



NHULUNBUY TOWN BOARD INCORPORATED

CONSTITUTION

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NHULUNBUY TOWN BOARD INCORPORATED

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NHULUNBUY TOWN BOARD INCORPORATED

CONSTITUTION

PART 1 - PRELIMINARY

1 NAME

The name of the incorporated association is Nhulunbuy Town Board Incorporated (**Board**).

2 OBJECTS AND PURPOSES

The object and purpose of the Board is to meet together to discuss and advise on the community welfare of the residents of the Town, the management, operation and beautification of these areas and the facilities of the Town which are used or enjoyed in common by the Town's residents.

3 DEFINITIONS

In this Constitution, unless the contrary intention appears:

Act means the *Associations Act* (NT) and regulations made under that Act.

Rio Tinto Alcan Gove means Alcan Gove Pty Limited ABN 76 000 453 663.

Elected Members means the members of the Board elected by an Election, and for the avoidance of doubt, excludes the Chairperson, the Secretary and the members appointed under clauses 15.1(b) and 15.1(c).

Election means an election of the Elected Members as further defined in clause 17;

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Elector means a person who is:

- (a) over 18 years of age
- (b) a Resident, and
- (c) enrolled as an elector for an election of a member of the House of Representatives for the Northern Territory.

Enrolment Day means in relation to any Election, a day prior to that Election but for the avoidance of doubt, cannot be before the day of the announcement of that Election.

member means a member of the Board.

NCL means Nhulunbuy Corporation Limited ACN 009 596 598.

register of members means the register of members established and maintained under section 34 of the Act.

Resident means a person:

- (a) who usually resides in the Town, and
- (b) whose principal place of abode is in the Town.

special resolution means a resolution notice of which is given under clause 38 and passed in accordance with section 37 of the Act.

Town means the township known as Nhulunbuy and includes Nhulunbuy South, Nhulunbuy West, Contractors Village and the Industrial Estate and any other areas so resolved by the Committee to be included in this definition.

Chief Executive Officer means the person currently employed by the NCL, bearing the title 'Chief Executive Officer' and any other person acting in the role of the 'Chief Executive Officer' and bearing the title 'Acting Chief Executive Officer'.

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PART 2 – CONSTITUTION AND POWERS OF BOARD

4 POWERS OF BOARD

- 4.1 With the exception of section 11(b), the Board has the powers conferred by section 11 of the Act for achieving its objects and purposes.
- 4.2 Subject to the Act, the Board may do all things necessary or convenient for carrying out its objects or purposes, and in particular, may –
- (a) appoint agents to transact business on its behalf
 - (b) enter into any contract it considers necessary or desirable, and
 - (c) make and amend by-laws, not inconsistent with this Constitution and the Act.
- 4.3 The Board is expressly prohibited from levying, dealing with or handling any monies securities or assets of the Board or NCL.

5 EFFECT OF CONSTITUTION

This Constitution binds every member to the same extent as if every member had signed and sealed this Constitution and agreed to be bound by it.

6 INCONSISTENCY BETWEEN CONSTITUTION AND ACT

Subject to any exemption by the Commissioner of Consumer Affairs pursuant to section 5 of the Act, if there is any inconsistency between this Constitution and the Act, the Act prevails.

7 ALTERING THE CONSTITUTION

- 7.1 The Board may alter this Constitution by special resolution but not otherwise.
- 7.2 If the Constitution is altered, the public officer must ensure compliance with section 23 of the Act.

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8 BY-LAWS

- 8.1 The Board may by resolution, make or amend any by-laws pertaining to the good governance of the Board.
- 8.2 The by-laws shall be deemed to take effect from the date of passing of the resolution described at 8.1, or otherwise as determined by the Board.

PART 3 – MEMBERS

Division 1 – Membership

9 MEMBERSHIP

- 9.1 A member of the Board must be an Elector at all times that the person is a member of the Board.
- 9.2 A right of membership of the Board is not capable of being transferred or transmitted to another person.

10 ACCESS TO INFORMATION ON BOARD

The following must be available for inspection by members:

- (a) a copy of this Constitution, and
- (b) minutes of general meetings.

11 RAISING GRIEVANCES AND COMPLAINTS

- 11.1 A member may raise a grievance or complaint about another member of the Board or the Board as a whole.
- 11.2 The grievance or complaint must be dealt with by the procedures set out in Part 8.

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Division 2 – Termination, death, suspension and expulsion

12 TERMINATION OF MEMBERSHIP

Membership of the Board may be terminated by –

- (a) ceasing to be a Resident, or
- (b) removal under clause 24.

13 DEATH OF MEMBER OR WHEREABOUTS UNKNOWN

If a member dies or the whereabouts of a member are unknown, the Board must cancel the member's membership.

PART 4 – BOARD

Division 1 – General

14 ROLE AND POWERS

- 14.1 The Board may exercise all the powers of the Board permitted by the Act or this Constitution.
- 14.2 The Board may establish one or more subcommittees consisting of the members of the Board as it considers appropriate.
- 14.3 The Board shall review the monthly report provided by NCL and provide advice to NCL in relation to:
 - (a) NCL's activities during the preceding month, and
 - (b) any other matters it considers necessary or advisable.

15 COMPOSITION OF BOARD

- 15.1 The Board consists of:
 - (a) the Chief Executive Officer who will be the Chairperson;

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- (b) a person nominated by Rio Tinto Alcan Gove or appointed proxy;
 - (c) a person nominated by the Secretary of the Department of the Northern Territory or its authorised officer or appointed proxy, and
 - (d) four Elected Members.
- 15.2 The appointment of the persons nominated pursuant to clauses 15.1(b), 15.1(c) and 15.1(d), shall only be deemed effective appointments upon a resolution to accept such nominations of members of the Board who are:
- (a) Elected Members, or
 - (b) members nominated pursuant to clauses 15.1(b), 15.1(c), or 15.1(d), and whose appointment has already been accepted under this clause.
- 15.3 The Board will be supported by an employee of NCL nominated by NCL, who will be the Secretary and Public Officer.

16 DELEGATION

- 16.1 The Board may delegate to a subcommittee or staff any of its powers and functions other than:
- (a) this power of delegation, or
 - (b) a duty imposed on the Board by the Act or any other law.
- 16.2 The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.
- 16.3 The Board may, in writing, revoke wholly or in part the delegation.

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Division 2 – Tenure of office

17 ELECTIONS

- 17.1 Elected Members shall serve four (4) year terms with two Members elected every two (2) years on a split term basis.
- 17.2 A person seeking election to become an Elected Member must be an eligible person in accordance with clause 18.
- 17.3 Elections must be conducted in accordance with any by-laws of the Board relating to them.

18 ELIGIBILITY OF ELECTED MEMBERS

- 18.1 An Elected Member must:
 - (a) be qualified to be an Elector on Enrolment Day, and
 - (b) must not be an employee of NCL.
- 18.2 Elected Members must be elected to the Board at an Election or an election under clause 25.

19 NOMINATIONS FOR ELECTED MEMBERS

- 19.1 A person is not eligible for election as an Elected Member unless the Secretary receives a written nomination for that member by another Elector.
- 19.2 The nomination must be signed by:
 - (a) the nominator and a seconder, both of whom must be Electors, and
 - (b) the nominee to signify his or her willingness to stand for election.
- 19.3 A person who is eligible for election or re-election under this clause may:

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- (a) propose or second himself or herself for election or re-election,
and
- (b) vote for himself or herself.

20 RETIREMENT OF ELECTED MEMBER

- 20.1 The Elected Members hold office for terms of four (4) years each unless the member vacates the office under clause 23 or is removed under clause 24.
- 20.2 At an Election the office of the two Elected Members who have completed, or are nearing the end of their four (4) year tenure become vacant and elections for two (2) new Elected Members must be held.
- 20.3 Members may serve consecutive terms on the Board.

21 ELECTION BY DEFAULT

- 21.1 If the number of persons nominated for election as Elected Members under clause 19 does not exceed the number of vacancies to be filled, the Chairperson must declare the persons to be duly elected as members of the Board on and from the date the Election was scheduled.
- 21.2 If vacancies remain on the Board after the declaration under subclause 21.1, the unfilled vacancies are taken to be casual vacancies and must be filled by the new Board in accordance with clause 25.

22 ELECTION BY BALLOT

- 22.1 If the number of nominations exceeds the number of vacancies on the Board, Elections for those positions must be conducted.
- 22.2 The ballot must be conducted in a manner set out in the by-laws relating to Elections.
- 22.3 The Elected Members chosen by ballot must be declared by the Chairperson to be duly elected as members of the Board.

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23 VACATING OFFICE

The office of a member becomes vacant if:

- (a) the member:
 - (i) is disqualified from being a member under section 30 or 40 of the Act
 - (ii) resigns by giving written notice to the Chairperson
 - (iii) becomes incapable of performing the duties of his or her office for more than two (2) months
 - (iv) dies or is rendered permanently incapable of performing the duties of office by mental or physical ill-health, or
 - (v) ceases to be a resident of the Town.
- (b) the member is absent from more than:
 - (i) three (3) consecutive meetings, or
 - (ii) three (3) meetings in the same calendar year without tendering an apology to the Chairperson

of which meetings the member received notice and the Committee has resolved to declare the office vacant.

24 REMOVAL OF BOARD MEMBER

- 24.1 Subject to the procedures set out in this clause, the Board through a special meeting, may remove any Board member before that member's term of office ends.
- 24.2 If the Board considers that a member should be suspended or expelled because his or her conduct is detrimental to the interests of the Board, the Secretary must give notice of the proposed suspension or expulsion to the member and to the other members of the Board.

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- 24.3 The notice must:
- (a) be in writing and include:
 - (i) the time, date and place of the meeting at which the question of that suspension or expulsion will be decided, and
 - (ii) the particulars of the conduct, and
 - (b) be given to the member not less than 30 days before the date of the meeting referred to in paragraph (a)(i).
- 24.4 At the meeting, the Board must afford the member a reasonable opportunity to be heard or to make representations in writing.
- 24.5 If a vacancy arises through removal under subclause 24.1, in relation to
- (a) a member appointed pursuant to clauses 15.1(a), 15.1(b) or 15.1(c), a new member must be appointed in accordance with that clause; and
 - (b) an Elected Member, the vacancy to be filled in accordance with clause 25.

25 FILLING CASUAL VACANCY OF AN ELECTED MEMBER

- 25.1 If a vacancy remains of an Elected Member after the application of clause 21 or if the office becomes vacant under clause 12, 13, 23, or 24 and
- (a) if such vacancy occurs more than 12 months prior to the next Election, an Election must be held to fill that vacancy, or
 - (b) if such vacancy occurs within 12 months of the next Election, the vacancy will not be filled until the next Election.

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Division 3 – Duties of members

26 COLLECTIVE RESPONSIBILITY OF BOARD

- 26.1 As soon as practicable after becoming a Board member, each Board member must become familiar with the Act and regulations made under the Act.
- 26.2 Subject to any exemption by the Commissioner of Consumer Affairs pursuant to section 5 of the Act, the Board is collectively responsible for ensuring that it complies with the Act and regulations made under the Act.

27 CHAIRPERSON

- 27.1 Subject to subclause 27.2, the Chairperson must preside at all meetings.
- 27.2 If the Chairperson is absent the presiding member for that meeting must be a member elected by the other members present at that meeting.

28 SECRETARY

The Secretary must:

- (a) coordinate the correspondence of the Board
- (b) ensure minutes of all proceedings of general meetings and of committee meetings are kept in accordance with section 38 of the Act
- (c) maintain the register of members in accordance with section 34 of the Act
- (d) unless the members resolve otherwise at a meeting – have custody of all books, documents, records and registers of the Board, and
- (e) perform any other duties imposed by this Constitution on the Secretary.

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29 PUBLIC OFFICER

- 29.1 The public officer must ensure that documents are filed with the Commissioner of Consumer Affairs in accordance with sections 23, 28 and 45 of the Act.
- 29.2 The public officer must keep a current copy of the Constitution of the Board.

30 NO REMUNERATION

No payment shall be made to any Board member by way of salary, wages, fee or gratuity whether in money, property or otherwise.

PART 5 – BOARD MEETINGS

31 FREQUENCY AND CALLING OF MEETINGS

- 31.1 The Committee must meet together for the conduct of business on a day set by resolution at least once each month.
- 31.2 The Chairperson, or at least half the members, may at any time convene a special meeting of the Board.

32 VOTING AND DECISION MAKING

- 32.1 Each member present at the meeting has a deliberative vote.
- 32.2 A question arising at a meeting must be decided by a majority of votes.
- 32.3 If there is no majority, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

33 QUORUM

- 33.1 For a meeting, four (4) of the members constitutes a quorum, two (2) of whom must be Elected Members.

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- 33.2 If quorum is not present after half an hour of the scheduled meeting time:
- (a) the names of the persons present and the absent members (setting out whether or not an apology has been received for each absent member) shall be recorded in the minutes, and
 - (b) the meeting will stand adjourned and be rescheduled at the same time and place three (3) days later, unless such day is a Saturday, Sunday or public holiday in the Town, in which case the meeting shall be rescheduled for the next business day after then in the Town.
- 33.3 For a meeting convened under clause 33.2(b), three (3) members constitutes a quorum, two (2) of whom must be Elected Members.

34 PROCEDURE AND ORDER OF BUSINESS

- 34.1 The procedure to be followed at a meeting must be determined from time to time by the Board.
- 34.2 The order of business will be determined by the members present at the meeting.
- 34.3 Only the business for which a special meeting is convened may be considered at a special meeting.

35 DISCLOSURE OF INTEREST

- 35.1 A member who has a direct or indirect pecuniary interest in a contract, or proposed contract, with the Board must disclose the nature and extent of the interest to the Board in accordance with section 31 of the Act.
- 35.2 The Secretary must record the disclosure in the minutes of the meeting.
- 35.3 The Chairperson must ensure a member who has a direct or indirect pecuniary interest in a contract, or proposed contract, complies with section 32 of the Act.

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36 NOTICE OF MEETINGS

- 36.1 The Secretary must give a notice of all meetings by –
- (a) serving it on a member personally, or
 - (b) sending it by post to a member at the address of the member appearing in the register of members.
- 36.2 If a notice is sent by post under subclause 36.1(b), sending of the notice is taken to have been properly effected if the notice is addressed and posted to the member by ordinary prepaid mail.

PART 6 – SPECIAL MEETINGS

37 CONVENING SPECIAL MEETINGS

- 37.1 The Committee:
- (a) may at any time convene a special meeting, and
 - (b) must, within 30 days after it receives a request under clause 37.2, convene a special meeting for the purpose specified in that request.
- 37.2 Half the number of members constituting a quorum for a meeting may make a written request to the Board for a special meeting.
- 37.3 Any request under subclause 37.2 must:
- (a) state the purpose of the special meeting, and
 - (b) be signed by the members making the request.
- 37.4 If the Board fails to convene a special meeting pursuant to a request under subclause 37.2 within the time allowed, the members who made the request may convene a special meeting as if they were the Board

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37.5 The Secretary must give to all members not less than 21 days notice of a special meeting.

37.6 The notice must specify:

- (a) when and where the special meeting is to be held, and
- (b) the particulars of and the order in which business is to be transacted.

38 SPECIAL RESOLUTIONS

38.1 A special resolution may be moved at any special meeting of the Board.

38.2 The Secretary must give all members not less than 21 days notice of the special meeting at which a special resolution is to be proposed.

38.3 The notice must include the resolution to be proposed and the intention to propose the resolution as a special resolution.

39 VOTING IN A SPECIAL MEETING

39.1 Each member present at a special meeting is entitled to a deliberative vote.

39.2 At a special meeting a special resolution put to the vote is passed if three-quarters of the members who are present vote in favour of the resolution.

PART 7 – FINANCIAL MANAGEMENT

40 ANNUAL RETURN

The Board must give a statutory declaration once each year, setting out that, to the best of the Board's knowledge, the Board and each member has complied with clause 4.3 of this Constitution.

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PART 8 – GRIEVANCE AND DISPUTES

41 GRIEVANCE AND DISPUTES PROCEDURES

- 41.1 This clause applies to disputes between:
- (a) a member of the Board and an Elector, or
 - (b) one (1) or more members of the Board.
- 41.2 Within 14 days after the dispute comes to the attention of the parties to the dispute, they must meet and discuss the matter in dispute and, if possible, resolve the dispute.
- 41.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten (10) days after the meeting, hold another meeting in the presence of a mediator.
- 41.4 The mediator must be:
- (a) a person chosen by agreement between the parties, or
 - (b) in the absence of agreement, a person who is a mediator appointed or employed by the department administering the Act.
- 41.5 A member of the Board can be a mediator.
- 41.6 The mediator cannot be a party to the dispute.
- 41.7 The parties to the dispute must in good faith attempt to settle the dispute by mediation.
- 41.8 The mediator in conducting the mediation must:
- (a) give the parties to the mediation process every opportunity to be heard
 - (b) allow due consideration by all parties of any written statement submitted by any party, and

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- (c) ensure natural justice is accorded to the parties to the dispute throughout the mediation process.

41.9 The mediator must not determine the dispute.

41.10 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.