



The Overstrand Conservation Foundation

...more effective conservation management through co-ordinated partnerships

Overstrand Conservation Foundation Constitution

(Draft Rev. 6.3:2016)

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1 Name

The name of the association will be the Overstrand Conservation Foundation ("the Foundation"), trading as Whale Coast Conservation (WCC).

2 Legal status

The Foundation has been established not for gain and will be a body corporate, with perpetual succession. The Foundation will have the power to sue and be sued in its own name. The liability of members will be limited to the amount of any subscription due by them and they will have no right to the property or other assets of the Foundation.

3 Vision, Mission and Objectives

3.1 Vision

That the Cape Whale Coast community will be a vibrant, environmentally sustainable community.

3.2 Mission

The mission of the Foundation is to unify, coordinate and promote environmentally sustainable living in the Cape Whale Coast region of the Western Cape, South Africa

3.3 Objectives

3.3.1 The main objective of the Foundation is to facilitate, promote and coordinate the sustainable use and management of the environment and heritage resources:

- 3.3.1.1 In a non-profit manner compliant with the Non-Profit Organisations Act No. 71 of 1997;
- 3.3.1.2 As a Public Benefit Organisation compliant with Section 30 of the Income Tax Act No. 58 of 1962.

3.3.2 The secondary objectives of the Foundation are to:

- 3.3.2.1 Facilitate coordinated public participation and partnerships between the State, the private sector and civil society in order to promote collaborative and effective environmental management;
- 3.3.2.2 Build environmental awareness, knowledge and skills development through communications, education and skills training;
- 3.3.2.3 Promote adoption of environmentally sustainable practices by the public and private sectors, civil society organisations and members of the community;
- 3.3.2.4 Contribute to the development of sustainable communities through engagement in socio-economic and community programmes and projects;



- 3.3.2.5 Raise funds and develop resources and facilities to enable the active pursuit of the Foundation's main and secondary objectives
- 3.3.2.6 Support the activities of members and other organisations with objectives consistent with those of the Foundation;
- 3.3.2.7 Do any and all such things that are legal and conducive to the attainment of the Foundation's main and secondary objectives without limitation.

4 Membership and Membership Fees

4.1 Membership

- 4.1.1 Membership comprises of non-governmental organisations, companies, and individuals that align themselves with and support the Foundation's vision, mission, objectives and ethos.
- 4.1.2 Persons or organisations can be granted patron or honorary membership of the Foundation, in recognition of their services to or sympathy with the aims of the Foundation.
- 4.1.3 Prospective Patron Members will be proposed for membership by paid up members. In this proposal the member will motivate the eligibility of the prospective Patron Members by indicating in what way they can bring essential and/or unique skills, funding, expertise, etc. into the Foundation by way of their membership as individuals.
- 4.1.4 A prospective Patron Member will obtain membership of the Foundation by way of acceptance of the proposal by a majority of the paid up members of the organisation. Such acceptance can be obtained by way of e-mail or normal mail by the Board. Once accepted as a Patron Member, the normal rules applying to ordinary Members will also apply to the Patron Member.

4.2 Membership fees

- 4.2.1 The minimum annual membership fee will be decided annually by the Board for the following financial year.
- 4.2.2 The Board may waive or grant discounted membership fees for any reason that serves the interests of the Foundation.
- 4.2.3 The Board may negotiate and authorise special membership, collaborative, or partnership agreements with organisations or companies where such agreements will serve the best interests of the Foundation. The terms of such agreements, including voting rights, will be confirmed by the signing of a memorandum of understanding between the parties.



5 Applications for membership and termination of membership

5.1 Applications for membership

Applications for membership will be processed by a person or persons delegated by the Board with the responsibility of membership administration. Admission of new members will be done in accordance with rules and a process laid down by the Board.

5.2 Termination of membership

Subject to the continued liability of a member for membership fees imposed up to the time of cessation of membership, membership will terminate: -

- 5.2.1 when the resignation of a member in good standing is submitted in writing to and accepted by the Board; or
- 5.2.2 when the member's membership fee is unpaid for six months from the date due; or
- 5.2.3 when for good cause shown, the Board terminates the membership by giving the member written notice to that effect posted to the last address of the member in the membership register, provided that the member or its representative will be given written reasons for the proposed termination and will have the right to be heard by the Board before the Board makes a final decision.

6 Meetings of Members

6.1 Notices, place and votes at general meetings

- 6.1.1 The Foundation will hold an annual general meeting of members within six months of the end of each financial year.
- 6.1.2 Every meeting of members will, unless otherwise resolved by the Board, be held in Hermanus.
- 6.1.3 Subject to 6.1.5, at general meetings each Member will have one (1) vote. Organisational and Company members will be entitled to nominate two representatives who will be entitled to attend general meetings, one of whom will be entitled to vote on behalf of the member, and the second of whom will not be entitled to vote.
- 6.1.4 For any motion proposed at a general meeting, the votes of individual members will be counted separately from those of organisational and company members and the motion will be carried only if supported by a majority of the individual members present and a majority of organisational and company members present.



6.2 Proceedings at meetings of members

- 6.2.1 General meetings will be called on at least twenty-one days' written notice by post or e-mail. The notice will specify the venue, the date and the time of meeting and, in the case of special business, the general nature of the business; provided that, notwithstanding that it is called on shorter notice, the accidental omission to give notice of a meeting to any member, or the non-receipt of notice of a meeting by any member entitled to receive notice, will not invalidate the proceedings of that meeting.
- 6.2.2 Business may be transacted at any meeting of members only while a quorum is present. The quorum at a meeting of members will be a minimum of 25 eligible members in good standing.
- 6.2.3 If within thirty minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the request of members, will be dissolved. In any other case it will stand adjourned to the same day in the next week, at the same time and place, or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at the resumption of the adjourned meeting a quorum is not present within thirty minutes from the time appointed for the meeting, then the members or member present will be a quorum.
- 6.2.4 The chairman may, with the consent of any meeting at which a quorum is present (and will if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business will be transacted at any resumption of the adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 6.2.5 When a meeting is adjourned as a result of a direction given in terms clause 6.2.3, notice of the resumption of the adjourned meeting will be given in the manner prescribed by the chairperson presiding at such meeting.
- 6.2.6 At any meeting of members a resolution put to the vote of the meeting will be decided on a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by any person entitled to vote at the meeting. Where such poll is not so demanded, a declaration by the chairman that a resolution has been carried, or lost, as the case may be, whether unanimously or by a particular majority and an entry to such effect appears in the subsequent minutes of the meeting, this will be conclusive evidence of the grounds for the adoption, or rejection, of such resolution, without need of proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection may be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which such vote is tendered. Every vote not disallowed at such meeting will be valid for all consequential purposes. Any objection raised at a meeting as to the admissibility of a particular vote at that



meeting will be referred to the chairman of the meeting, whose decision will be final and conclusive.

6.2.7 If a poll is duly demanded it will be taken forthwith in such manner as the chairman directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. Scrutinisers will be elected to declare the result of the poll, and their decision, which will be given by the chairman of the meeting, will be deemed to be the resolution of the meeting at which the poll is demanded.

6.2.8 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, will not be entitled to a second or a casting vote.

6.2.9 Although a poll will be taken forthwith, the demand for a poll will not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.

6.3 The business to be transacted at an annual general meeting will be inter alia to consider the following matters:

6.3.1 the minutes of the previous meeting;

6.3.2 the annual report to be presented by the chairperson or his nominee and the annual financial statements;

6.3.3 any statement by the Board of the general policy of the Foundation

6.3.4 announcement of result of election of Board members for the coming year;

6.3.5 other business of which due notice has been given, whether described specifically or as general business.

6.4 Notice of any general meeting of members or of a Board meeting, given in writing and posted to the last address recorded in the register of members, will be deemed to have been received five days after posting.

6.5 An attendance register, bearing the signatures of all eligible members in good standing present, and minutes will be taken at every general meeting. Minutes will be made available to members.

7 Management Board ('the Board')

7.1 The Board will be responsible for control and direction of the affairs of the Foundation and for determining the policy of the Foundation but will consult the members at a general meeting, on such matters as it considers appropriate.

7.2 The Board may delegate any of its functions to such persons or committees for such period as it deems fit, but subject always to



retaining ultimate responsibility for the outcomes of the functions so delegated and the unconditional right to revoke any such mandate.

- 7.3 There will be not less than seven and not more than sixteen members of the Board, elected annually by the members before or at the annual general meeting of members. The Board will decide on the procedure for election but in doing so must ensure that persons nominated:
- (a) fairly represent the broad spectrum of member interests;
 - (b) are qualified to fulfil the duties of the board.
- 7.4 Each of these elected members will serve for a period of 2 years. Half of the elected members will, however, stand down every year to ensure that continuity is maintained in Board membership. Members standing down will be eligible for re-election.
- 7.5 Members of the Board will elect a chairperson, vice-chairperson and an honorary treasurer, from amongst the elected Board members. In the event that no member of the board is suitably qualified to fulfil the role of treasurer, the Board may decide to co-opt a qualified person in terms of clauses 7.5 or 7.6 of this constitution.
- 7.6 Members and representatives of members may be co-opted by the Board to fill Board vacancies. Such co-opted office bearers may hold office until the end of the following annual general meeting.
- 7.7 People who are not members or member representatives, but who are able to make specialist contributions to the work of the Foundation, may be co-opted onto the Board. Such co-opted persons will serve in an advisory capacity and have no vote at Board meetings.
- 7.8 The Board must keep proper minutes of its meetings and, subject to the other provisions of this constitution, must convene and conduct its meetings in the manner that it from time to time decides.
- 7.9 One half of the board's members or four members of the Board, whichever be the greater, will constitute a quorum. The Chairperson will, when there is an equality of votes, not have a casting vote. (Section 30(3)(b)(i) of Act 58 of 1962).
- 7.10 Membership of the Board will terminate if a Board member fails to attend two consecutive meetings of the Board without having been granted leave of absence.
- 7.11 Board members will not be personally liable for any loss suffered by any person as a result of an act or omission, which occurs in good faith, while the Board member is performing functions for or on behalf of the Foundation.



7.12 No Board member will be liable for any act, omission or negligence of any other Board member or of any agent employed by the Foundation.

8 General Manager

- 8.1 The Board may appoint a 'General Manager' as the chief executive officer of the Foundation, and may determine the extent of the powers and duties of such general manager, and may terminate his or her employment at any time.
- 8.2 The Board may only delegate its powers to the general manager on the basis that such delegation may be revoked at any time on notice to the general manager.
- 8.3 The general manager will report to the Board and will attend Board meetings and General Meetings of members, unless specifically requested not to do so, but will not be entitled to vote at any such meetings.

9 Finance

- 9.1 The honorary treasurer must ensure the proper operation of a bank account or bank accounts in the name of the Foundation and that the financial affairs of the Foundation are properly recorded. All money receipts will be deposited in such bank accounts.
- 9.2 The general manager, in consultation with the treasurer, must prepare a budget annually to be presented to the Board for approval.
- 9.3 The treasurer must ensure that policies for the management of the Foundation's finances and conducting of financial transactions are drawn up, approved by the Board and implemented.
- 9.4 An annual audited financial statement of the Foundation must be prepared within six months of the end of each financial year, and must be submitted to the Board for its approval. A registered accountant and auditor who is not a member of the Board must audit the statement.
- 9.5 The financial year of the Foundation will end on 31st March of each year.

10 Powers

The Foundation will have all the powers required to fulfil its object and objectives and, without prejudicing the generality of its powers, may:-

- 10.1 acquire movable and immovable property from any source and may invest and reinvest its funds in property of every description, insure,



- preserve or turn to account, alienate and encumber assets, open and operate on accounts with reputable financial institutions;
- 10.2 employ, pay and discharge staff, professional advisers, agents and contractors for any purpose;
- 10.3 borrow, lend, lease, hire, let, mortgage and pledge assets, provide guarantees and suretyships in connection with its assets, engage in legal proceedings of any description;
- 10.4 co-operate with, establish or promote any other body or person for any purposes that may be calculated to benefit the Foundation directly or indirectly;
- 10.5 initiate and implement a fundraising strategy and to receive such funds. Should the services of a fund-raiser be made use of for the collection of contributions, the expenses (remuneration and/or commission included) may not exceed 15% of the total turnover of the collection, unless specifically approved by the Board.
- 10.6 assist members to formulate projects within the scope of the Foundation's sole object and objectives that can be funded by revenues contributed.
- 10.7 generally do all such things, as it may consider necessary or desirable in the interests of the Foundation and consistent with this constitution.

11 Limitations on powers and liabilities

- 11.1 The Foundation will ensure that the activities and resources of the Foundation are directed at the furtherance of its object and objectives and that the Foundation accordingly unconditionally undertakes to comply with all obligations required to be undertaken in terms of or accepted pursuant to the provisions of Section 30(2) of the Income Tax Act No 58 of 1962 and the Non Profit Organisations Act No 71 of 1997, which obligations are accordingly in this constitution, undertaken by the Foundation. Specifically:
- 11.1.1 The activities of the organisation will be carried on in a non-profit manner and with an altruistic or philanthropic intent.
- 11.1.2 No activity will directly or indirectly promote the economic self-interest of any fiduciary or employee of the organisation otherwise than by way of reasonable remuneration.
- 11.1.3 The funds of the organisation will be used solely for the objects for which it was established.
- 11.1.4 No funds will be distributed to any person (other than in the course of undertaking any public benefit activity).
- 11.1.5 The Board will delegate at least three persons, who accept fiduciary responsibility for the public benefit organisation, are not



connected persons in relation to each other, and ensure that no single person directly or indirectly controls the decision making powers relating to the organisation.

- 11.1.6 No remuneration will be paid to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and has not and will not economically benefit any person in a manner which is not consistent with its objects.
- 11.1.7 No resources will be used, directly or indirectly, to support advance or oppose any political party.
- 11.2 The Foundation will not distribute any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and will utilise its funds solely for the objects for which it has been established and invest such funds in accordance with the requirements of Section 30(3)(b) of the Income Tax Act No 58 of 1962.
- 11.3 The Foundation will not accept any donation that is revocable at the instance of the donor, in contravention of the provisions of Section 30(3)(b)(v) of Act 58 of 1962.
- 11.4 Members or Board members will not be liable for any of the obligations and liabilities of the Foundation solely by virtue of their status as members or members of the Board of the Foundation.
- 11.5 Members or office bearers will have no rights in the property or other assets of the organisation solely by virtue of their being office-bearers or members and the organisation's income and property will not be distributable to its members or office-bearers, except as reasonable compensation for services rendered. (Section 12(2)(c) and (f) of the Non Profit Organisations Act No 71 of 1997).
- 11.6 The public benefit organization will not be a party to, or does not knowingly permit, or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main aim purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have become payable by any other person under this Act or any other Act administered by the Commissioner

12 Amendment of constitution

The constitution may be amended with the approval of two thirds of the members present at a general meeting, of which 28 days' notice has been given. The notice will state the nature and reasons for the proposed amendments. Any amendment to the constitution will be submitted to the Commissioner of Inland Revenue and to the Directorate for Non-profit Organisations (Section 30(3)(b)(vi) of Act 58 of 1962).



13 Dissolution

13.1 The Foundation may be dissolved by a resolution passed by a two-thirds majority of organisational members present at a general meeting of which 28 days' notice has been given to members. The notice must state that the question of dissolution of the Foundation, the reasons, and that the disposal of the assets will be considered. If there is no quorum at such a meeting, the meeting must stand adjourned for not less than one week and the members attending the adjourned meeting of which further notice will be given, will constitute a quorum.

13.2 On dissolution the net assets of the Foundation must be paid to:

13.2.1 A similar public benefit organisation approved in terms of section 30 of Act 58 of 1962 {Section 30(3)(b)(iii) Act 58 / 1962}.

13.2.2 Any institution, board or body which is exempt from the payment of income tax in terms of section 10(1) (cA)(i) of the Act which has as its sole or principal object the carrying on of any public benefit activity, or

13.2.3 Any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1)(a) or (b) of the Act

14 Arbitration

In the event of any dispute of any nature whatsoever arising between any members or members of the board on any matter provided for in, or arising out of this constitution, then that dispute will be submitted to and decided by arbitration. Any arbitration arising out of this arbitration agreement will, unless otherwise agreed be referred to the Arbitration Forum Ltd and conducted in accordance with the standard terms and conditions, and the General Arbitration Rules, then applicable in that Forum.

15 Interpretation

15.1 In this constitution:-

15.1.1 Clause headings are for reference purposes only and will not be used in its interpretation.


15.1.2 Unless inconsistent with the context, words signifying any one gender will include the others, words signifying the singular will include the plural and vice versa and words signifying natural persons will include artificial persons and vice versa.

15.1.3 Reference in this constitution to any statutory provision will include a reference to that provision as modified, amended, extended or re-enacted from time to time.



15.2 Should any question arise as to the interpretation of this constitution or any of the provisions hereof or as to the true construction thereof or as to the administration of the Foundation or otherwise howsoever, the Board will have the power to decide such question either on their own judgment or upon the advice of appropriate independent professionals and any such decision will be final and binding on all parties affected thereby and will be carried into effect by them.

Certified to be a true copy of the constitution of the Overstrand Conservation Foundation adopted at the General Meeting on 27 September 2016

Signature: 
J.H. Hart (Chairperson)

Date: 2016-09-27