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BOARD CHARTER

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BOARD CHARTER
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AMENDMENT CERTIFICATION

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REVISION AND ISSUE CONTROL

Pages listed above are the subject of a revision to the current issue of this manual. This manual can have pages of different revision status; however, the official issue of the completed manual is to be the same on all pages.

1 Introduction

This Board Charter governs the functions and responsibilities of the Board and Senior Executives of the Company.

2 Definitions

- (1) **ASX** means the Australian Securities Exchange;
- (2) **Board** means the board of directors of the Company;
- (3) **Chairman** means the chair of the Board;
- (4) **Chief Executive Officer** means the Chief Executive Officer of the Company or where there is more than one Chief Executive Officer the joint Chief Executive Officers;
- (5) **Chief Financial Officer** means the Chief Financial Officer of the Company (or equivalent);
- (6) **Company** means Cuesta Coal Limited ACN 153 351 994; and
- (7) **Senior Executives** refers to the senior management team as distinct from the Board, being those who have the opportunity to materially influence the integrity, strategy and operation of the Company and its financial performance and includes, as the context requires, the executive directors, the Chief Financial Officer/Company Secretary, and the general managers of the Company.

3 Responsibilities of the Board

The Board is responsible for, and has the authority to determine, all matters relating to the strategic direction, policies, practices, goals for management and the operation of the Company. Without intending to limit this general role of the Board, the specific functions and responsibilities of the Board include:

- (1) approving the strategic objectives of the Company and establishing goals to promote their achievement;
- (2) monitoring the operational and financial position and performance of the Company;
- (3) ensuring the directors inform themselves of the Company's business and financial status;
- (4) establishing investment criteria including acquisitions and divestments, approving investments, and implementing ongoing evaluations of investments against such criteria;
- (5) approving and monitoring the progress of major capital expenditure, capital management and major acquisitions and divestitures;
- (6) providing oversight of the Company, including its control and accountability systems;
- (7) considering and approving the Company's budgets;

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- (8) establishing written policies on compliance, risk oversight and management;
- (9) reviewing and ratifying and monitoring systems of risk management and internal compliance and control, codes of conduct and legal compliance, in conjunction with the Company's Audit and Risk Management Committee, and ensuring they are operating effectively;
- (10) appointing and removing the Chief Executive Officer, monitoring performance and approving remuneration of the Chief Executive Officer and the remuneration policy and succession plans for the Chief Executive Officer, where applicable and appropriate;
- (11) ratifying the appointment of directors and, where appropriate or applicable, the Secretary;
- (12) ensuring that business risks facing the Company are, where possible, identified and that appropriate monitoring and reporting internal controls are in place to manage such risks;
- (13) approving and monitoring financial and other reporting and disclosure;
- (14) determining the dividend policy of the Company and declaring dividends;
- (15) ensuring the Company complies with its responsibilities under the *Corporations Act 2001*, the Company's constitution, the ASX Listing Rules and other relevant laws;
- (16) exercising due care and diligence and sound business judgment in the performance of those functions and responsibilities; and
- (17) ensuring appropriate resources are available to Senior Executives.

3.2 The Board should be provided with the information it needs to discharge its responsibilities effectively. The Senior Executives should supply the board with information in a form and timeframe, and of a quality that enables the board to discharge its duties effectively. Directors are entitled to request additional information where they consider such information necessary to make informed decisions.

4 Composition of the Board

4.1 Size

The Board will be comprised of a minimum of three and a maximum of six directors. Subject to the Corporations Act, the maximum number may be changed to reflect the Company's needs and circumstances from time to time.

4.2 Composition

The Company acknowledges that it is desirable to have a majority of directors of the Company being independent directors. However, all directors, whether independent or not, should bring an independent judgement to bear on Board decisions. An independent director is a non-executive director who is not a member of management and who is free of any business or other relationship that could materially interfere with – or could reasonably be perceived to materially interfere with – the independent exercise of their judgement. In determining whether a non-executive director is considered by the Board to be independent, the following relationships affecting independence will be taken into account:

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- (1) whether the director is a substantial shareholder of the Company or an officer of, or otherwise associated directly with a substantial shareholder of the Company (as defined in section 9 of the *Corporations Act 2001*);
- (2) whether the director is employed or has been employed in an executive capacity by the Company or another group member and there has not been a period of at least three years between ceasing such employment and serving on the board;
- (3) whether the director is or has been, within the last three years, a principal of a material professional adviser or a material consultant to the Company or another group member, or an employee materially associated with the service provided;
- (4) whether the director is or has been within the previous three years been employed by, or a partner in, any firm that in the past three years has been the Company's external auditors;
- (5) whether the director is a material supplier or customer of the Company or an other group member, or an officer of or otherwise associated, directly or indirectly, with a material supplier or customer;
- (6) whether the director has a material contractual relationship with the Company or another group member other than as a director of the Company; and
- (7) whether the director is free from any interest and any business or other relationship which could materially interfere with the director's ability to act in the best interests of the Company.

Family ties and cross-directorships may also be relevant in considering interests and relationships which may compromise independence.

Directors considered by the Board to be independent should be identified as such in the corporate governance statement in the annual report. The Board should state its reasons if it considers a director to be independent, notwithstanding the existence of relationships set out above, and the corporate governance statement in the Company's annual report should disclose the existence of any such relationships.

The Board will regularly assess whether each non-executive director is considered to be independent. Information relevant to this assessment must be provided to the Board by each non-executive director. Should a director's independent status change, this should be disclosed and explained in a timely manner to the market.

4.3 Expertise

The Board shall ensure that, collectively, it has the appropriate range of skills and expertise to properly fulfil its responsibilities, including:

- (1) accounting;
- (2) finance;
- (3) business;
- (4) the Company's industry;
- (5) Senior operating - level experience; and
- (6) relevant technical expertise.

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The Board shall review the range of expertise of its members on a regular basis and ensure that it has operational and technical expertise relevant to the operation of the Company.

5 Appointment of Directors

Directors are appointed in accordance with the terms of the Company's constitution.

Subject to the number of directors allowed under the Company's constitution, a director may be appointed by an ordinary resolution of the Company in general meeting. In the situation of a vacancy occurring between such elections, the Board may appoint a replacement director. Such director will only hold office until the next annual general meeting of the Company and then may stand for re-election as a director.

The terms and conditions of the appointment and retirement of members of the Board will be set out in a letter of appointment, which shall include the following matters:

- (1) the term of the appointment, subject to member approval;
- (2) time commitments envisaged;
- (3) the powers and duties of directors;
- (4) any special duties or arrangements attaching to the position;
- (5) circumstances in which an office of director becomes vacant;
- (6) expectations regarding involvement with committee work;
- (7) remuneration, including superannuation and expenses;
- (8) superannuation arrangements;
- (9) the requirement to disclose directors' interests and any matters which affect the director's independence;
- (10) fellow directors;
- (11) trading policy governing dealings in securities (including any share qualifications) and related financial instruments by directors, including notification requirements;
- (12) induction training and continuing education arrangements;
- (13) Board policy on access to independent professional advice;
- (14) indemnity and insurance arrangements;
- (15) confidentiality and rights of access to corporate information;
- (16) a copy of the Company's constitution; and
- (17) organisational chart of management structure.

6 Remuneration, appointment and removal

6.1 Election of Board

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In nominating the board, issues to be considered as part of the process include:

- (1) Director competencies – in order to be able to discharge its mandate effectively the board should comprise directors possessing an appropriate range of skills and expertise. An evaluation of the range of skills, experience and expertise on the board is important when considering new candidates for nomination or appointment.
- (2) Board renewal – Board renewal is critical to performance, and directors should be conscious of the duration of each director's tenure in succession planning.
- (3) Composition and commitment of the board – the board should be of a size and composition that is conducive to making appropriate decisions. The board should be large enough to incorporate a variety of perspectives and skills and to represent the best interests of the company as a whole rather than of individual shareholders or interest groups. It should not, however, be so large that effective decision-making is hindered.
- (4) Election of directors – the names of candidates submitted for election as directors should be accompanied by the following information to enable shareholders to make an informed decision on their election:
 - (a) biographical details, including competencies and qualifications and information sufficient to enable an assessment of the independence of the candidate;
 - (b) details of relationships between the candidate and the Company, and the candidate and directors of the company;
 - (c) directorships held;
 - (d) particulars of other positions which involve significant time commitments;
 - (e) the term of office currently served by an directors subject to re-election; and
 - (f) any other particulars required by law.

Unless otherwise stated, non-executive directors will be appointed for the maximum term permissible under the Constitution subject to re-election and to the ASX Listing Rule and *Corporations Act 2001* provisions concerning removal of a director.

Re-appointment of directors should not be automatic.

6.2 Board commitment

The Board is responsible for monitoring, on an ongoing basis, the time required from non-executive directors and the extent to which non-executive directors are meeting these requirements.

Prior to the nomination of prospective non-executive directors for election or re-election, the Board must obtain from the prospective candidate:

- (1) details of other commitments of the prospective candidate and an indication of the time involved; and

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- (2) an acknowledgement that the prospective candidate will have sufficient time to meet the requirements of non-executive directors of the Company.

Non-executive directors should inform the Chairman before accepting any new appointment as a director of another company.

6.3 Induction and continuing education

The Board must implement an appropriate induction and education process for new Board appointees and Senior Executives to enable them to gain a better understanding of:

- (1) the Company's financial, strategic, operational and risk management position;
- (2) the rights, duties and responsibilities of the directors;
- (3) the roles and responsibilities of Senior Executives; and
- (4) the role of Board committees.

6.4 Evaluation and review

The Chairman is responsible for the:

- (1) evaluation and review of the performance of the Board and its committees (other than the Chairman);
- (2) evaluation and review of the performance of individual directors (other than the Chairman);

The Chairman should disclose the process for evaluating the performance of the board, its committees and individual directors.

The Board (other than the Chairman) is responsible for the:

- (1) evaluation and review of the performance of the Chairman; and
- (2) review of the effectiveness and programme of Board meetings.

The process for the performance evaluation of the Board, its committees and directors generally involves an internal review. From time to time as the Company's needs and circumstances require, the Board may commission an external review of the Board, and its composition.

6.5 Access to resources

The Board shall in exercising in its role regarding the director's election and appointment practices of the Company have access to adequate internal and external resources, including access to advice from external consultants or specialists as required.

Senior Executives should supply the Board with this information in a form and timeframe, and of a quality that enables the Board to discharge its duties effectively. Directors are entitled to request additional information where they consider such information necessary to make informed decisions.

6.6 Board renewal

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The Board is responsible for ensuring that consideration is given to the importance of Board renewal to Board performance and must be conscious of the duration of each director's tenure in succession planning.

7 Independent professional advice

To facilitate independent judgement in decision-making, each director has the right to seek independent professional advice at the Company's expense. However, prior approval from the Chairman is required, which may not be unreasonably withheld.

8 Allocation of responsibilities

8.1 Chairman

- (1) The Board elects the Chairman in accordance with the Company's constitution.
- (2) The Chairman will be an independent director who is selected on the basis of the person's achievements and record as a leader.
- (3) The division of responsibilities between the chair and the Chief Executive Officer should be agreed by the board and set out in a statement of position or authority.
- (4) The position of Chairman will be reviewed by the Board at the first Board meeting following the Annual General Meeting each year.
- (5) The Chairman is responsible for leadership of the Board, for the efficient organisation and conduct of the Board's function and for the briefing of all directors in relation to issues arising at Board meetings.
- (6) The Chairman's specific duties are to:
 - (a) chair Board meetings. If the Chairman is not present within 15 minutes after the time appointed for the holding of that meeting, unless a deputy Chairman has been elected and is present and agrees to act, a director chosen by a majority of directors present shall assume this role;
 - (b) establish the agenda for Board meetings in consultation with the Chief Executive Officer;
 - (c) ensure Board minutes properly reflect Board decisions;
 - (d) be the spokesperson for the Company at the annual general meeting and in the reporting of performance and profit figures; the Chief Executive Officer or the Chief Executive Officer's nominee will undertake all other public relations activities;
 - (e) be the major point of contact between the Board and the Chief Executive Officer;
 - (f) be kept fully informed of current events by the Chief Executive Officer on all matters which may be of interest to directors;
 - (g) regularly review with the Chief Executive Officer and such other Senior Executives as the Chief Executive Officer recommends, progress on important initiatives and significant issues facing the Company;
 - (h) provide mentoring for the Chief Executive Officer; and

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- (i) commence the annual process of Board and director evaluation;
- (7) The Chairman is not entitled to vote or participate in the deliberations on any matter in which he or she has a personal interest, unless there is compliance with the conflict of interest provisions under the constitution of the Company, the ASX Listing Rules and under the *Corporations Act 2001*.
- (8) The Chairman may be removed from office in accordance with the Company's constitution.

8.2 Individual directors

In accordance with statutory requirements and in keeping with developments at common law, directors have the following responsibilities:

- (1) exercise their powers and discharge their duties in good faith and in the best interests of the Company;
- (2) use their powers of office for a proper purpose and not for personal advantage or for the benefit of another party;
- (3) use due care and diligence;
- (4) make a reasonable effort to become and remain familiar with the affairs of the Company;
- (5) attend all Board meetings and Board functions unless there are valid reasons for non-attendance; and
- (6) commit the necessary time and energy to Board matters to ensure that they are contributing their best endeavours in the performance of their duties for the benefit of the Company, without placing undue reliance on other directors to fulfil these duties.

8.3 The Chief Executive Officer

- (1) The Chief Executive Officer is appointed by the Board.
- (2) The Chief Executive Officer is responsible for the ongoing management of the Company in accordance with the strategy, policies and programs approved by the Board.
- (3) The Chief Executive Officer's responsibilities include:
 - (a) developing, with the Board, a consensus for the Company's vision and direction;
 - (b) constructing, with Senior Executives, programs to implement this vision;
 - (c) implementing the Company's risk management policies (in conjunction with the Company's Audit and Risk Management Committee);
 - (d) negotiating the terms and conditions of appointment of the Senior Executives for Board approval;
 - (e) appointing the general managers of the Company;

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- (f) endorsing the terms and conditions of appointment of all other staff members;
 - (g) providing strong leadership to, and effective management of, the Company in order to:
 - (i) encourage co-operation and teamwork;
 - (ii) build and maintain staff morale at a high level; and
 - (iii) build and maintain a strong sense of staff identity with, and a sense of allegiance to, the Company;
 - (h) ensuring a safe workplace for all personnel;
 - (i) ensuring a culture of compliance generally, and specifically in relation to environmental matters;
 - (j) carrying out the day-to-day management of the Company;
 - (k) forming other committees and working parties from time to time to assist in the orderly conduct and operation of the Company;
 - (l) keeping the Board informed, at an appropriate level, of all the activities of the Company; and
 - (m) seeking to ensure that all personnel act with the highest degree of ethics and probity.
- (4) The Chief Executive Officer is formally delegated by the Board to authorise all expenditures as approved in the budget, subject to:
- (a) the Chief Executive Officer's remuneration, outside of normal monthly remuneration, being authorised by the Chairman;
 - (b) all business related expenses paid to the Chief Executive Officer being authorised or ratified by the Chairman;
 - (c) the appointment of individuals to specific management roles while being the responsibility of the Chief Executive Officer, the terms and conditions under which appointed individuals report to the Chief Executive Officer must be approved by the Board.

8.4 Secretary

- (1) The Secretary is generally responsible for carrying out the administrative and legislative requirements of the Board. The Secretary holds primary responsibility for ensuring that the Board processes, procedures and policies run efficiently and effectively.
- (2) The Secretary holds primary responsibility in supporting the effectiveness of the Board by monitoring that Board policy and procedures are followed.
- (3) All directors have access to the Secretary.
- (4) The Secretary is accountable to the Board through the Chairman on all governance matters.

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- (5) The Secretary is appointed in accordance with the Company's constitution. The appointment and removal of the Secretary is a matter for decision by the Board as a whole.
- (6) The specific tasks of the Secretary include:
 - (a) overseeing the Company's compliance program and ensuring all Company legislative obligations are met;
 - (b) ensuring that the agenda and briefing materials for Board meetings are prepared and forwarded to directors in a timely and effective manner;
 - (c) recording, maintaining and distributing the minutes of all Board and Board subcommittee meetings as required;
 - (d) preparing for and attending all general meetings of the Company and ensuring that the correct procedures are followed;
 - (e) recording, maintaining and distributing the minutes of all annual and other general meetings of the Company;
 - (f) meeting statutory reporting requirements in accordance with relevant legislation; and
 - (g) any other services the Chief Executive Officer or Chairman may require.

9 Chief Executive Officer and Chief Financial Officer assurances

It is the responsibility of both the Chief Executive Officer (or equivalent) and the Chief Financial Officer (or equivalent if any) to provide written assurances to the Board that in all material respects:

- (1) the financial reports submitted to the Board present a true and fair view of the Company's financial condition and operational results; and
- (2) the Company's risk management and internal compliance and control system is operating efficiently and effectively.

10 Committees

To assist with the execution of its responsibilities, the Board has the authority to establish and determine the powers and functions of the committees of the Board, including the Audit and Risk Management Committee and the Remuneration and Nomination Committee. Each board committee has documented a charter, approved by the Board, setting out its responsibilities.

10.1 Remuneration and Nomination Committee

- (1) The role and responsibilities, composition, structure and membership requirements of the Remuneration and Nomination Committee are set out in detail in a Remuneration and Nomination Committee Charter approved by the Board.
- (2) The Remuneration and Nomination Committee consists of at least three members the majority being non-executive directors. The Committee should be chaired by an independent director.

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- (3) The responsibilities of the Remuneration and Nomination Committee include reviewing and making recommendations in respect of:
 - (a) executive remuneration and incentive policies;
 - (b) the remuneration packages of Senior Executives;
 - (c) the Company's recruitment, retention and termination policies for Senior Executives;
 - (d) incentive schemes;
 - (e) superannuation arrangements;
 - (f) the remuneration framework for non-executive directors;
 - (g) nomination and appointment of directors; and
 - (h) director competencies, Board composition and evaluation of performance.

10.2 Audit and Risk Management Committee

- (1) The role and responsibilities, composition, structure and membership requirements of the Audit and Risk Management Committee are documented in a separate Audit and Risk Management Committee Charter.
- (2) The Audit and Risk Management Committee consists of:
 - (a) a majority of non-executive directors;
 - (b) an independent chair; and
 - (c) at least three members.
- (3) The Audit and Risk Management Committee must review the integrity of the Company's financial reporting and oversee the independence of the external auditors.

11 Codes of Conduct

11.1 Directors and Key Officers

To promote ethical and responsible decision-making, the Board must approve a Code of Conduct for Directors and Key Officers (the Chief Executive Officer (or equivalent), the Chief Financial Officer and any other key executives) as to the practices necessary to maintain confidence in the Company's integrity and the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

The Code of Conduct for Directors and Key Officers shall deal with the following main areas:

- (1) compliance with the law;
- (2) conflicts of interest;
- (3) confidential information;

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- (4) insider information;
- (5) benefits to Senior Officers;
- (6) fair dealing; and
- (7) observance of the Code of Conduct.

Directors and the senior management team must comply with the Code of Conduct and demonstrate commitment to the Code and consistency in its execution. Adherence to the Code of Conduct must be periodically evaluated and intermediate action taken where necessary.

11.2 Code of conduct covering obligations to stakeholders

The Board must establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.

The Code should include:

- (1) responsibilities to shareholders and the financial community generally;
- (2) employment practices;
- (3) obligations relative to fair trading and dealing;
- (4) responsibilities to the community;
- (5) responsibilities to the individual;
- (6) how the Company complies with legislation affecting its operations; and
- (7) how the Company monitors and ensures compliance with the Code.

12 Policies

12.1 Delegation of authority

- (1) The Company's statement of delegated authority shall set out the Company's policy relevant to the delegation of authority to management to conduct the day-to-day management of the Company.
- (2) Directors have no individual authority to make representations or enter agreements on behalf of the Company unless such authority is expressly delegated by the Board.

13 Public availability of materials

This Charter or a summary of its main provisions shall be made available on the Company's website in a clearly marked corporate governance section.

Approved by the Board on 21 November 2011.

Signed..........

Print name:.....*Matthew P Crawford*.....

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