



**Notice of Annual General Meeting  
and  
Explanatory Memorandum**

**Mackay Sugar Limited    ACN 057 463 671**

# Notice of Annual General Meeting

Mackay Sugar Limited ACN 057 463 671

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

<b>Location</b>	Mackay Entertainment Centre, Gordon Street, Mackay
<b>Date</b>	Thursday 28 October 2010
<b>Time</b>	9.00 a.m. (AEST)

## Ordinary business

1. To confirm the minutes of the last Annual General Meeting of 9 December 2009, and the minutes of the Information Meeting held 19 November 2009.
2. To receive and consider the Financial Statements, the reports of the Directors' and Auditors' for the financial year ended 31 May 2010.
3. To elect two Directors.

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

- (i) That Andrew Shane Cappello, 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.
- (ii) That Rex Corrado Stroppiana, 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.
4. To fix the remuneration of Directors in accordance with Clause 16.5 of the Constitution.
5. 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 2010).

## 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.’*

### **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 22 October 2010.

### **Restrictions on Voting**

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

Dated: 29 September 2010

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

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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 Thursday 28 October 2010 at 9.00 a.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 3 contains a reference table to explain all changes proposed by Resolution 1.
- 4 The Board supports 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 3 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.
- 13 A copy of the Amended Constitution (as if the amendments were made by Resolutions 1 and 2 had been passed) is also **attached** for the assistance of shareholders.

# Definitions

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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:

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

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## **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 14.2(a) (to be renumbered rule 13.2(a)) be amended to reduce the quorum at a general meeting to 50 Voting Shareholders by replacing the number '200' with the number '50'.
- 16 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.
- 17 That the definition of '*Initial Directors*' be deleted from rule 3.2.
- 18 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*'.
- 19 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).
- 14 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).
- 15 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.

21 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

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## 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.'*

3 That a new rule 5.3(c) (newly renumbered as a result of the changes made in Schedule 1) be inserted as follows and that the existing 5.3(c) to (j) be renumbered accordingly:

*'(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.'*

4 That rule 5.3(i) (newly renumbered as a result of the changes made in Schedule 1 and Part 3 of Schedule 2) be amended by inserting a new rule 5.3(j)(ii) as follows, and that the existing 5.3(j)(ii) be renumbered accordingly:

*'(ii) for the purpose of rule 5.3(c), which are in excess of 5% of the total number of Investment Shares on issue in the Company; or'*

## Schedule 3

Table of amendments proposed to the Current Constitution

Current Constitution	Amended Constitution	Comment
<p>There are a number of small typographical errors in regard to the definitions 'Voting Share' and 'Voting Shareholder' within the Current Constitution.</p>	<p>The letter 's' at the beginning of the word 'Share' within the terms 'Voting Share' and 'Voting Shareholder' have been capitalised in accordance with the definition contained in rule 3.2.</p>	<p>These amendments have been made to correct the typographical errors and make the definitions consistently used throughout the Amended Constitution.</p>
<p>Rule 4.1 provides that the shares on issue are 'Grower Shares' and 'Former Grower Shares'.</p>	<p>Rules 4.1 and 4.2 of the Current Constitution have been deleted from the Amended Constitution. Rule 4.1 of the Amended Constitution sets out the rights attaching to Voting Shares.</p>	<p>Rules 4.1 and 4.2 have been updated because the provisions of the Current Constitution are now redundant. Grower Shares and Former Grower Shares have become Investment Shares. The types of Mackay Sugar shares on issue include Voting Shares, Investment Shares and B Class Investment Shares.</p>
<p>Rule 4.2 outlines the Company's initial share capital upon registration as a company.</p>	<p>Rule 4.2 of the Amended Constitution sets out the rights attaching to Investment Shares. Rule 4.2(b) of the Amended Constitution states that upon the allotment of shares relating to a Fundraising Event, the rights attaching to Investment Shares will not be altered. Rule 4.2(b) is implied in the Current Constitution but not expressly stated.</p>	<p>The rights attaching to Investment Shares are the same in both the Existing and Amended Constitutions.</p>
<p>Rule 3.2 of the Current Constitution provides that 'Investment Shares' means the shares which will be issued by the Company to both Growers and Former Growers to reflect their Ten Year Production History.</p>	<p>Rule 3.2 of the Amended Constitution provides that 'Investment Shares' means the shares issued in the capital of the Company which entitle the holders to the rights set out in rule 4.2.</p>	<p>The rights attaching to Investment Shares have not changed. To make the Amended Constitution more reader friendly, the rights are set out in rule 4.2.</p>

<b>Current Constitution</b>	<b>Amended Constitution</b>	<b>Comment</b>
Rule 4.3 provides that upon the allotment of shares relating to a Fundraising Event, the voting rights attaching to the Voting Shares will be altered and will have the rights attaching to them as set out in Schedule 5.	Rule 4.3 provides that upon a Fundraising Event, the voting rights attaching to the Voting Shares will be altered and will have the rights attaching to them as set out in rule 4.3(b).	The rights attaching to Voting Shares have not changed. To make the Amended Constitution more reader friendly, the rights are set out in rule 4.2(b) rather than Schedule 5.
<p>The rules regarding to the rights attaching to Grower Shares and Former Grower Shares are set out in rule 5 of the Current Constitution which is entitled 'Share Rights'.</p> <p>Rule 5 provides that the rights of Grower Shares and Former Grower Shares automatically convert in accordance with Schedules 1 to 5 upon the happening of certain events.</p>	<p>The rules regarding to the rights attaching to Voting Shares and Investment Shares are contained within rule 4 of the Amended Constitution. This means that the rights are now in the same section as the other rights attaching to shares in the Company.</p> <p>The rights of the Voting Shares and Investment Shares have not changed, they have just been moved. Accordingly, rule 5 has been deleted in its entirety.</p>	<p>Rule 5 of the Current Constitution has been deleted in its entirety because Grower Shares and Former Grower Shares have been converted to Investment Shares.</p> <p>Moving the rights of Voting Shares and Investment Shares from the schedules to rule 4 of the Amended Constitution means that both rule 5 and schedules 1 to 5 may be deleted. This makes the Amended Constitution more succinct and reader friendly.</p>
Rule 6.1(a) provides that 'upon registration of the Company and completion of the steps in rule 5.1, Voting Shares will be held only by Growers on the basis of one Voting Share per Grower.'	The words 'upon registration of the Company and completion of the steps in rule 5.1,' have been deleted from rule 5.1 of the Amended Constitution.	<p>The words 'upon registration of the Company and completion of the steps in rule 5.1' have been deleted because these steps have already occurred.</p> <p>The rights currently attaching to Voting Shares and Investment Shares are as set out in schedule 4 of the Current Constitution and rule 4 of the Amended Constitution.</p>
Rule 6.2(a) provides that 'upon registration of the Company and completion of the steps in rule 5.1, Investment Shares will be held by Growers and Former Growers to reflect the Ten Year Production History of those Growers and Former Growers.'	<p>Rule 5.2(a) of the Amended Constitution provides that Investment Shares may be held by a number of investors associated with the Company including, but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Growers;</li> <li>(b) a person who is collectively with another or others, a Grower;</li> <li>(c) a shareholder of a corporation which</li> </ul>	<p>The ability for a variety of investors associated with the Company to be able to invest in Investment Shares increases the amount of money able to be invested in the Company. For example, if the Company undertakes a capital raising (such as a rights issue) it is possible that more money may be raised from a larger number of people.</p> <p>The Company also welcomes the idea of Employees investing in the long term future of the Company.</p> <p>The addition of 'Employee' will be subject to the</p>

Current Constitution	Amended Constitution	Comment
	<p>is a Grower;</p> <p>(d) a shareholder of a corporation which collectively with another or others is a Grower;</p> <p>(e) a primary or default beneficiary of any discretionary trust which is a Grower;</p> <p>(f) a primary or default beneficiary of any discretionary trust which collectively with another or others is a Grower;</p> <p>(g) a unitholder of any unit trust which is a Grower;</p> <p>(h) a unitholder of any unit trust which collectively with another or others is a Grower;</p> <p>(i) a Self Managed Superannuation Fund of which a Permitted Shareholder is a member, so far as it is permitted by law; and</p> <p>(j) an Employee.</p> <p>The investors listed above are defined as 'Permitted Shareholders' in the Amended Constitution.</p>	<p>passing of Resolutions 1 and 2.</p>
<p>Rule 6.2(b) provides that shareholders may only transfer their Investment Shares to:</p> <p>(a) Growers; or</p> <p>(b) Former Growers.</p>	<p>Rule 5.2(b) of the Amended Constitution provides that Investment Shares may be transferred from one Permitted Shareholder to another.</p>	<p>This means that Investment Shareholders will have a greater diversity of people to whom they may sell or buy Investment Shares.</p>

<b>Current Constitution</b>	<b>Amended Constitution</b>	<b>Comment</b>
Rule 6.2(c) provides that if a Former Grower disposes of all of his, her or its Investment Shares held in the Company, the Former Grower is unable to acquire further Investment Shares in the Company unless the Former Grower again becomes a Grower.	Rule 5.2(c) provides that 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.	The rule in the Amended Constitution has a similar effect to the rule in the Current Constitution. For a person or entity to be able to acquire Investment Shares, they must be a Permitted Shareholder and not a <i>former</i> Permitted Shareholder.
Rule 6.3(c) provides that a person has a prohibited shareholding interest if they are not a: (a) Grower; or (b) Former Grower.	Rule 5.3(c) provides that a person has a prohibited shareholding interest if they are not a Permitted Shareholder.	The rule in the Amended Constitution has a similar effect to the rule in the Current Constitution. If a person is not a Permitted Shareholder, then their shareholding in the Company is prohibited.
Rule 12.6 provides that shares can only be transferred to a Grower or a Former Grower.	Rule 11.6 provides that shares can only be transferred to Permitted Shareholders.	This allows shares to be transferred amongst Permitted Shareholders.
Under the Current Constitution, the quorum for a general meeting of the Company is 200 Voting Shareholders.	Under rule 13.2 of the Amended Constitution, the quorum is reduced from 200 Voting Shareholder to 50 Voting Shareholders.	The reduced quorum means that it will be much easier for the Company to convene a general meeting.
Rule 16.1 provides for the appointment and gradual reduction of Initial Grower Directors from seven to five after the registration of the Company.	Rule 15 of the Amended Constitution does not provide for the appointment or reduction of the Initial Grower Directors. Accordingly, any reference to rule 16.1 of the Current Constitution has been deleted.	Under the Amended Constitution, it is unnecessary to provide for the reduction of Initial Directors from seven to five because the number of Initial Grower Directors has already been reduced.  The rules governing directors are now in accordance with the usual practice among Australian public companies.

<b>Current Constitution</b>	<b>Amended Constitution</b>	<b>Comment</b>
<p>Rule 19.2 provides that the Grower Directors to retire in accordance with rule 19.1 are the Grower Directors or Grower Directors longest in office since last being elected.</p> <p>In the event that there are two Grower Directors elected or appointed on the same day, their service as directors of the Company are to be taken into account.</p>	<p>Rule 18.2 of the Amended Constitution states that if Grower Directors appointed or elected on the same day cannot agree upon which Grower Director will retire in accordance with rule 18.1, then the decision will be determined by ballot.</p> <p>Further, the words 'subject to rule 15.1' have been deleted from the Amended Constitution.</p>	<p>The ability for a decision to be determined by ballot has been included in the Amended Constitution to provide a solution in the event that Grower Directors appointed or elected on the same day cannot agree upon which Grower Director will retire.</p> <p>The words 'subject to rule 15.1' have been deleted because that rule ('Initial Board of Directors') has been deleted.</p>
<p>Five directors form a quorum under rule 21.1(b).</p>	<p>Four directors form a quorum under rule 20.1(b).</p>	<p>As the number of directors has been reduced from nine to seven, it is proposed that the quorum be lowered from five to four. This still means that more than 50% of the directors must be present to form the quorum.</p>
<p>Rule 28.1 provides that the Board may from time to time determine that a dividend is payable to Mackay Sugar's shareholders.</p> <p>Further, the dividend is payable on all shares in proportion to the amount of total issue price for the time being paid or credited as paid in respect of the shares.</p>	<p>Rule 27.1(a) allows the Directors to pay any:</p> <ul style="list-style-type: none"> <li>(a) interim and final dividend that, in their judgement, is justified by Mackay Sugar's financial position; and</li> <li>(b) dividend required to be paid under the terms of issue of a share.</li> </ul> <p>Rule 27.1(a) also allows the Directors to rescind their decision to pay the dividend if the Mackay Sugar's financial position no longer justifies the payment.</p> <p>Rule 27.1(b) provides that the dividend is payable on all shares in proportion to the amount of total issue price for the time being paid or credited as paid in respect of the shares.</p>	<p>New dividend rules came into effect from Monday, 28 June 2010. Under the new section 254T, the 'profits' test has been replaced by a three pronged test. Accordingly, Mackay Sugar must not pay a dividend unless:</p> <ul style="list-style-type: none"> <li>(a) its assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend;</li> <li>(b) the payment of the dividend is fair and reasonable to Mackay Sugar's shareholders as a whole; and</li> <li>(c) the payment of the dividend does not materially prejudice Mackay Sugar's ability to pay its creditors.</li> </ul> <p>There has been no change in regard to the apportionment of dividends.</p>



<b>Current Constitution</b>	<b>Amended Constitution</b>	<b>Comment</b>
Rule 28.3 allows the Board to, from time to time, pay shareholders any interim dividend it sees fit having regard to the financial position of the Company.	This rule has been deleted from the Amended Constitution as the ability for the Directors to pay interim dividends has been included in rule 27.1.	Rule 27.1 gives the Directors the ability to pay interim and final dividends.
Rule 28.4 provides that no dividend is payable except out of profits of the Company.	This rule has been deleted from the Amended Constitution.	As mentioned above, the 'profits' test previously contained in section 254T Corporations Act has been deleted and replaced by a three pronged test based on net assets, fairness and solvency.
The Current Constitution provides that the rights of Grower Shares and Former Grower Shares automatically convert in accordance with schedules 1 to 5 upon the happening of certain events.	The Amended Constitution does not contain any schedules. Rather, the rights attaching to Voting Shares and Investment Shares are set out in rules 4.1 and 4.2 respectively.	The Amended Constitution recognises that the events anticipated in schedules 1 to 4 have already occurred and are therefore redundant. As a consequence, the rights previously contained within schedule 5 of the Current Constitution have been moved to rule 4.1 of the Amended Constitution.  Containing the rights of Voting Shares and Investment Shares in rule 4 means that schedules 1 to 5 may be deleted. This makes the Amended Constitution more succinct and reader friendly.
Rule 3.2 includes the following definitions: (a) 'Conversion Proposal'; (b) 'Cooperatives Act'; (c) 'Diversification Initiative'; (d) 'Former Grower'; (e) 'Former Grower Share'; (f) 'Grower Share'; (g) 'Initial Directors'; and (h) 'Ten Year Production History'.	These definitions are not included in rule 3.2 of the Amended Constitution.	It is unnecessary to include these definitions in the Amended Constitution as these words will not be used if the Resolutions are passed.

Current Constitution	Amended Constitution	Comment
Rule 3.2 does not contain a definition for 'Employee'.	Rule 3.2 defines an 'Employee' of the Company as a person who: (a) is a full time employee of the Company of 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.	A definition for the word 'Employee' is required because if Resolution 2 is passed, an Employee is permitted to hold Investment Shares in accordance with rule 5.2.
Rule 3.2 does not contain a definition for 'Permitted Shareholder'.	A 'Permitted Shareholder' is a person who is entitled to hold Investment Shares in accordance with rule 5.2(a) of the Amended Constitution.	The definition of 'Permitted Shareholder' is required to expand the category of people entitled to hold Investment Shares in accordance with rule 5.2.
Rule 3.2 does not contain a definition for 'Self Managed Superannuation Fund'.	Rule 3.2 provides that the term 'Self Managed Superannuation Fund' has the meaning given to that term in the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).	A definition for the term 'Self Managed Superannuation Fund' is required because in the Amended Constitution, a Self Managed Superannuation Fund is permitted to hold Investment Shares.

# Annexure

Amended Constitution

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## Proxy form

### Section 1: Name and address of member

Full name \_\_\_\_\_

Address \_\_\_\_\_

### Section 2: Appointment of proxy

I, being a member of the Company and entitled to attend and vote appoint

the Chairman of the meeting  
(mark with an 'X')

**OR**

Write here the full name of the person or body corporate you are appointing if this person is **someone other than** the Chairman of the meeting.

or failing the person or body corporate named, or if no person or body corporate is named, the Chairman of the meeting, as my proxy to attend, to vote in accordance with the following directions (or if no directions have been given, as the proxy sees fit), and to act generally on my behalf, at the general meeting of the Company to be held at:

<b>Location</b>	Mackay Entertainment Centre, Gordon Street, Mackay
<b>Date</b>	Thursday 28 October 2010
<b>Time</b>	9.00 a.m. (Brisbane time)

and at any adjournment of that meeting.

### Section 3: Voting instructions

Voting directions to proxy – please mark  to indicate your directions.

**Resolution 1. Amendments to the Company's constitution.**

**For**

**Against**

**Proxy's Discretion**

**Resolution 2. Additional amendments to the Company's constitution.**

**If you do not wish to direct the Chairman as your proxy to vote, please place a mark in this box.**

The Chairman intends to vote all undirected proxies in favour of the resolutions being passed.

### Section 4: Signing by member

This section **must** be signed in accordance with the instructions overleaf to enable your directions to be implemented.

**Individual or Member 1**

**Member 2 (if joint holding)**

**Member 3 (if joint holding)**

**Member 4 (if joint holding)**

**Member 5 (if joint holding)**

**Member 6 (if joint holding)**

\_\_\_\_\_  
**Sole Director and Sole Secretary**

\_\_\_\_\_  
**Director/Company Secretary**

\_\_\_\_\_  
**Director**

Please provide the information below in case we need to contact you.

\_\_\_\_\_  
**Contact name**

\_\_\_\_\_  
**Contact day time telephone**

\_\_\_\_\_  
**Date**

# Instructions for completion of proxy form

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## Section 1: Name and address of member

- 1 Insert your name and address. If it is a joint holding, insert details of all holders.

## Section 2: Appointment of proxy

- 2 If you wish to appoint the Chairman of the meeting as your proxy, mark the box. If the person or body corporate you wish to appoint as your proxy is someone other than the Chairman of the meeting, write the full name of that person or body corporate in the space provided. A proxy may be an individual or a body corporate. If you leave this section blank or your named proxy does not attend the Meeting, the Chairman of the meeting will be your proxy. A proxy need not be a member of the Company.
- 3 If you are entitled to cast two or more votes at the general meeting, you are entitled to appoint two persons as proxies to attend the meeting and vote on a poll. If you wish to appoint a second proxy, an additional proxy form may be obtained by telephoning the Company. Alternatively you may copy this form.
- 4 To appoint a second proxy:
  - (a) on each of the first proxy form and second proxy form state the percentage of your voting rights or number of shares applicable to that form (if the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise one half of your votes, and fractions of votes will be disregarded); and
  - (b) return both forms in the same envelope.

## Section 3: Voting instructions

- 5 You may direct your proxy how to vote on an item of business by placing a mark in one of the three boxes opposite that item of business. All of your shares will be voted in accordance with your direction unless you indicate a proportion of voting rights on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on a given item, your proxy may decide whether or how to vote on that item. If you mark more than one box on an item, your vote on that item will be invalid.

## Section 4: Signing by member

- 6 You must sign this form as follows in the spaces provided:

<b>Individual</b>	Where the holding is in one name, the member must sign.
<b>Joint holding</b>	Where the holding is in more than one name, all of the members must sign.
<b>Power of Attorney</b>	To sign under power of attorney, either the power of attorney must have already been lodged with the Company's share registry for notation or the original (or a certified copy) of the power of attorney must accompany this document.
<b>Companies</b>	In the following cases, subject to the Company's constitution, the following person must sign: <ol style="list-style-type: none"><li>(a) Australian proprietary company with a sole director who is also the sole company secretary - that person must sign;</li><li>(b) Australian proprietary company with a sole director and no company secretary - that person must sign;</li><li>(c) other Australian companies - two directors, or one director and one company secretary must sign; and</li><li>(d) foreign company - in accordance with the laws of the jurisdiction of</li></ol>

	incorporation and constituent documents.
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**Section 5: Lodging of proxy**

7 This proxy form (and the original or a certified copy of any power of attorney under which it is signed) must be received by the Company not later than close of business on the date set out below, by mail, hand delivery, or facsimile.

<b>Last time and date for lodgement*</b>	9.00 a.m. Brisbane time on Tuesday 26 October 2010
<b>By mail</b>	PO Box 5720, Mackay Mail Centre, Mackay, Queensland 4741
<b>By delivery</b>	26277 Peak Downs Highway, Mackay, Queensland 4740
<b>By facsimile</b>	(07) 4953 8340          Attention: Donna Rasmussen

\* Any proxy form received after that time will not be valid.