or join with any entity or other persons whose purposes or objects are the same as or similar to the purposes and objects of the Foundation or where such affiliation or joinder would further any purpose of the Foundation; and
- (s) contribute to any body or support any body with purposes or objects consistent with the purposes or objects of the Foundation; and
- (t) make awards or give other acknowledgement to persons or organisations who have provided exceptional service or benefits or assistance to the Foundation itself or to causes or organisations which would assist the purposes or objects of the Foundation; and
- (u) do all such other acts or things to further the purposes or objects of the Foundation as the Foundation members in general meeting or the Board thinks fit as appear to be necessary, incidental or conducive to the attainment of the purposes or objects of the Foundation; and
- (v) take such steps beyond the borders of South Australia as may be necessary to promote the purposes or objects of the Foundation.

5. THE BOARD

5.1 The Board of the Foundation alone manages and controls the affairs of the Foundation including:

- (a) exercise of any Powers or authorities conferred by these rules;

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(b) doing all things within and to pursue the purposes or objects,

that are not by the Act or these rules required to be done by the Foundation in a General Meeting.

- 5.2 The Board may appoint officers (including the Public Officer within the meaning of section 56 of the Act) and employees of the Foundation.
- 5.3 The Board may delegate any of its powers to its officers and employees.
- 5.4 The Board comprises a minimum of 4 persons and a maximum of 9 persons comprising
- (a) a Chairperson;
 - (b) a Deputy Chairperson;
 - (c) a Secretary;
 - (d) a Treasurer;
 - (e) 5 general Board members
- 5.5 The first Board is as set out in the Schedule and holds office until the first annual General Meeting, and all members are eligible for re-election after the first annual General Meeting.
- 5.6 Board members will be selected for their expertise in ecology and/or environmental management and/or local environment and community and/or strategic planning and/or finance and/or communications and/or volunteer management, and/or expertise, training or experience relevant to the objects and purposes of the Foundation.
- 5.7 Board members will be elected at the annual General meeting for two year terms.
- 5.8 Board members are eligible to serve on the Board for no more than four terms before resigning from the Board.
- 5.9 The Board may appoint a natural person to fill a casual vacancy. That person must retire at the next annual General Meeting, though will be eligible for re-election.
- 5.10 The Board will determine the means for recruiting additional Board members and will seek to ensure that the recruitment process secures the skills required in clause 5.6.
- 5.11 The notice to Board Members, calling the meeting at which the election will take place, must be accompanied by a list of all candidates seeking election to the Board.
- 5.12 The election of Board Members occurs by Special Resolution.

6. REMOVAL OF BOARD MEMBERS


- 6.1 In addition to the circumstances in which the Board Member is disqualified by the Act or other provisions of these Rules, the Board Member ceases to hold office if the Board Member:
- (a) becomes mentally incapable or the Board Member's estate is liable to be dealt with in any way under the law relating to mental health;

- (b) is permanently incapacitated by ill health;
- (c) dies;
- (d) is convicted of a criminal offence incompatible with being a Board member;
- (e) behaves in a way that is incompatible with being a Board member;
- (f) is disqualified under the *Australia Charities and Not-for-Profits Commission Act 2012* (Cth) or similar legislation;
- (g) the Board Member is absent without apology and cause for more than 3 consecutive Board meetings or for more than 3 Board meetings in a financial year and the Board determines that the person is no longer an active member of the Board; or
- (h) the Board Member resigns by giving written notice to the Foundation.

6.2 Prior to a member being excluded in relation to clause 6.1(e) notice will be given to the member and mediation encouraged prior to a Board decision.

7. PROCEDURES OF BOARD

- 7.1 The Board must meet to dispatch business at least bimonthly in person or via electronic means. Participation by electronic means shall occur in accordance with Board policy, as determined by the Board.
- 7.2 The Chairperson (or in his or her absence, the Deputy Chairperson) chairs all Board meetings.
- 7.3 A quorum of the Board is 1 person more than half the Board Members.
- 7.4 A quorum of the Board must be present at all times when business is transacted.
- 7.6 Each Board Member has 1 vote.
- 7.7 The Chairperson also has a casting vote.
- 7.8 A resolution of the Board is carried by a majority of votes.
- 7.9 Any Board Member shall be entitled to appoint in writing, a person who is also a Board Member, to be such Member's proxy, and to attend and vote at (in accordance with the appointer's voting rights) any meeting of the Foundation.
- 7.10 Subject to sections 31 and 32 of the Act, a Board Member who has any direct or indirect pecuniary interest in a contract, or proposed contract, with the Foundation:
 - (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of his or her interest to the Board; and
 - (b) must disclose the nature and extent of his or her interest in the contract at the next annual general meeting;
 - (c) must not take part in any decision of the Board with respect to that contract (but may, subject to complying with this clause, take part in any deliberations with respect to that contract).


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8. OTHER ADVISORY PANELS OR COMMITTEES AND BY-LAWS

- 8.1 The Board may, in pursuance of purposes or objects of the Foundation, establish advisory panels or project based Committees, and any such panel or committee shall report to the Board.
- 8.2 The Board may at any time by Special Resolution make, alter and repeal By-laws consistent with the Act and these Rules, for any matter that is:
- (a) the subject of these Rules; or
 - (b) necessary, convenient or desirable in relation to the conduct of the business and affairs of the Foundation, the Board or any of the Board's advisory panels or Committees.
- 8.3 The Board may determine such By-laws as it sees fit for the activities and proceedings of any advisory panel or Committee.
- 8.4 An advisory panel or Committee to which any powers have been so delegated must exercise the powers delegated in accordance with the directions of the Board. A power so exercised is taken to be exercised by the Board.

9. INDEMNITY

Every Board Member and other properly appointed employee, contractor, agent or officer of the Foundation is entitled to be indemnified out of the assets of the Foundation against all losses or liability which may be suffered or incurred in or about the execution of the duties of office.

10. GENERAL MEETINGS

10.1 The Board:

- (a) must hold an annual General Meeting each year, at which the following business will be transacted:
 - (i) Board Members are elected in accordance with clause 5.12;
 - (ii) profit and loss accounts, balance sheets, any reports of the auditor and any other financial reports are received and considered; and
 - (iii) an auditor is appointed (if required).
- (b) must hold the first annual General Meeting within 18 months after incorporation;
- (c) must hold each subsequent annual General Meeting within 5 months after the end of the Foundation's financial year;

10.2 The Board

- (a) may hold a special General Meeting at any time;
- (b) must hold a special General Meeting within 1 month after receiving a written requisition by 1 person more than half the Board Members. That requisition must:
 - (i) be signed by the requisitionists; and

- (ii) state the purpose of the meeting.
- 10.3 A special General Meeting is to be held for the purposes of considering Special Resolutions.
- 10.4 The Board must give each Board Member written notice of a General Meeting:
- (a) specifying the place, day and time of the meeting;
 - (b) specifying the general nature of any business;
 - (c) specifying any proposed Special Resolution;
 - (d) if a Special Resolution will be proposed, at least 21 days before the meeting;
 - (e) if an annual General Meeting, at least 14 days before the meeting.
- 10.5 Notice may be given to a Board Member:
- (a) personally;
 - (b) by ordinary pre-paid post to the last known address of the Board Member;
 - (c) by email to the last known email address of the Board Member; or
 - (d) as permitted by statute.

11 MINUTES

- 11.1 The Foundation must:
- (a) cause minutes of all proceedings of General Meetings and Board Meetings to be entered in books kept for that purpose;
 - (b) cause those minutes to be:
 - (i) confirmed by the Board Members present at the next meeting;
 - (ii) signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the meeting at which the minutes are confirmed.
- 11.2 A minute that is entered, confirmed and signed in accordance with this clause is, in the absence of proof to the contrary, proof of the proceedings to which the minute relates.
- 11.3 Where minutes have been entered, confirmed and signed in accordance with this clause, it is to be taken, in the absence of proof to the contrary, that:
- (a) the meeting to which the minutes relate was held;
 - (b) the proceedings recorded in the minutes occurred; and
 - (c) all appointments of officers or auditors recorded in the minutes were validly made.

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12 FINANCIAL YEAR

- 12.1 The first financial year of the Foundation commences on incorporation and ends on the next 30 June.
- 12.2 Each subsequent financial year of the Foundation commences on 1 July and ends on the next 30 June.

13 ACCOUNTS

- 13.1 The Foundation must keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Foundation in accordance with the Act.
- 13.2 If the Foundation is classified as a Prescribed Foundation, the Board must appoint an auditor to undertake an annual audit of the books and accounts of the Foundation.
- 13.3 The accounts of the Foundation, together with any auditor's report, the Board's statement and the Board's report, must be laid before the Board Members at the Annual General Meeting.
- 13.4 The annual return, accompanied by a copy of the accounts, any auditor's report, the Board's statement and the Board's report, must be lodged with the appropriate government body if required by the Act.

14 ALTERATION OF RULES

- 14.1 The Rules may be altered by Special Resolution of the Board Members.
- 14.2 Upon registration in accordance with section 24 of the Act, the Rules bind the Foundation and each Board Member.

15 COMMON SEAL

- 15.1 The Foundation must have a common seal upon which its name appears in legible characters.
- 15.2 The common seal may be used only with the express authority of the Board.
- 15.3 The affixing of the seal must be:
- (a) witnessed by any 2 Board Members; and
 - (b) recorded in the minute book of the Foundation.
- 15.4 The seal must be kept in the custody of the Secretary or any other person the Board thinks fit.

16. NOT-FOR-PROFIT

- 16.1 **No distributions of income**
The Foundation is a not-for-profit Foundation, as such, Board Members will not be entitled to receive any dividends or other distributions.

16.2 Licence to raise funds

The Foundation will obtain and comply with any applicable legislation that requires it to have a licence or registration to raise funds or collect money.

17. PUBLIC FUND

- 17.1 The Board may determine that the Foundation will maintain a public fund or public funds to solicit and receive gifts towards the carrying out of the whole or any part of the Objects of the Foundation.
- 17.2 The Board may appoint another Board to manage and administer any such public fund/s or may undertake that task itself.
- 17.3 The majority of persons responsible for the management and administration of any such public fund/s must have a degree of responsibility to the general community by reason of their occupation or standing in the community. The Board and any relevant Board must ensure that the public fund/s complies with all relevant taxation laws applicable to the administration of that fund.
- 17.4 If the Foundation maintains a public fund/s the general public will be invited to make gifts to the Foundation for the purpose of carrying out the objects or purposes of the public fund.
- 17.5 If the Foundation maintains a public fund/s, it must establish an appropriate bank account to hold all gifts received by the Foundation. This account must contain only money or property which is a gift to the Foundation or which is received because of such gifts, including, without limitation, interest received on any monies in the account.
- 17.6 Any receipt given by the Foundation for a gift must be issued in the name of the Foundation, clearly state that the receipt is for a gift and state the Australian Business Number of the Foundation.

18. WINDING UP

- 18.1 The Foundation may be wound up:
- (a) in accordance with section 41 of the Act; or
 - (b) by Special Resolution.
- 18.2 Subject to section 21 of the Act, a Board Member is not liable to contribute towards the payment of the debts and liabilities of the Foundation or the costs, charges and expenses of a winding up of the Foundation.
- 18.3 On a winding up, any surplus assets (within the meaning of section 43(5) of the Act) must be distributed to another non-profit organisation with similar and compatible purposes or objects of the Foundation as decided by:
- (a) the Board on or before the winding up; or
 - (b) if the Board does not make that decision, by any Court with jurisdiction.

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