



# Australian Climbing Association (Qld) Inc

## *Minutes - Executive Meeting 13<sup>th</sup> January 2022*

### **Purpose**

*A quarterly meeting of the ACAQ Management Committee in accordance with the ACAQ constitution.*

### **Attendees**

<i>Peter Martland</i>	<i>President</i>
<i>David O'Sullivan</i>	<i>Secretary</i>
<i>Matt Pelekanos</i>	<i>Treasurer</i>
<i>Daniel Peatey</i>	<i>Legal and Policy Advisor</i>
<i>Adam Kerz</i>	<i>Operations</i>
<i>Sophie Antony</i>	<i>Ordinary Member</i>
<i>Petros Khalesirad</i>	<i>Ordinary Member</i>
<i>Ron Farmer</i>	<i>Guest Advisor</i>

### **Minutes of the meeting**

*Meeting opened at 1830 AEST.*

#### **1. *Due Process for Public Lands***

- *Discussion on the process that was applied to the allocation of the trusteeship of Lot 20 on SP331086 becoming a reserve (under the Land Act 1994) for Aboriginal and cultural purposes, as it relates to the Dhagun Yumba Aboriginal Corporation (ICN 9619) being appointed trustees of the reserve, and the process of consultation with stakeholders. Discussion encompassed a review of the process, and potential future actions to enhance the allocation of public lands to the national estate.*
- *Ron Farmer was invited to provide input:*
  - *The South East Queensland Regional Forest Agreement provided a structured process for the transfer of land under State Forest tenure to other tenures, including the heritage estate.*

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjBt6DnnLL1AhXzSGwGHWR0DFoQFnoECAkQAQ&url=https%3A%2F%2Fwww.awe.gov.au%2Fsites%2Fdefault%2Ffiles%2FSitecollectiondocuments%2Ffr%2Fregions%2Fqld-south-east%2Fdirections-options%2Fqld\\_se\\_rfa\\_toward.doc&usg=AOvVaw1Od0Ljqu6XRFblzcAvZvn9](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjBt6DnnLL1AhXzSGwGHWR0DFoQFnoECAkQAQ&url=https%3A%2F%2Fwww.awe.gov.au%2Fsites%2Fdefault%2Ffiles%2FSitecollectiondocuments%2Ffr%2Fregions%2Fqld-south-east%2Fdirections-options%2Fqld_se_rfa_toward.doc&usg=AOvVaw1Od0Ljqu6XRFblzcAvZvn9)

- *Under the agreement, all identified land was placed into a holding tenure, and a stakeholder consultation process was used to gather recommended tenure for identified land parcels, including tenure within the Queensland Heritage Estate.*
- *QPWS adjudicated on appropriate tenure for land identified as potential for the heritage estate, and generally followed the recommendations arising from the consultation process conducted by QPWS with stakeholder groups.*
- *In the case of aboriginal stakeholder interest, an ILUA was often established to preserve those interests. QPWS is familiar with the ILUA process.*
- *In the process undertaken by DoR for Lot 20 on SP331086, there appeared, prima facie, to be a lack of comprehensive consultation with all stakeholders (ACAQ, YYAC, NPA, etc).*
- *Ron proposed an approach to relevant Ministers (Environment and Science; Resources; Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships) to recommend that a process similar to the SEQRFA be explored - particularly as there is a significant amount of leasehold land reaching end of lease in the immediate future.*
- *Such a process would be valuable for the expansion of land allocated to recreation, a situation becoming critical for land surrounding Brisbane.*
- *Dan Peatey commented on the process applied to Lot 20 on SP331086:*
  - *The parcel has been set aside as a reserve; a reserve must be for a community purpose, and a lot of community purposes listed in the Act relate to ACH.*
  - *ACH is the community purpose ascribed to Lot 20 on SP331086.*
  - *While it is a reserve, it is afforded some level of protection under the trusteeship of the Dhagun Yumba Aboriginal Corporation (ICN 9619) whereby the Minister retains oversight of the trustee to ensure that the reserve is being managed in accordance with the purpose for which it was set aside.*
  - *Once a transfer to the DYAC as freehold occurs, the community purpose protection is removed.*

- *There is limited scope for parties other than the Minister to provide input to the administration of the land while it is a reserve.*
- *The two possible avenues for input are:*
  - i. *requesting that a second community purpose be added under the trusteeship, or*
  - ii. *make a case that it is not being managed by the trustee in accordance with the established community purpose.*
- *ACAQ has no standing, and there is no requirement in the Land Act, or the Aboriginal Cultural Heritage Act, to consult with ACAQ. The only potential appellant would be another aboriginal group (e.g. YYAC).*
- *The process applied to Lot 20 on SP331086 complies with the applicable laws.*
- *The options for ACAQ or other parties is (while it remains a reserve):*
  - i. *to petition the Minister to add additional community purposes to the reserve (environment protection, recreation); however, it would make little difference as the trajectory is to transfer tenure to DYAC as freehold, or*
  - ii. *to petition the Minister(s) to change the tenure to National Park, which establishes a process triggering broader consultation, and an expanded stakeholder base.*
- *Opinion is that the option to petition the Minister is not advantageous and that it not be pursued.*
- *The main lesson from what has occurred with Lot 20 on SP331086 is that this is a land tenure where recreational users have no say, and that any future decision made under the Land Act may disadvantage recreational user groups due to the absence of any requirement to consult with those groups (or indeed, any group other than an aboriginal group). It is, therefore, an imperative to move all lands identified as having recreational, environmental, or cultural values to the National Estate, and afforded the processes and protection of the NCA.*
- *With regard to land where there is currently a lease, the tenure does not change, or if the tenure is changing DoR must guarantee that the lease is maintained until the end of the agreement. At the end of the lease, it is renegotiated under the new tenure.*
- *DoR initially approached QPWS to consider tenure under the NCA - rejected by QPWS due to resource constraints.*
- *Subsequent approach was to the Scenic Rim Regional Council to consider a reserve for community recreation - rejected by Council as a risk based decision.*
- *Ron Farmer stated that the Premier of Queensland had undertaken to expand the Parks Estate, and that very little had occurred beyond that. Queensland has the*

*lowest percentage of land under heritage legislation in Australia. He proposed that the relevant Ministers should be shown the value of the Premiers undertaking, particularly as it would apply to USL or leasehold land with identified cultural, environmental or recreational values, and that the undertaking should be adopted as an imperative because land suitable for the heritage estate is rapidly disappearing.*

- *Peter Martland asked if it should be proposed as an action undertaken or managed by Outdoors Queensland.*
- *Ron Farmer suggested:*
  - *that it would be better if it was initiated by ACAQ, and support sought from the National Parks Association, the NPA being a body with good standing and patronage, and with the expansion of the National Estate forming a part of their advocacy;*
  - *that having the NPA support will make it easier to expand the support base to bushwalking and other nature oriented groups such as The Queensland Conservation Council and Natural History Associations;*
  - *And once the core groups are in place, then approach Outdoors Queensland to establish if there are any other interested groups such as horse riding, MTB, HGFA, etc. who would be interested in joining the group.*

Motion: *That ACAQ:*

- 1. support the development of a formal process to expand the National Estate;*
- 2. develop a formal proposal suitable for wider distribution;*
- 3. approach the NPA with the proposal and seek support; and*
- 4. for ACAQ to become a NPA affiliated organisation.*

*Proposed: Peter Martland*

*Seconded: Daniel Peatey*

*Carried unanimously.*

- *Ron Farmer offered to support the proposal with gathering support within the NPA, and suggested that, once proposed by ACAQ, that NPA would take a lead role in progressing the proposal.*

Motion: *That Ron Farmer continues to work with the ACAQ Committee of Management as an advisor, and as a point of liaison with the Queensland National Parks Association.*

*Proposed: Peter Martland*

*Seconded: Daniel Peatey*

*Carried unanimously.*

## **2. Sub Committees**

- *Status of amendment to Constitution.*
  - *Secretary to complete and submit application.*
- *Discuss immediate and longer-term needs for sub-committee support to the Management Committee:*
  - *Primary need is to manage the public interface, therefore a Media and Public Relations Sub-committee will be established once the Constitution is amended.*
  - *Facebook moderation:*
    - *The need for stronger moderation of the page has been implemented and has been successful*
    - *There has been no additional advocacy by members for a moderation sub-committee since the increased moderation was implemented.*

## **3. Climber Coalitions**

- *Peter Martland opened by stating that he was a firm believer in things being managed locally, with ACAQ acting as a ‘Big Brother’, waiting in the wings to assist as necessary.*
- *Dan Peatey provided a briefing on the Friends of Frog climber coalition, its status and proposed structure.*
  - *The FoF concept began with a couple of Frog Buttress climbers approaching ACAQ seeking help with setting up a group that would concentrate on looking after the area, unencumbered by politics or ethics.*
  - *Peter, at the time, said “that smells a lot like a climber coalition”.*
  - *FoF will have a purely environmental and education focus, thereby avoiding ‘another’ organisation doing access work.*
  - *FoF will be a group of locally recognised climbers, known to QPWS, local businesses, local individuals of note... providing a good public reputation to the local community.*
  - *The purpose of the most recent FoF meeting was to develop concepts of structure and what needs to be put in place.*

- *Being an environmental and educational organisation, FoF would be eligible for Deductible Gift Recipient status (DGR).*
- *Dan has been busy determining which legal entity would best fit the FoF structure and charter, the ideal being one which achieves DGR status whilst minimising administrative obligations.*
- *The Australian Charities and Not-for-Profits Commission (ACNC), requires an organisation with a defined structure - an unincorporated association covers those requirements.*
- *The intent is to establish FoF as an unincorporated association, allowing for a future option to become incorporated if necessary.*
- *Immediate task is to align a constitution with existing organisations such as CliffCare (Victoria) or Crag Care (NSW).*
- *Businesses (e.g. K2 and others) have indicated that they will support FoF if they can obtain DGR status.*
- *Funding would largely be used for educational material and working bee materials.*
- *Peter suggested that a similar model could be utilised at Kangaroo Point and Mount Coolum, where there is already a strong local core group.*
- *Petros thought it would be more problematic in Central Queensland as the local community is more fragmented, but certainly a future possibility.*
- *Dan advised that the FoF structure should be a template for future Queensland coalitions.*

#### **4. Bank Account Authorised Users**

- *Recording of additional names of authorised users of the ACAQ bank account is required by BOQ for ongoing management of access to the account.*

*Motion:* *That Matt Pelekanos and Peter Martland are named as authorised users of BOQ account 23238825.*

*Proposed: Peter Martland*

*Seconded: Daniel Peatey*

*Carried unanimously.*

## **5. Governance requirements for Queensland Incorporated Associations**

- *Petros Kholesirad advised the committee that new governance requirements come into effect in June 2022, and in effect, codify common law duties.*
- *Dan Peatey and Petros agreed that an amended constitution needed drafting prior to the next AGM, for tabling at that meeting.*
- *Petros proposed that we need a Constitutional and Legal sub-committee. Dan agreed.*
- *Peter Martland requested that the committee is appraised of the changes with the intent that each member understands their obligations. (See attachment 1.)*

*Action Item: Dan Peatey, Petros Kholesirad and Sophie Antony collaborate to draft required constitutional amendments prior to June 2022.*

## **6. Conduct of ACAQ members**

- *Petros Kholesirad didn't think the majority of Central Queensland climbers understood the role of ACAQ in the climbing community, and did not understand his role as a member of the management committee.*
- *Petros advised the committee of allegations by climbers in the Rockhampton area that he had been cutting bolts (he hadn't). To his knowledge, they are members of the ACAQ, and that this type of conduct is not acceptable, whether it's towards a member of the management committee, a member of ACAQ, or any other climber.*
- *Petros proposed that a dispute resolution policy would facilitate the investigation and processing of grievances in a formal structure.*
- *Dan Peatey was not aware of a grievance process in any clause of the Queensland model laws. He was aware that the Victorian model laws contain such clauses and that we could use those as a template for ours.*

## **7. Website**

*This item was touched on during the sub-committee discussion.*

- *Petros Kholesirad made the point that the platforms for communication are merely tentacles for the most important aspect - the content.*
- *In order to have relevant content, we must understand the audience.*
- *Ron Farmer mentioned that other organisations used a single point of contact - the CARE Officer (Cultural, Access, Recreation, Environment).*
- *Peter Martland considered that such a role could exist within a sub-committee.*
- *Petros disagreed to whit:*
  - *Our number one asset is our members (or audience)*
  - *We need to start thinking about how we get them to create content, to develop events for fundraising, to promote the benefits of membership, and to generate an understanding of the association.*
- *Peter agreed, but thought that those things should reside within, and be managed by, a sub-committee.*
- *Dan Peatey supported Petros' comments about content and stated that it was not something we do well; and not in a structured way - that we tend to operate reactively.*
- *Peter advised that there are volunteers with the skills we need within the membership and the broader climbing community, and they're keen to get started.*
- *Dan proposed that this is a conversation that needs to be ongoing, and that it is assigned a dedicated Slack channel. General agreement.*
- *Petros suggested content matter around member profiles as one way to engage (how about Ron Farmer?).*

Action Item: *Peter Martland to establish a 'Media and Public Relations' Slack channel.*

### **1. Housekeeping**

- *Email addresses: Arrange transfer of David Reeve's (committee1@climb.org.au) email address to Petros, and to establish one for Sophie (committee2@climb.org.au)*
- *Sort out access to Google Drive etc, to Petros and Sophie.*
- *IT maintenance roles: Petros offered to undertake the bulk of this and has a team of web developers who can do this pro-bono.*



- *Some discussion about conducting a member survey once the Media and Public Relations sub-committee is established.*

*Action Item: Peter Martland to undertake the above two items.*

#### **8. Other Business**

- *Petros Khaledirad mentioned that there was no formal representation in North Queensland.*
- *Dan thought it would be useful to invite club executives to our meetings as a good introduction, and perhaps a reciprocal arrangement.*

*Meeting closed 2000 AEST*

## **Attachment 1**

### ***New governance requirements for Qld Incorporated Association***

***Key changes to the governance requirements for incorporated associations are scheduled to come into effect by June 2022***

#### **Codifying the common law duties.**

***Associations should consider addressing these matters before holding an AGM in the second half of the year.***

***While most of the new requirements reflect the basic governance principles and common law duties that officers of associations would generally be expected to observe, management committee members will be personally liable for breach of the new statutory duties from their commencement date.***

***Incorporated associations should be reviewing their governance arrangements and documents to ensure that they reflect the new requirements and establish the processes to ensure compliance by the time the new changes come into effect by June 2022. Incorporated associations will also need to decide whether they prefer to rely on the model grievance procedure (once it is developed) or introduce their own custom grievance procedure in the rules. This all may take some time if any changes to the association's rules are required. Any changes would need to be approved by the association's members and registered with the Office of Fair Trading before they could come into effect.***

## **What are the key changes to governance requirements of associations?**

***Key changes to the governance requirements for incorporated associations are scheduled to come into effect by June 2022*** due to the changes to the Associations Incorporation Act 1981 (Qld) (Act). This was effected by the Associations Incorporation and Other Legislation Amendment Act 2020 (Qld) (Amending Act). While most of these provisions were originally expected to be introduced by June 2021, this has now been postponed to 22 June 2022 (unless commenced earlier by proclamation). The reason for the postponement is to allow the government to conduct a consultation process to amend the Associations Incorporation Regulation 1999 (Qld), with this consultation process still to commence. We note that some other changes to the Act have commenced on 22 June 2020 and are outside the scope of this note.

***Below is a summary of the key changes, noting the key changes to governance requirements.***

### **Common seals and execution of contracts**

***The Amending Act will make common seals optional (although associations may continue using their seal if they wish to do so) and allow associations to execute contracts and other documents without a common seal.***

### **Eligibility of secretary**

*The Amending Act will require the appointed secretary to be 18 or older to align the requirements with those of other management committee members.*

## **Duties of management committee members**

*The Amending Act will impose the equivalent of directors' duties on the management committee members. These include:*

*1. Disclose material personal interests. To disclose the nature and extent of any material personal interest (other than an interest that arises only from the person's position as an employee or member of an association) in a matter being considered at a management committee meeting:*

- *to the management committee, as soon as the member becomes aware of the interest; and*
- *at the next general meeting of an association,*

*with the relevant details of a material personal interest recorded in the minutes of the meeting at which they were disclosed and provided to association members on request;*

*2. Abstain from voting where a member of the management committee has a material personal interest (other than an interest that arises only from the person's position as a member of an association) in a matter being considered at a management committee meeting. They should also not be present while the matter is being considered or vote on the matter, unless the management committee determines otherwise. In this case the decision of the management committee must be recorded in the minutes of the meeting, disclosed at the next general meeting of an association and provided to association members on request;*

*3. Duty of care and diligence to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person in the same position would exercise;*

*4. Duty of good faith to exercise their powers and discharge their duties in good faith in the best interests of an association and for a proper purpose;*

*5. Use of position and information not to improperly use their position or information obtained because of their position to gain a pecuniary benefit or material advantage for themselves or another person, or to cause detriment to an association;*

*6. Duty to prevent insolvent trading not to incur a debt if:*

- *the association is insolvent when the debt is incurred or becomes insolvent by incurring that debt, or by incurring debts including that debt; and*
- *immediately before the debt was incurred, either:*
  - *there were reasonable grounds to expect that an association was insolvent; or*
  - *there were reasonable grounds to expect that, if an association incurred the debt, an association would become insolvent;*

*7. Duty to disclose remuneration and other benefits. This will ensure that the prescribed details of the remuneration paid or other benefits given to members of the management committee and senior staff and their respective relatives are presented to an association's AGM in the way prescribed by regulation (which is yet to be announced); and*

*8. Duty to keep financial records to ensure an association keeps proper financial records.*

*Penalties apply for non-compliance with the above duties.*

*The duties set out in items 3 to 5 above apply to all officers of an association, including management committee members, secretary, treasurer, president and any manager appointed by the management committee.*

*The duty set out in item 6 above applies to management committee members and any person who participates in the management of an association.*

## **Defences**

*Available defences to breach of duties will include:*

- *Business judgment defence. An officer of an association who makes a 'business judgment' is considered to have acted in compliance with the duty of care and diligence referred to in item 3 above and the officer's equivalent duties at common law and in equity, if the officer:*
- *makes the judgment in good faith for a proper purpose;*
- *does not have a material personal interest in the subject matter of the judgment;*
- *is informed about the subject matter of the judgment to the extent the officer reasonably believes to be appropriate; and*
- *reasonably believes the judgment is in the best interests of an association;*

*A business judgement is any decision to take or not to take action in relation to a matter relevant to the operations of an association.*

- *Reasonable reliance. It is reasonable for an association's officers to rely on the information or advice of others if it was given or prepared by any of the following persons listed below. The reliance should also have been made in good faith and after making an independent assessment of the information or advice, having regard to the officer's knowledge of an association and the complexity of the structure of an association:*
- *an employee of the association whom the officer reasonably believes to be reliable and competent in relation to the matters concerned;*
- *a professional advisor or expert in relation to the matters that the officer reasonably believed to be within that person's professional or expert competence;*
- *another officer of an association in relation to matters within the other officer's authority; or*
- *a sub-committee of the association which the officer was not a member in relation to matters within the sub-committee's authority; and*
- *Insolvent trading defence. It is a defence to the offence referred to in item 6 above if the accused proves that the debt was incurred without their express or implied authority or consent. Also, when the debt was incurred, if the accused did not participate in the management of an association, or had reasonable grounds to expect that an association was solvent and would remain solvent even if it incurred the debt and any other debts that it incurred at that time.*