

# **CONSTITUTION OF THE UMTAMVUNA MARINE CONSERVANCY**

**(Established in May 1989)**

Adopted: \_\_\_\_\_ 2024

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**A. NAME, ADDRESS, AREA OF OPERATION and MISSION**

1. The name of the Conservancy is the “**Umtamvuna Marine Conservancy**” (“**the Conservancy**”), abbreviated to the acronym “**UMC**”.
2. The Conservancy is an established independent legal person, and the original constitution was duly adopted on 26 May 1989.
3. The postal and physical address of the Conservancy, for statutory purposes and for the formal service of physical documents, shall be the residence of the Secretary of the Conservancy from time to time, or at any other place in Port Edward that its office bearers, or the Executive Committee of the Conservancy (“**the EXCO**”), may designate in writing from time to time.
4. The Conservancy’s e-mail address shall be as it appears on the letterhead of the Conservancy from time to time.
5. The Conservancy represents the interest of its members in Port Edward, falling under the area of jurisdiction of the Greater Ray Nkonyeni Local Municipality (“**RNLM**”) and the concurrent jurisdiction of the UGU District Municipality (“**UGU**”), currently described as Port Edward Ward 1, and the area covered by the Conservancy is; from the middle of the Umtamvuna river in the Sout-West, along the National Road (R61), to the middle of the Sandlondlu Lagoon in the North-West, and inter alia, include the sea-shore and the sea area encompassed and including a depth of up to 18.288 m (10 fathoms) (“**the area of operation of the Conservancy**”).
6. The Conservancy’s annual financial year shall be the end of February annually.
7. The mission of the Conservancy is to preserve in perpetuity the natural environment of coastal and riverine forest, coastal bush and grasslands for the benefit of the creatures occurring there and the delight of future generations of humankind.

**B.       LEGAL STATUS of the CONSERVANCY**

8.           The Conservancy is a separate legal persona, being an independent legal person, distinct from the individual members who compose it. The Conservancy exists in its own right and as such:

8.1       It acquires and disposes of property and rights in its own name;

8.2       It incurs obligations and liabilities in its own name;

8.3       It is capable of suing and being sued in its own name;

8.4       It has perpetual succession, notwithstanding any changes in the composition of its membership, or any changes in the composition of its office bearers; and

8.5       The members of the Conservancy and its office bearers shall not be liable for the liabilities or obligations of the Conservancy.

9.       The Conservancy has been established for a public purpose with its principal objectives being carried out in a non-profit manner, and it shall apply to the relevant authority for the status of a Non-Profit Organisation. As such:

9.1       The Conservancy's income (including donations made to it) and its assets shall be directed solely to the furtherance of achieving its principal objectives;

9.2 All income and assets shall be used solely to achieve its objectives;

9.3 All surplus revenue shall be retained by the Conservancy, and shall be applied against its future expenditure, and may be invested and reinvested for such purpose in such manner as set out herein;

9.4 All assets shall be held in its own name;

9.5 No member or office bearer, directly or indirectly, may have any financial interest in the Conservancy;

9.6 All office bearers carry out his/her duties free of charge. However, a general meeting may approve the payment of honoraria;

9.7 No member or office bearer shall have any right in the property or assets solely by virtue of being a member or office bearer;

9.8 Notwithstanding the aforesaid, the members of the EXCO, and any person/s appointed by it to perform functions on its behalf, shall be entitled to be refunded reasonable disbursements made by them pursuant to the performance of their duties. Such refunds must be recorded in writing, supported by proof of the expenditure, and signed off by no fewer than two members of the EXCO. Material amounts require approval by the entire EXCO and must be in writing;

9.9 The aforesaid shall not preclude:

9.9.1 The reasonable remuneration of a person employed by the Conservancy; and:

9.9.2 The reasonable remuneration of a person appointed by the Conservancy to deliver services to it.

10. Upon dissolution, the Conservancy must transfer its remaining assets to some other non-profit institution, board or body which has been granted exemption from tax in terms of section 10(1)(cA) of the **Income Tax Act, No 58 of 1962** and which has objects similar to those of the Conservancy.

11. The Conservancy shall be a non-political organisation and shall not align itself to any political party.

### **C. POWERS and OBJECTIVES of the CONSERVANCY**

12. The Conservancy is a voluntary association, and it represents the interests of its members by promoting and engaging in the conservation and protection of the natural environment, including flora, fauna, or the biosphere in its area of operation, *inter alia* in

12.1 Generating interest and active participation by landowners, user and/or population groups in the conservation of indigenous fauna, flora and marine life, and the protection of the environment in the area;

12.2 ensuring the long-term sustainability, and better general security of its area of operation by working in collaboration with other local Conservancies, the KwaZulu-Natal Conservancies Association ("**Conservancies KZN**"), the Ezemvelo KZN Wildlife ("**KZN Wildlife**"), South African National Parks ("**SANParks**"), the South African Police Services ("**SAPS**"), the Greater Ray Nkonyeni Local Municipality ("**RNLM**") and similar bodies to maintain and preserve the greenbelts, rivers, and wetlands in its area of operation;

12.3 influencing land use and building activities by reviewing and commenting on planning/environmental or other development applications to ensure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development as contemplated in section 24 of the **Constitution**;

- 12.4 promoting the conservation of the traditional village, traditional rural character, and the beauty of its area of operation;
- 12.5 protection, regulation, and improvement of the environment;
- 12.6 the conservation of natural and man-made resources within development frame works;
- 12.7 by affiliating with any other conservancies, and governing or national bodies; and
- 12.8 to be the “eyes and ears” for all law enforcement agencies in respect of marine and terrestrial conservation issues within the geographical area of the Conservancy.

and it shall have all powers incidental to achieving the above.

13. In exercising its powers, the Conservancy must:

- 13.1 Conduct its financial transactions by means of a banking account or accounts, with all payments from the account requiring authorisation by a minimum of two persons serving on the EXCO, excluding the Treasurer;
- 13.2 Any investments shall be invested at a duly registered bank in terms of the **Banks Act, No 94 of 1990** or at such registered investment entity approved at a general meeting of the Conservancy;
- 13.3 Keep accounting records of its income, expenditure, assets, and liabilities to the standards of generally accepted accounting practice;

- 13.4 The Conservancy shall not incur liabilities in excess of the sum of its subscriptions, voluntary contributions and net assets and each member of the EXCO shall be responsible for making this clause known to any person with whom he/she deals on behalf of the Conservancy and to whom this limitation of liability applies;
- 13.5 Within three months from the end of its financial year, prepare a statement of income and expenditure for that financial year and a balance sheet showing its assets, liabilities, and financial position as at the end of that financial year, and it shall be submitted for approval at every annual general meeting ("AGM"); and
- 13.6 reserve its books of account, supporting vouchers, records of subscriptions paid by its members, income and expenditure statements, and balance sheets in an original or reproduced form, for five years.

**D. MEMBERSHIP of the Conservancy and SUBSCRIPTIONS**

14. All members are deemed to be bound by this Constitution, and any future amendments thereto.
15. The Conservancy shall consist of paid-up members, hereinafter referred to as "Members".
16. Membership shall be opened to all owners/residents of property within the geographic area, and any acceptable person/s living or employed in the area.
17. There are six classes of membership:
- 17.1 "Ordinary Member" means any person or member who has paid his/her full membership fee;

17.2 “Honorary and Life Member” means any person or member that, at the sole discretion of the EXCO, has through his/her contribution towards the Conservancy, qualified for honorary, or life membership;

17.3 “Corporate member” means any business entity who is a member and who has paid its full membership fee;

17.4 “Family member” means any person or persons who is/are a member of a family unit who has paid his/her full membership fee;

17.5 “Junior member” means any person or member who is, either a primary, or secondary school pupil who has paid his/her full membership fee; and

17.6 persons nominated by KZN Wildlife, RNLN, and other similar organisations in the area who paid their full membership fee.

18. All membership applications shall be in writing, reflecting the basis upon which the person avers to be eligible for membership, and shall be considered and decided by the EXCO, in its discretion.

19. A person, other than an honorary, or a life member, whose application for membership has been declined, shall be entitled to request written reasons for the decision, and may appeal the decision to the next general meeting (“GM”). The decision of the EXCO may be set aside at a GM, but until so set aside, will remain in force.

20. Membership is renewable annually, at, or prior to the AGM.

21. Members are liable for annual subscriptions as determined by the EXCO, provided that no annual increase may exceed twenty percent without approval of a GM.

22. Unless otherwise determined by a GM, subscriptions are payable annually in advance, on or before 1 January of every year.



23. The EXCO may invite a person or persons to become an Honorary, or a Life Member, and such person or persons:

23.1 Does not have to meet the requirements of a member set out in clause 16 above;

23.2 Are not expected to pay annual subscriptions; and

23.3 Have the same rights as any other member.

24. Honorary and life membership is intended to be awarded on rare occasions only and is aimed at recognising the significant contribution by individuals in pursuing some or all of the objectives of the Conservancy in the area of its operation.

25. Upon acceptance as a member, the Secretary of the EXCO must enter the name of the member in a Register of Members. The EXCO shall keep the Register of Members updated, which *prima facie* shall be deemed to be correct.

26. Membership of the Conservancy is terminated;

26.1 Automatically upon written resignation by the member, addressed to the EXCO;

26.2 Automatically upon the death of the member;

26.3 Automatically upon a decision of the EXCO, taken with a majority of not less than two-thirds of its members present at a meeting arranged on not less than one week's written notice of the meeting and its purpose. Without limitation, the EXCO's discretion would be guided, by a member causing embarrassment to the Conservancy, a *prima facie* case of criminal conduct against the member, and/or unreasonable disruptive

conduct in exercising membership rights. The member is entitled to request written reasons for the decision and may appeal the decision to the next GM. The decision of the EXCO may be set aside by the Conservancy at a GM, but until so set aside, will remain in force;

- 26.4 Automatically upon failure to pay annual subscriptions within three months from the date when they become due. However, should the subscriptions be paid within six months from when they become due, the former member's membership will be reinstated automatically without the need to apply again for membership;
- 27. No person whose membership has been terminated is entitled to a refund of part or all of membership fees paid in respect of such membership.
- 28. All members may request reasonable access to the Conservancy's:
  - 28.1 Constitution;
  - 28.2 Minutes of GM's;
  - 28.3 Annual financial records; and
  - 28.4 Membership list (excluding contact particulars).
- 29. No person may divulge the Conservancy's minutes of GM's, annual financial records, or membership list without prior written approval by the EXCO, or prior approval by a Court of Law.

## **E. GENERAL MEETINGS**

30 The Conservancy has two types of General Meetings:

30.1 Its Annual General Meeting (***“the AGM”***); and

30.2 Special General Meetings (***“the SGM”***).

31. General meetings are chaired by the Chairperson of the EXCO, failing him/her the Deputy- Chairperson of the EXCO, failing him/her a member of the EXCO nominated by the meeting, failing him/her a person nominated by the meeting from its number.

32. The EXCO in its discretion may determine that a particular general meeting may be conducted in part or wholly by video conferencing, acknowledging that in-person general meetings are preferable.

33. The chairperson of the meeting determines the procedural rules for the meeting.

34. The purpose of the AGM is:

34.1 For the EXCO to report to the membership;

34.2 To decide on policy;

34.3 To authorise a course of action by the EXCO in appropriate instances;

34.4 To make decisions on matters referred to it in terms of this Constitution or the EXCO;

34.5 To make changes to the Constitution;

34.6 To elect an EXCO; and

34.7 To dissolve the Association.

35. The AGM shall be held annually within ninety (90) days after the financial year-end, on not less than fourteen days' notice to all Conservancy members, together with the agenda and proposals for consideration thereat.

36. The business to be transacted at the AGM shall be:

36.1 To receive the chairperson's annual report;

36.2 to receive and approve, with or without amendment, the annual financial report;

36.3 to elect EXCO members;

36.4 to set annual subscriptions; and

36.5 to conduct general business.

37. Apart from arranging the AGM:

37.1 The Chairperson, or the EXCO, on the written request of at least three EXCO members, may arrange SGM's;

37.2 Ten per cent of members of the Conservancy may also demand, by written notice to the EXCO, for a SGM to be arranged.

38. The purpose of a SPECIAL General Meeting is:

38.1 To fill any vacancies on the EXCO;

38.2 To decide policy that, reasonably assessed, cannot wait for the next AGM;

38.3 To authorise a course of action by the EXCO that, reasonably assessed, cannot wait for the next AGM;

38.4 To make decisions on matters referred to it in terms of this Constitution or the EXCO;

38.5 To make changes to the Constitution; and

38.6 To dissolve the Conservancy.

39. Each member whose subscriptions then payable have been paid:

39.1 May speak at any general meeting, unless the chairperson of the meeting rules otherwise in conducting the meeting;

39.2 Have one vote at any general meeting and at other voting forums the Conservancy may use from time to time, save that when voting for members of the EXCO, each ordinary member in good standing may vote for any number of candidates up to a maximum of eleven.

40. General meetings make decisions by majority vote of those members present;

41. Voting at all general meetings may be held by either a show of hands or by the secret completion of bona fide voting papers, should this be ordered by the chairperson of the meeting in his/her discretion. Only paid-up members, honorary and life members may vote at any GM, and corporate and family members shall, irrespective of the number of representatives, enjoy a single vote.
42. The chairperson of all general meetings has a deliberate vote and a deciding vote if votes are equal on an issue.
43. Every member has the right to nominate another member, in writing, to act as his/her proxy, to attend, and to vote on his/her behalf at any general meeting.
44. Such nominations must be on a form prescribed by the EXCO and must be submitted to the Secretary at least forty-eight hours before the general meeting concerned.
45. A member representing other members by proxy may only act on behalf of a maximum of three other members.
46. A quorum for any general meeting shall be ten per cent of members, unless the meeting is to consider the dissolution of the Association, in which case the quorum will be two-thirds of the members.
47. In the event of a quorum not being present within fifteen minutes of the nominated time of the meeting, the meeting shall be postponed for a week, if possible, at the same time and venue, and the quorum for that meeting shall be those members present, in person, or by proxy, provided a quorum at a postponed general meeting where the dissolution of the Conservancy is to be discussed remains two-thirds of the ordinary members.
48. Notice of general meetings shall be given not less than fourteen days before the meeting, and such notice must indicate the matters for discussion. Such notice:

- 48.1 Must be given electronically, including on the Conservancy's WhatsApp group/s for as long as they remain in use, by email to the last known email address of all members, and such other forms of electronic communication that may be approved of at an AGM to replace the Conservancy's WhatsApp group/s and/or email as an electronic communication method;
- 48.2 If reasonably possible, such electronic communications should include as an attachment, an agenda and any document which is intended to serve before the general meeting and must stipulate-
  - 48.2.1 Where any document which is intended to serve before the meeting could be obtained; and
  - 48.2.2 In the case of the AGM, where the Conservancy's statement of accounts, and all reports by the chairperson and the treasurer could be obtained.
- 49. Proper notice of a meeting shall be deemed to have been duly given if transmitted to the mailing list of the Conservancy then in use for email communications and transmission to the Conservancy's WhatsApp group/s for as long as they remain in use or transmitted making use of such other forms of electronic communication that may be approved at an annual general meeting.
- 50. Proper minutes and attendance records of the AGM shall be kept by the Conservancy and shall be confirmed by the next AGM.
- 51. Proper minutes and attendance records of SGM's shall be kept by the Conservancy and shall be confirmed by the next general meeting.
- 52. Upon confirmation of minutes, the chairperson of the meeting shall sign them, or such person nominated by a general meeting

**F. THE EXCO**

53. The Conservancy's day-to-day affairs are conducted by the EXCO elected at an AGM, which performs such actions and have all the powers necessary to give effect to the objectives of the Conservancy, expressed or implied in this Constitution.
54. The EXCO shall consist of a minimum of six members and a maximum of ten members.
55. Save for addressing any vacancies in the EXCO, the members of the EXCO are appointed by the members at the AGM to serve for a period of two years, provided half of such elected members shall retire by rotation annually.
56. A member of the Conservancy may nominate another member or other members for election to the EXCO in writing (signed by the proposer and another member as seconder) not less than four days before the general meeting concerned, and such member may accept the nomination in writing, or in person at the GM concerned.
57. Serving members of the EXCO may stand for re-election without nomination, provided that their willingness to stand for re-election is confirmed in writing prior to the AGM, or in person at the AGM.
58. If fewer persons are nominated than the minimum number of persons to be elected, the chairperson of the AGM concerned may permit members to be nominated and seconded at the AGM, and for the acceptance of nominations in person at the AGM concerned.
59. A member of the EXCO serves until the second AGM that follows his/her election, but may:



- 59.1 Stand for re-election;
- 59.2 Resign from office in writing;
- 59.3 Be removed by a GM called inter alia for that purpose;
- 59.4 Become disqualified and automatically removed as a member of the EXCO if that member of the EXCO-
  - 59.4.1 Ceases to be a member of the Conservancy;
  - 59.4.2 Becomes disqualified from being an office bearer for any reason set out in section 25A(1) and (3) to (6) of the **Nonprofit Organisations Act, No 71 of 1997**;
  - 59.4.3 Is appointed to office in any structure of a political party;
  - 59.4.4 Does not attend three consecutive meetings of the EXCO, without his/her written apology having been accepted by the majority of members of the EXCO present at any such meeting, acting in their discretion;
  - 59.4.5 Becomes a councillor on the RNLM or UGU;
  - 59.4.6 Has submitted, or has been awarded a tender by, or has been awarded a contract with the RNLM or UGU;
  - 59.4.7 If found by the EXCO to be guilty of any conduct prejudicial to the objectives, interests, operation, or procedures of the

Conservancy, or has not conscientiously carried out duties assigned to such member by the EXCO;

59.4.8 In case of a member of the EXCO disputing that he/she so has become disqualified, the member of the EXCO is entitled to request written reasons for the decision and may appeal the decision to the next general meeting. The disqualification may be set aside at a general meeting, but until so set aside, will remain in force.

60. In the event of it transpiring that the EXCO consists for a period of time less than six members:

60.1 The actions of the EXCO shall nevertheless be lawful subject to further members being co-opted or appointed within ninety days from the date upon which the number of the EXCO members fell below five;

60.2 The remaining members of the EXCO must call a SGM to fill the vacancies;

60.3 The remaining members of the EXCO should take all reasonable endeavours to co-opt additional members pending a decision by a SGM to fill the vacancies.

61. The members of the EXCO are answerable to the Conservancy's AGM or SGM called for that purpose and must report to the AGM, which reporting must include a least the chairperson's and the treasurer's reports.

62. In the event of a vote of no-confidence in the EXCO at an SGM, arranged for that purpose, a SGM may appoint an interim EXCO pending the next AGM.

63. The members of the EXCO amongst themselves elect:

63.1 A chairperson;

63.2 A vice-chairperson;

63.3 A treasurer;

63.4 A secretary; and

63.5 Members to chair such other functions as determined by the EXCO, save that the position of treasurer may never be left vacant.

64. No person may serve as chairperson or vice-chairperson for longer than a continuous period of four years.

65. The members of the EXCO amongst themselves determine the date, times, and venues (including videoconferencing) for meetings, but must meet not less than once every quarter, on no less than fourteen days' notice.

66. In addition to regular meetings of the EXCO, further meetings may be called by the chairperson, or the vice-chairperson, or by three members of the EXCO. Such meetings, save for matters of the utmost urgency, should be called on not less than seven days' notice.

67. Two-thirds of the members of the EXCO shall constitute a quorum. In the event of any member/s leaving a meeting of the EXCO thirty minutes after the start of the meeting, the remaining members shall constitute a quorum.

68. Any member of the EXCO with any financial, political, personal, or business interest in any matter under discussion, must declare such interest and recuse him/herself from such discussions and any vote thereon by the EXCO.

69. No member of the EXCO or of any of its sub-committees may use his/her position on such committees to promote his/her financial and/or business interests and/or political interests or to use confidential information obtained through his/her position for such purposes.
70. Attendance at EXCO meetings is limited to elected members and individuals invited by the chairperson, provided that invited guests may not vote.
71. The chairperson shall act as chairperson of the EXCO meeting, failing him/her the vice-chairperson, failing him/her the members of the EXCO who are present choose which one of them is to chair that meeting.
72. When necessary, the EXCO will vote on issues. The chairperson of the meeting has a deliberative, and a deciding vote if the votes are equal on an issue.
73. Voting by proxy shall be allowed.
74. Nothing in this Constitution shall preclude a round-robin written approval of resolutions by members of the EXCO.
75. Proper minutes and attendance records of meetings of the EXCO shall be kept by the EXCO and shall be confirmed at the next meeting of the EXCO.
76. Upon confirmation of minutes, the chairperson of the meeting shall sign them.
77. The EXCO may appoint sub-committees of not less than one EXCO member, to which further members of the Conservancy may be co-opted by the EXCO, with such delegated powers as the EXCO may determine. These sub-committees will report to the EXCO and will function for limited periods only.

- 78. The EXCO may appoint persons to represent the Conservancy at meetings with other entities.
- 79. Public statements may be made only by the chairperson, the vice-chairperson, and a member of the EXCO who has been so authorised to do so by the EXCO.
- 80. Correspondence issued on behalf of the Conservancy shall be on the Conservancy's letterhead and shall be signed by the chairperson, the vice-chairperson, or a member of the EXCO who has been authorised to do so by the EXCO.
- 81. No member of the EXCO shall be liable for any action undertaken in good faith in performing functions for or on behalf of the Conservancy.

**G. AMENDMENTS to the CONSTITUTION**

- 82. The Conservancy may amend its Constitution at a GM, provided that at least two-thirds of the members present and voting at a GM convened for the purpose of considering such amendment, vote in favour of the amendment.
- 83. Notice of intent to amend the Constitution at such meeting shall be given at least fourteen days before the date of such meeting and shall contain the intended changes, motivation, and reasoning for such changes.
- 84. A member, wishing to amend the Constitution, shall give the secretary written notice thereof with the proposed amendment/s and the reason thereof at least one month prior to the AGM or SGM concerned.

**H. DISSOLUTION of the Conservancy and INTERPRETATION**

85. The Conservancy may dissolve itself at a GM, provided that at least two-thirds of the members present and voting at a GM convened for the purpose of considering such dissolution, vote in favour of the dissolution.
86. The Conservancy's GM may nominate some other non-profit institution, board or body which has been granted exemption from tax in terms of section 10(1)(Ca) of the **Income Tax Act, No 58 of 1962** and which has objects similar to those of the Conservancy as the recipient of any assets of the Conservancy remaining after payment of all the Association's debts, as envisaged in clause 9 above.
87. Should any doubt arise as to the meaning or interpretation of any of the terms or provisions of this Constitution, or any resolution of the Conservancy, the EXCO, or any other sub-committee appointed by the EXCO, the decision of the EXCO shall be final and binding.

The above Constitution was duly adopted at a Special General Meeting of the members of the Conservancy on \_\_\_\_\_ 2024

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Vice-chairperson