

**REVISED DRAFT TRUST DEED IN RELATION TO THE PROPOSAL
ON THE EVOLUTION OF TECT – JANUARY 2018**

DATED

27 March

2002

DEED OF TRUST

establishing the

TECT CHARITABLE TRUST

Updated ~~21 August 2015~~ 2018

TAURANGA, NEW ZEALAND

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TECT CHARITABLE TRUST

DEED OF TRUST

DATED 27 March 2002

PARTIES

- (1) **TAURANGA ENERGY CONSUMER TRUST** as established by a Deed of Trust dated 21 December 1993 (“the Settlor”); and
- (2) **MATTHEW HAROLD CAMERON
MICHAEL JAMES COONEY
BRUCE WILLIAM CRONIN
IAN ROBERT HARRIS
KAREN JANE JONES**

(hereinafter together with their successors in office called “the Trustees”)

BACKGROUND

- A. The Settlor has determined to establish a Trust Fund for certain Charitable Purposes.
- B. The Trustees have agreed to act as Trustees of the Trust.
- C. The Settlor and the Trustees have agreed to enter into this Deed for the purposes of establishing the Trust and the trusts and conditions on which the Trust Fund is to be held.

AGREEMENT

1. DEFINITIONS AND CONSTRUCTION

- 1.1 In this deed, unless the context otherwise requires:

“**Balance Date**” means 31 March or any other date adopted from time to time by TECT as the end of its Financial Year;

~~“**Board**” means the Tauranga Electric Power Board constituted by the Electric Power Boards Act 1925;~~

“**Chairperson**” means the Trustee appointed as chairperson of the Trust pursuant to clause 7.~~15~~ and holding office as such for the time being;

“**Charitable Body**” means any person, entity, club, society, association, trust, institution (whether such entities are incorporated or not), partnership, or company formed for the purposes (whether its sole purpose or not) of furthering or promoting a Charitable Purpose and which is not carried on for the private pecuniary profit of any individual ~~unless permitted under the Income Tax Act 1994;~~

“Charitable Consumers” means each and every Consumer which is a Charitable Body;

“Charitable Purpose” means and includes that term as defined by the Charities Act 2005~~Charitable Trusts Act 1957~~, and also means and includes every charitable purpose (whether religious, educational or otherwise) within New Zealand which shall be regarded as charitable by the law for the time being in New Zealand and as the Trustees shall determine from time to time PROVIDED HOWEVER that any such charitable purpose shall also be regarded as charitable under any statute regulation or ordinance of New Zealand relating to income tax, estate duty, gift duty or any other revenue statute for the time being in force in New Zealand;

~~**“Code of Practice”** means the operating guidelines to promote best practice in energy trust administration adopted or to be adopted by the Trustees in respect of the Trust (as amended or replaced from time to time);~~

“Company” means TrustPower Limited and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company;

“Consumer” means a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District;

“Deed” means this deed as amended from time to time;

“Deputy Chairperson” means the Trustee appointed as deputy chairperson of the Trust pursuant to clause 7.15 and holding office as such for the time being;

~~**“Directors”** means the directors from time to time of the Company;~~

“District” means: the areas which at 1 January 2018 are administered by the Tauranga City Council and the Western Bay of Plenty District Council, as shown on the map in Schedule One.

- ~~(i) — the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electric Power Board Supply Licence granted to the Board under section 20 of the Electricity Act 1968; and~~
- ~~(ii) — the territory over which Tauranga Electricity Limited was authorised to supply electricity immediately prior to its merger with the Company in 1997 and includes, for the avoidance of doubt, that area comprising the Tauranga City peninsula north of the centreline of 17th Avenue, Tauranga.~~

~~**“Elector”** means a person who at the record date for the applicable election set by the Trustees;~~

~~(a) — is entered on the parliamentary electoral roll; and~~

~~(b) — has a residential address on the parliamentary electoral roll within the District.~~

“Financial Statements” means the financial statements of the Trust prepared in accordance with clause 8.2;

“Financial Year” means any year or other accounting period ending on a Balance Date;

“Income” means

- (i) all net income being dividends, rent, interest or other income derived from the Trust Fund, as and when the same shall be received; and
- (ii) all net income derived from the activities of the Trust, in accordance with the terms of this Deed or otherwise howsoever, as and when the same shall be received and finally determined for each Financial Year of the Trust,

after payment of all expenses relating to the Trust Fund. Those expenses shall include all expenses and outgoings related to the administration, working, management and maintenance of the Trust Fund and to the affairs of the Trust;

“persons” includes any individual, corporation, partnership, joint venture, association, trust, organisation, government department or local authorities;

“Retirement Date” means the date the Secretary declares the names of the candidates elected under rules 3.4(e) or 3.4(k) of Schedule Two;

“Secretary” means the person appointed as secretary pursuant to rule 19 of Schedule Two;

~~**“Secretary” means the person appointed as secretary of the Trust pursuant to clause 7.5 and holding office as such for the time being;**~~

“Special Resolution” means a resolution of the Trustees passed by a majority of not less than ~~seventy five~~**seventy-five** per cent (75%) of the total number of Trustees in office at the time the Special Resolution is passed;

~~**“TECT” means the Tauranga Energy Consumer Trust as established by TECT’s Trust Deed;**~~

~~**“TECT’s Trust Deed” means the Deed of Trust dated 21 December 1993 (as amended from time to time) being the founding document constituting TECT;**~~

“the Trust” means the trust established by this Deed;

“the Trustees” means the trustees for the time being of the Trust;

“Trust Fund” means all the funds of the Trust and includes all capital and Income for the time being held by the Trustees of the Trust;

“Trustee Act” means the Trustee Act 1956.;

~~“Vesting Date” means the date upon which the Governor General by Order in Council under section 47 of the Energy Companies Act 1992 vested the undertaking of the Board in the Company and the Company’s shares in the trustees of TECT.~~

1.2 In this Deed, unless the context otherwise requires:

- (a) references to one gender include the other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of this Deed;
- (d) references to clauses are references to clauses of this Deed; and
- (e) references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulations, order or other statutory instrument or by-law shall be deemed to be references to the statute, regulation, order, instrument or by-law as from time to time amended and includes substituted provisions that substantially correspond to those referred to.

2. NAME OF TRUST

2.1 The Trust shall be known as the “TECT Charitable Trust” or such other name as the Trustees may determine from time to time ~~with the written consent of TECT.~~

3. DECLARATION OF TRUST

3.1 The Trustees hereby acknowledge and declare that they shall stand possessed of the sum of \$100 settled on the Trust by ~~TECT~~the Tauranga Energy Consumer Trust contemporaneously with the execution of this Deed and all moneys or property of whatever kind hereafter paid, given, or transferred to, vested in, or purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees are to be held upon the trusts hereby declared and the capital and any accumulations of Income therefrom and all moneys, investments and property of whatever kind from time to time representing the same are also to be held upon the trusts hereby declared and for the purposes and with the powers, authorities and discretions set out in this Deed.

4. PURPOSES OF THE TRUST

4.1 Subject to clause 4.2, the Trust is established for Charitable Purposes for the benefit of Charitable Consumers.

4.2 If by reason of any alteration in the law relating to income tax, it is at any time necessary to amend the objects and purposes of the Trust in order to preserve the right to exemption from income tax of the kind referred to in sections CW 41 and CW 42 paragraphs CB 4(1)(c) and (e) of the Income Tax Act ~~1994~~ 2007, the objects and purposes of the Trust shall thereupon be deemed to be amended to the extent necessary.

- 4.3 All the objects and purposes of the Trust are to be carried out exclusively within New Zealand.

4A. TRUSTS OF INCOME AND CAPITAL

- 4A.1 The Trustees shall, until the Trust is wound up under clause 12, stand possessed of the capital and income arising from the Trust Fund upon the following trusts and with and subject to the following powers:
- (a) The Trustees shall from the net annual income derived by the Trust Fund first pay all the fees, costs and disbursements of and incidental to administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties and may in addition set aside reserves of income to provide for any payments or liabilities which the Trustees have power to pay pursuant to this clause 4A.
 - (b) The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
 - (c) The Trustees shall have the power to distribute the balance of the current net annual income and/or capital of the Trust by paying, applying or appropriating the same in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for or towards the purposes of the Trust set out in clause 4.

5. POWERS OF TRUSTEES

- 5.1 Subject to any express terms of this Deed, the Trustees shall have in relation to the Trust Fund and the Income arising from the Trust Fund all the same powers as natural persons acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 5.2 Without limiting the generality of clause 5.1 and merely by way of example, the Trustees shall have all those same powers as described in Schedule ~~ThreeH to TECT's Trust Deed~~ (in this clause 5.2, "the provisions") which may be exercised either alone or jointly with any other person. ~~For the purposes of interpretation in relation to the provisions, clause 7.5(b) shall apply.~~
- 5.3 In the exercise of any power, authority or discretion under this Deed, the Trustees shall have no obligation to deal with persons other than those who qualify as Charitable Consumers as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer nor shall the Trustees be liable in any respect for any inaccuracies in the records of the Company which affect the status of any person as being or not being a Consumer.

- 5.4 Notwithstanding the provisions of section 13C of the Trustee Act 1956 and the likelihood that the Trustees will from time to time include persons whose profession, employment or business is or includes acting as a trustee or investing money on behalf of others, the care diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of such persons by section 13C of the Trustee Act 1956 but, subject always to clause 5.54, shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 5.5 Notwithstanding anything else in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

6. TRUSTEES' INDEMNITY AND LIMITATION OF LIABILITY

- 6.1 Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust for and in respect of any loss or liability which such Trustee, officer or employee may sustain or incur by reason of the carrying out or omission of any function, duty or power under this Deed and also in respect of any expenses incurred by the Trustees in the management and administration of the Trust Fund unless such loss or liability is attributable to that person's dishonesty or to the wilful commission of an act known by that person to be a breach of trust or to the wilful omission by that person of any act when that omission is known by that person to be a breach of trust. This indemnity is in addition to and not in limitation of any other rights, indemnities or limitations or liabilities that may be available to the Trustees or to trustees in general.
- 6.2 No Trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to that Trustee's own dishonesty or to the wilful commission or omission by that Trustee of an act where such commission or omission is known by the Trustee to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.
- 6.3 Every Trustee shall be chargeable only for such moneys as shall actually have been received by that Trustee although that Trustee may have joined in any receipt for money received by any other Trustee. No Trustee shall be answerable for the acts or omissions of any other Trustee nor for any loss which may arise by reason of any trust funds being lawfully deposited in the hands of any banker, solicitor or agent or for the sufficiency, insufficiency or deficiency of any security upon which any trust money or any part thereof may be invested or for any loss in the execution of any trust unless the same shall happen through that Trustee's neglect or default.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

- 7.1 The rules set forth in Schedule Two shall govern the appointment, retirement and proceedings of the Trustees and associated matters.

~~8.1 The statutory power of appointing new or replacement Trustees at any time shall be vested in TECT.~~

~~(a) The power to remove Trustees at any time shall be vested in TECT.~~

~~(b) The statutory power of appointing Trustees and the power to remove Trustees shall be exercised by TECT in accordance with clause 7.2(c). Written notice of any such appointment and/or removal by TECT shall be promptly given to the Trust and to the Trustee(s) concerned. Any such appointment and/or removal shall be effective from the date of the relevant notice.~~

~~8.2 The minimum and maximum numbers of Trustees of the Trust from time to time shall be the same as those prescribed for TECT pursuant to TECT's Trust Deed.~~

~~(b) The initial Trustees of the Trust at the date of execution of this Deed shall be the Trustees party to this Deed. All of the initial Trustees confirm that they are existing trustees of TECT.~~

~~(c) Thereafter, the Trustees of the Trust shall be those same persons who are validly elected, or appointed, and continuing in the office of trustee of TECT pursuant to TECT's Trust Deed.~~

~~(ii) For the avoidance of doubt, where a person pursuant to TECT's Trust Deed:~~

~~(A) is validly elected, or appointed, to the office of trustee of TECT;~~

~~(B) resigns from the office of trustee of TECT; or~~

~~(C) is no longer eligible to hold office as a trustee of TECT,~~

~~then such person shall also be appointed to, resign from, or be removed from the office of Trustee of the Trust and TECT by its execution of this Deed confirms that it shall exercise its statutory power of appointment and its power to remove Trustees pursuant to clause 7.1 accordingly to give effect to the intention of this clause.~~

~~8.3 The Trustees acknowledge and agree that should they retire as a Trustee of the Trust, then they will also retire as a trustee of TECT and vice versa.~~

8.47.2 Upon every change of trustees, the Trust Fund shall be vested in the Trustees for the time being in office.

~~To the extent not being inconsistent with any other express provision of this Deed, the provisions set out in Schedule I to TECT's Trust Deed (but excluding clauses 1 and 3.4 thereof) (in this clause 7.5, "the provisions") in effect from time to time shall govern the proceedings of Trustees and associated matters.~~

~~(a) Where defined expressions are used in such provisions and where no meaning has been ascribed to them in clause 1.1 of this Deed, then the meanings given to such defined expressions in clause 1.1 of TECT's~~

~~Trust Deed shall apply with all amendments and modifications thereto which are necessary to give effect to the intent of this clause.~~

~~(ii) For the avoidance of doubt, those provisions shall apply as if references to the Trust are references to this Trust and as if references to Trustees, Annual General Meetings, the Chairperson, the Deputy Chairperson and the Secretary are references to the Trustees, Annual General Meetings, the Chairperson, Deputy Chairperson and Secretary of this Trust with all amendments or modifications thereto which are necessary to give effect to the intent of this clause.~~

9.8. DUTIES OF TRUSTEES

9.18.1 The Trustees shall ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept.

9.28.2 The Trustees shall within ~~four~~six months after the end of each Financial Year:

- (a) prepare Financial Statements in accordance with generally accepted accounting practice (within the meaning of section ~~38~~ of the Financial Reporting Act ~~1993~~2013, applied as if the Trust was a reporting entity) with respect to the affairs of the Trust for that Financial Year;
- (b) submit those Financial Statements to an auditor for audit; ~~and~~
- ~~(c)~~ make available to the public (which includes all Consumers) in accordance with clause 8.4 those audited Financial Statements and the auditor's report on those Financial Statements; ~~and~~
- ~~(c)~~(d) comply with the Trust's annual return filing obligations under the Charities Act 2005.;

9.38.3 In addition to clause 8.2(a), the Financial Statements of the Trust shall show separately:

- (a) the total amount of any distribution of Income or capital paid to Charitable Consumers by way of general distribution (if applicable) in that Financial Year; ~~and~~
- (b) the names of persons to whom distributions of Income or capital have been approved or paid in that Financial Year other than those referred to in clause 8.3(a) together with the individual amounts approved or paid by way of a payment scheme; ~~and~~
- ~~(c) a statement confirming that the Trustees have complied with all of their obligations under the Code of Practice.~~

8.4 (a) The Trustees shall make the documents referred to in clause 8.2(c) available to the public (which includes all Consumers) by making copies of them available:

~~(i)~~ on a website maintained by the Trust;

~~(i)(ii)~~ for inspection at any office of the Trust or at any other place specified in the notification under clause 8.4(b) (during ordinary office hours) free of charge; and

~~(ii)(iii)~~ for purchase at a reasonable price.

- (b) The Trustees shall notify the fact that copies of such documents are so available by advertisement in the news section of two separate editions of each newspaper that is widely read by ~~Consumers~~ Electors and other people in the District.

~~(-)~~ ~~The Trustees shall in each Financial Year, hold a General Meeting of Consumers at which the Consumers:~~

8.5 (a) The Trustees shall in each Financial Year, hold a general meeting of Electors at which the Electors, if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 10.1(b)(i).

~~(ii) appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual General Meeting of Consumers; and~~

~~if applicable, fix the amount of remuneration payable to Trustees pursuant to clause 10.1(b)(i).~~

(b) The Trustees shall ensure that at all times there is an auditor of the Trust who complies with clause 8.5(c). The auditor shall be appointed by the Trustees, and the Trustees may remove an auditor from office. If the Trustees remove an auditor from office, they shall report to the next general meeting of Electors that fact, and the reasons why the auditor was removed from office, and shall give the auditor removed the right to attend and address the meeting. The remuneration of the auditor shall be fixed from time to time by the Trustees.

~~(b) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office, until the conclusion of the next annual meeting of Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).~~

~~(c) The fees and expenses of the auditor must be fixed:~~

~~(i) at the annual meeting of Consumers or in the way the Consumers determine at the meeting, if appointed at the annual meeting; or~~

~~(ii) by the Trustees, if appointed by the Trustees.~~

~~(d)(c)~~ The auditor:

(i) must be ~~a person~~ a qualified auditor in terms of section 35 of the Financial Reporting Act 2013;~~who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor General;~~ and

(ii) must not be a Trustee, ~~Director, or~~ employee or agent of the Trust, ~~TCT or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.~~

~~(e)(d)~~ In addition, sections ~~198, 200 and 202~~206 to 207C of the Companies Act 1993 apply in relation to the auditor. These sections of the Companies Act 1993 apply as if references to a company were to a trust, references to a director were to a trustee, references to a board were to the trustees, references to shareholders were to ConsumersElectors, and references to a subsidiary were to an electricity company which would be a subsidiary of the Trust if the Trust were a company owned by the Trust and that company's subsidiaries, and all other necessary modifications were made. ~~In this clause, "electricity company" has the meaning set out in section 3(1) of the Electricity Industry Reform Act 1998.~~

8.6 (a) The Trustees must give no less than 14 days' notice of the annual meeting of ConsumersElectors:

(i) in the news section of two separate editions of each newspaper that is widely read by ConsumersConsumers and other people in the District;
and-

~~(ii)~~ on a website maintained by the Trust.

~~(a)(b)~~ Every ConsumerElector shall have one vote.

~~(b)(c)~~ The quorum for the annual meeting is 20 ConsumersElectors.

~~(e)(d)~~ No business may be transacted at the annual meeting if a quorum is not present.

~~(d) — The regulations under section 172C of the Electricity Act 1992 (if any) may govern proceedings at such annual meeting of Consumers.~~

9.78.7 (a) If ~~no auditor is appointed in accordance with clause 8.5(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 8.5(b)~~at any time there is no auditor for one month or more, the Auditor-General must be the auditor of the Trust.

(b) The Trustees shall, within five working days of clause 8.7(a) becoming applicable, give written notice to the Auditor-General of this fact.

(c) If this clause 8.7 applies, the sections and Parts of the Public Audit Act 2001 listed in section 19 of that Act apply to the Trust, until an auditor is appointed ~~at an annual meeting of Consumers~~, as if references in those sections to a public entity were references to the Trust and with any other necessary modifications.

9.88.8 The Trustees shall, from time to time, make a copy of this Deed available to Consumersthe public in accordance with clause 9.

~~9.9 — The Trustees shall comply with the provisions of the Code of Practice in effect from time to time.~~

~~10.9.~~ INFORMATION ~~TO CONSUMERS~~

9.1 Subject to clause 8.4, for the purpose of complying with any requirement under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available:

(i) On a website maintained by the Trust; and

~~(ii)~~ for inspection at any office of the Trust or at any other place in the District during normal business hours on any business day.

~~10.29.2~~ The Trustees shall give not less than 3 days' notice in a principal newspaper or newspapers circulating in the District of the place at which and the times when such documents or information may be inspected, ~~by Consumers.~~

~~11.10.~~ REMUNERATION AND EXPENSES OF TRUSTEES

~~11.10.1~~ (a) Any Trustee hereof who shall be employed in connection with the trusts hereof may be paid all such remuneration for their services as may be normal as if they had been employed in that behalf and had not been a Trustee hereof.

(b)

(i) The Trustees (other than a Trustee remunerated pursuant to clause 10.1(a) to the extent that such remuneration covers services to which this clause 10.1(b) applies) shall be entitled in each Financial Year to such remuneration for their services as may be reasonable having regard to their duties and responsibilities as Trustees.

(ii) No remuneration shall be paid to a Trustee pursuant to clause 10.1(b)(i) unless that remuneration has been authorised by a resolution of ~~Consumers~~Electors passed at a ~~G~~general ~~M~~meeting of ~~Consumers~~Electors held pursuant to clause 8.5(a). Each such resolution shall express Trustees' remuneration as either:

A a monetary sum per annum payable to all Trustees taken together; or

B a monetary sum per annum, plus meeting allowances, payable to any person who from time to time holds office as a Trustee or as the Chairperson or as the Deputy Chairperson.

In the event of an increase in the total number of Trustees holding office, the Trustees may, without the authorisation of a resolution of ~~Consumers~~Electors, increase the total remuneration by such amount as is necessary to enable the additional Trustee or Trustees to receive remuneration, including provision for meeting allowances, not exceeding the average amount then being paid to each of the other Trustees (excluding the Chairperson).

(iii) No resolution which increases the amount fixed pursuant to a previous ~~Consumer~~ resolution shall be passed at a ~~G~~general ~~M~~meeting of

~~Consumers~~Electors unless notice of the amount of increase has been given in the notice of meeting.

- (iv) Trustees' remuneration paid pursuant to clause 10.1(a) may be approved by the Trustees without the need for ~~Consumer~~Elector approval.

~~11.2~~10.2 The Trustees shall be entitled to be indemnified against, and reimbursed for, any expenses incurred by them in the exercise of their powers and duties under this Deed.

~~11.3~~10.3 The payments of remuneration and expenses to the Trustees pursuant to clauses 10.1(a)~~, 10.1(b)~~ or clause 10.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

~~11.4~~10.4 No Trustee receiving any remuneration referred to in clause 10.1(a) shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by ~~TECT~~Tauranga Energy Consumer Trust.

~~12.11.~~ **VARIATION, REVOCATION OR ADDITION TO TRUST DEED**

~~12.1~~11.1 ~~Subject to the prior written approval of TECT, The~~ the Trustees shall have the power by Special Resolution (of which notice to propose that Special Resolution shall have been given in the notice convening the meeting) to alter or amend the terms of this Deed (including for the avoidance of doubt, the expression of the objects, purposes and proposed activities of the Trust set out in clause 4) PROVIDED THAT ~~the approval of TECT shall not be required in respect of any amendment that is certified by the Trustees as being necessary in order for the Trust to obtain or maintain approval from the Inland Revenue Department as a Charitable Body for tax purposes, and PROVIDED FURTHER THAT~~ no alteration, addition, rescission or other amendment shall be made which shall permit the Trust Fund to be applied for any purpose that is not a Charitable Purpose, and no alteration to the second proviso to this clause 11.1 shall be permitted.

~~12.2~~11.2 The parties to this Deed agree that ~~the Trustees shall not be permitted to make any TECT shall not be permitted to give its consent to any proposed~~ amendment to the definition of "Consumer" or "District", or ~~to any proposed~~ amendment to this clause 11.2, until ~~TECT shall have first complied with the provisions of clause 13.2 of TECT's Trust Deed~~ the Trustees shall have first resolved unanimously to take such action and have complied with the consultative procedure in Schedule Four.

~~13.12.~~ **WINDING UP OF TRUST**

~~13.1~~12.1 If at any time:

- (a) a resolution of ~~TECT (or of the Trustees)~~ that the Trust be wound up has been passed and has come into effect; or
- (b) the objects of the Trust shall fail; or
- (c) for any other reason the purposes hereof shall become wholly frustrated and incapable of being carried out; ~~or~~
- ~~(d) TECT shall cease to exist or a resolution that TECT be wound up in accordance with clauses 14.3 and 14.4 of TECT's Trust Deed has been passed and has come into effect,~~

the Trustees shall proceed to wind up the Trust.

~~13.2~~12.2 Upon a winding up for any reason, the surplus assets and funds of the Trust after payment of all liabilities shall be paid, applied or appropriated to or for the benefit of Charitable Consumers for the purposes specified in clause 4.1 as may be determined by the Trustees or in default of such determination as may be directed by the High Court of New Zealand.

~~14.13.~~ **INCORPORATION**

~~14.1~~13.1 The Trustees may at any time and at the expense of the Trust incorporate the Trustees as a ~~B~~board under the provisions of Part ~~H2~~ of the Charitable Trusts Act 1957.

~~15.14.~~ **NOTICES**

~~15.1~~14.1 Any notices or documents to be given to the Trustees pursuant to this Deed shall be in writing signed by the person giving the notice and served at the office of the Trust.

~~15.2~~14.2 Any notice or document given pursuant to clause 14.1 shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by facsimile, when receipt is confirmed; or
- (c) if sent by post, on the third working day after posting.

~~16.15.~~ **RESTRICTIONS ON CHARITABLE BENEFITS FROM THE TRUST**

~~16.1~~15.1 All provisions of this Deed are to be interpreted as being subject to clause 4.1, and to the requirement that the Trust Fund may only be applied for the Charitable Purposes of Charitable Consumers. In particular, nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of the Trustees, or any part of the Trust Fund to be applied so as to confer a private pecuniary profit on any individual or group of individuals, except to the extent that this Deed authorises the payment of a reasonable market remuneration to any individual (including a Trustee) for services actually rendered to the Trust.

~~16.2~~15.2 _____ Clauses 4.1, 4.2, 4.3, 10.4, 11.1, 12.2, and this clause 15 shall apply notwithstanding any other provision in this Deed to the contrary.

~~16.3~~15.3 _____ Notwithstanding anything contained or implied in this Deed, where the Trustees carry on or engage in any business by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, no person defined in section CW 42(5)(b) ~~section CB 4(1)(e)(i) to (iv)~~ of the Income Tax Act ~~1994~~2007 shall, by virtue of that capacity and within the ambit and scope of section CW 42(8) ~~section CB 4(1)(e)(v) to (viii)~~, and with the exceptions therein contained, in any way (whether directly or indirectly) determine, or materially influence in any way the determination of:

- (a) the nature or the amount of any benefit or advantage (whether or not convertible into money) or any income of any of the kinds referred to in section CW 42(8) ~~CC 1, sub part CD, sections CE 1, CE 3, CF 1, CG 1, and CH 3~~ of the Income Tax Act ~~1994~~2007 able to be received, gained, achieved, afforded or derived by that person from that business; or
- (b) the circumstances in which that ~~benefit~~benefit, or advantage or income is or is to be so received, gained, achieved, afforded or derived.

~~16.4~~15.4 _____ Nothing in this Deed shall authorise the derivation of income to which section CW 42 ~~section CB 4(1)(e)~~ of the Income Tax Act ~~1994~~2007 applies and which is excluded from exemption from income tax by the said section CW 42 ~~CB 4(1)(e)~~.

IN WITNESS WHEREOF this Deed has been executed the day and year first hereinbefore written.

EXECUTED AS A DEED

SIGNED for and on behalf of)
TAURANGA ENERGY CONSUMER)
TRUST as Settlor in the presence of:)

Witness

Trustee/Authorised Signatory

Signature:

Name (full):

Trustee/Authorised Signatory

Occupation:

Address:

SIGNED by **MATTHEW HAROLD**)
CAMERON as Trustee in the presence)
of:)

Signature of M H Cameron

Witness

Signature: _____

Name (full): _____

Occupation: _____

Address: _____

SIGNED by **MICHAEL JAMES**)
COONEY as Trustee in the presence of:)

Signature of M J Cooney

Witness

Signature: _____

Name (full): _____

Occupation: _____

Address: _____

SIGNED by **BRUCE WILLIAM**)
CRONIN as Trustee in the presence of:)

Signature of B W Cronin

Witness

Signature: _____

Name (full): _____

Occupation: _____

Address: _____

SIGNED by **IAN ROBERT HARRIS**)
as Trustee in the presence of:)

Signature of I R Harris

Witness

Signature: _____

Name (full): _____

Occupation: _____

Address: _____

SIGNED by **KAREN JANE JONES** as)
Trustee in the presence of:)

signature of K J Jones

Witness

Signature: _____

Name (full): _____

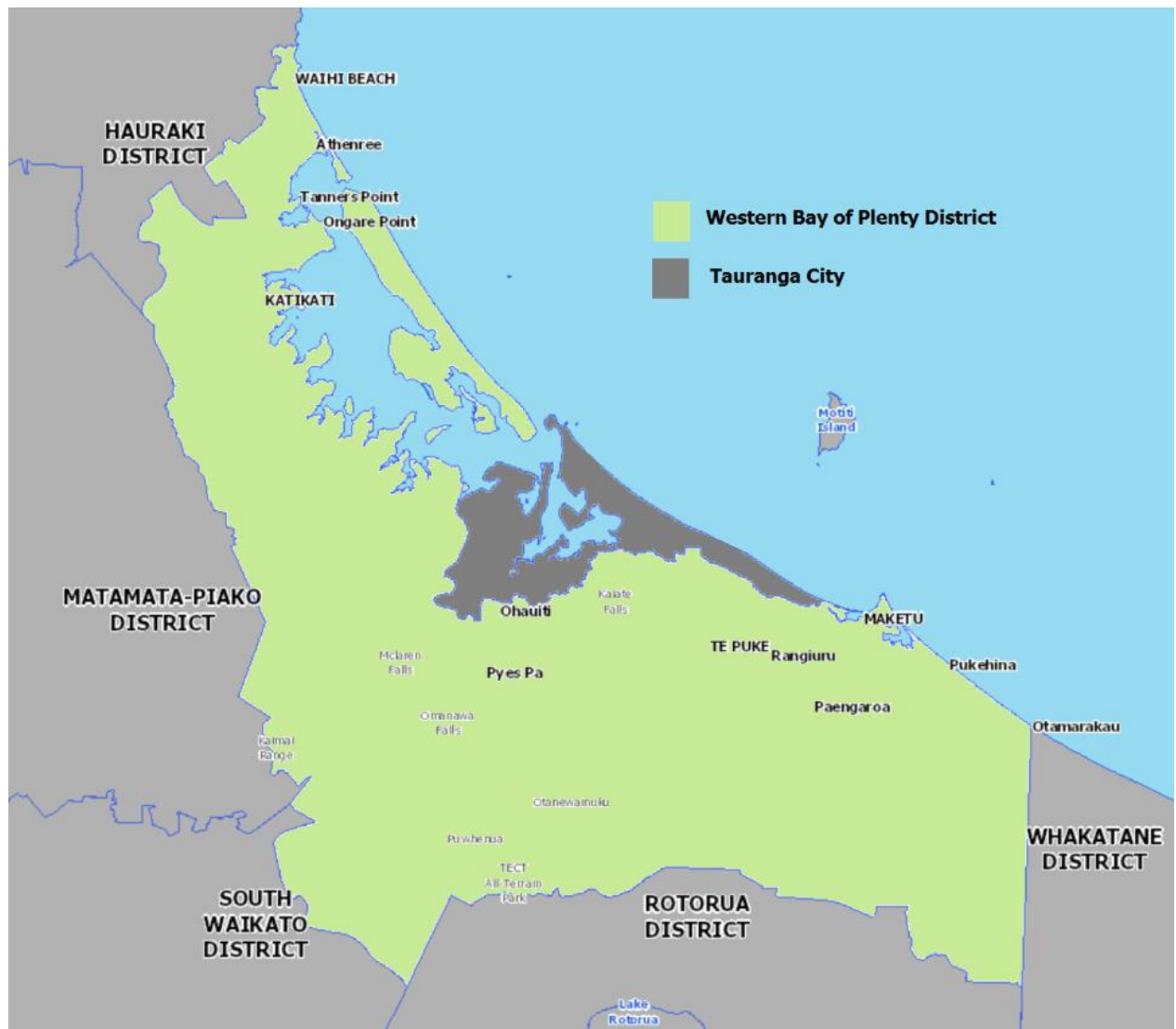
Occupation: _____

Address: _____

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SCHEDULE ONE

MAP OF THE DISTRICT



SCHEDULE TWO

RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1. NUMBER OF TRUSTEES

1.1 There shall be up to six (6) Trustees elected by Electors, **PROVIDED THAT** if at any time there are less than the minimum number of Trustees in office specified for that period the remaining Trustees shall be entitled to act until the number of Trustees is restored to the minimum number and no act or decision of the Trustees shall be called in to question on such account.

1.2 From and including the Annual General Meeting held in 2019 and at every second Annual General Meeting occurring thereafter, three (3) Trustees shall retire from office. The Trustees to retire at any Annual General Meeting shall firstly be any Trustee(s) (if any) appointed to fill any casual vacancy since the last Trustee election and secondly the required number of Trustees (to make the number of retiring Trustees three (3) in total) who have been longest in office since their election. If there are more Trustees due to retire than the required number of Trustees to retire as determined in accordance with the previous sentence, then the Trustees to retire shall be determined by lot. Such retiring Trustees shall retire at the conclusion of the relevant Annual General Meeting.

Where a casual vacancy is not filled pursuant to rule 1.3 and remains open at the next Annual General Meeting at which an election of Trustees is to take place, then (for the purposes of this clause and in order to determine the required number of Trustees to retire) such vacancy shall be deemed to be have been filled.

The new Trustees who have been elected in accordance with rule 3.4 who may, subject to the other provisions of this Deed, include Trustees who have retired, shall be appointed at the conclusion of that Annual General Meeting.

1.3 Any casual vacancy in the number of Trustees:

(a) shall, in the case of a vacancy occurring more than 12 months prior to the next scheduled election of Trustees; or

(b) may, in any other case,

be filled within 3 months of that vacancy occurring providing that the new appointee shall, subject to rule 1.2, hold office only for the residue of the term of office of the Trustee whose place is taken.

Any new appointee may be chosen at the discretion of the remaining Trustees having regard to the range and nature of skills of the appointee so that such skill set complements those of the remaining Trustees and which will add value to the good decision making by Trustees in their administration of the Trust.

2. ELIGIBILITY

2.1 Subject to rule 2.2, the following persons shall not be eligible for appointment as a Trustee and may not hold office as a Trustee:

- (a) a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 299 of the Insolvency Act 2006;
- (b) a person who has been convicted of any offence punishable by a term of imprisonment of two or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
- (c) a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) a person to whom an order made under section 383 of the Companies Act 1993 applies;
- (e) a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (f) a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1989;
- (g) a person who is not entered on the Parliamentary election rolls with an address in the District (subject to clause 2.3);
- (h) the Secretary or the Treasurer;
- (i) a person who is, or becomes, a member of parliament in New Zealand;
- (j) a person who is, or becomes, a councillor or employee of any local authority whose territory includes any part of the District;
- (k) a person who is disqualified from being an officer of a charitable entity under clause 16(2) of the Charities Act 2005, unless clause 16(3) or 16(4) applies;
- (l) a person who is an employee or a Director of the Company (other than a Trustee who has been appointed to the board of the Company as a Director following nomination for that office pursuant to a Special Resolution of the Trustees).

2.2 A person shall not be disqualified from appointment and may continue to hold that office:

- (a) in any case to which rule 2.1(b) applies, until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;

- (b) in any case to which rule 2.1(c) applies, until the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined;

3. TERM OF OFFICE

3.1 A Trustee shall cease to hold office if:

- (a) the Trustee resigns by written notice to the Trustees;
- (b) subject to rule 2.3, the Trustee is ineligible for election or appointment as a Trustee pursuant to rule 2.1;
- (c) the Trustee dies while holding office as a Trustee;
- (d) a Trustee is not re-elected pursuant to rule 3.4, when the Trustee shall retire at an Annual General Meeting as specified in rule 3.4(n);
- (e) the Trustee does not attend 3 consecutive monthly Trustee meetings of which notice has been properly given without the prior consent of the remaining Trustees.

3.2 The provisions of rule 2.2 shall apply, mutatis mutandis, to rule 3.1. During any appeal period the Trustee shall be deemed to have taken leave of absence and shall not be capable of acting as a Trustee. If the conviction or sentence of imprisonment (as the case may be) is not upheld the Trustee shall be immediately reinstated. If the conviction or sentence (as the case may be) is upheld the disqualification as Trustee shall take immediate effect.

3.3 Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be recorded in the minute book of the Trust.

3.4 Other than any casual vacancy Trustee(s) appointed pursuant to these rules, all Trustees shall be elected by the Electors (determined in accordance with rule 3.4(o) and every reference to 'Electors' in rules 3.4(f), (g) and (i) shall be a reference to those Electors as so determined) in the following manner, or in such other manner as the Trustees may by Special Resolution determine from time to time:

- (a) Not later than nine weeks before the proposed date of the election the Independent Returning Officer shall give notice in a newspaper or newspapers circulating in the District and on a website maintained by the Trust giving:
 - (i) advice of the proposed election;
 - (ii) the place or places at which nomination forms may be obtained;
 - (iii) where completed nominations may be lodged;

- (iv) notice that the nominator, candidate and seconder must be, at the time of making the nomination, Electors;
 - (v) the day and time nominations close.
- (b) Every nomination of a candidate shall be in writing. Nomination forms shall be in such form as the Independent Returning Officer decides, but shall include:
- (i) the full name and address of the candidate;
 - (ii) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be on the date of the election, disqualified from holding office as a Trustee by reason of any of the matters set out in rule 2.1; and
 - (iii) the signature of the nominator and seconder and the candidate all of whom must be Electors.
- The Independent Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of rule 2.1.
- (c) The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:
- (i) nominator withdraws the nomination by notice received by the Independent Returning Officer before closure of nominations;
 - (ii) candidate withdraws by notice received by the Independent Returning Officer before a result is declared;
 - (iii) candidate dies before a result is declared;
 - (iv) candidate becomes disqualified by virtue of rule 2.1 before a result is declared.
- (d) Nominations shall close four weeks after the first notice calling for nominations was given pursuant to rule 3.4(a).
- (e) If, on the closure of nominations, the number of valid nominations which have been received are equal to or less than the number of vacancies for the office of Trustee the Independent Returning Officer shall declare the candidates duly elected and no election shall be held. If less nominations are received than there are vacancies, the Trustees shall forthwith fill the vacancy or vacancies in accordance with rule 1.3 and a retiring Trustee who has not been nominated shall be eligible to fill a vacancy.
- (f) Should nominations be received for more than the number of vacancies, the Independent Returning Officer shall conduct an election of Trustees pursuant to this clause 3.4.

The Independent Returning Officer may, acting upon an instruction of the Trustees, use any of the following voting methods:

- (i) the method of voting commonly known as booth voting;
- (ii) the method of voting commonly known as postal voting;
- (iii) any form of electronic voting;
- (iv) any method of voting involving a combination of more than one of the methods referred to in subparagraphs (i) to (iii) above; or
- (v) any other method of voting, howsoever described.

The Independent Returning Officer shall give, not less than three weeks prior to the date on and the time at which voting is to close (in this clause 3.4, "Voting Period"), to the Electors, in such manner as the Independent Returning Officer shall deem fit, a postal and/or electronic ballot paper which shall contain:

- (vi) the names of all candidates validly nominated in alphabetical order of their surnames and appropriate provision for recording the Elector's vote;
- (vii) if postal voting is to be used, a pre-paid envelope in which the ballot paper is to be placed and returned to the Independent Returning Officer; and
- (viii) a written explanation of the method for recording the Elector's vote, the manner in which the ballot paper is to be returned, and the date and time at which the Voting Period is to close.

Biographical and other details of the candidates may, if the Trustees approve, be included in the information given to Electors.

(g) The following provisions shall apply with respect to votes:

- (i) each Elector shall be distributed one voting paper (which may be in electronic format) and each Elector shall only be entitled to one vote;
- (ii) Electors may not vote for the appointment of more Trustees than there are vacancies;
- (iii) Ballot papers (whether or not in electronic format) received by the Independent Returning Officer after the date and time stated in the notice to Electors as the date and time at which the Voting Period is to close shall not be counted.

(h) The Independent Returning Officer shall, after close of the Voting Period, count the number of valid votes cast for each candidate and ascertain the

candidates elected. The Independent Returning Officer is permitted and may in its discretion commence the counting of votes and the processing of ballot papers received prior to the expiry of the Voting Period.

- (i) A vote is invalid and shall not be counted if:
 - (i) the Elector votes for more candidates than there are Trustees to be elected; or
 - (ii) in the opinion of the Independent Returning Officer, the ballot paper does not clearly indicate the candidate or candidates for whom the Elector intended to vote.
- (j) Where, because two (2) or more candidates have received the same number of valid votes, the Independent Returning Officer cannot determine which of them has been elected, the Independent Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Independent Returning Officer and such other person or persons (if any) as the Independent Returning Officer may decide.
- (k) Forthwith after ascertaining which candidates have been elected, the Independent Returning Officer shall declare the names of the candidates so elected, and shall publish those names in one or more principal newspapers circulating in the District. The candidates elected shall be appointed Trustees at the conclusion of the relevant Annual General Meeting.
- (l) After declaring the result of the election, the Independent Returning Officer shall decide when to destroy the voting papers and / or to permanently delete any computer records or files relating to votes cast electronically.
- (m) The Independent Returning Officer and every person assisting the Independent Returning Officer shall faithfully and impartially perform their duties and shall not, directly or indirectly:
 - (i) before the declaration of the result of the election make known the state of the vote, or give or pretend to give any information by which the state of the vote might be known;
 - (ii) make known for which candidate or candidates any person has voted; or
 - (iii) give any person any information likely to defeat the secrecy of the election.
- (n) Notwithstanding any other provision in the Deed or these rules, the retiring Trustees shall remain in office until the conclusion of the Annual General Meeting at which they are to retire. Forthwith upon the conclusion of the relevant Annual General Meeting the candidates declared elected pursuant to rule 3.4(e) or 3.4(k) shall assume office in place of the retiring Trustees.

- (o) The Electors who shall be entitled to vote for Trustees shall be those persons who are Electors on the date nominations for candidates close as specified in accordance with rule 3.4(a)(v).

4. CHAIRPERSON AND DEPUTY CHAIRPERSON

The Trustees shall elect a Chairperson and Deputy Chairperson, who shall also be Trustees, at the first meeting of Trustees after the Annual General Meeting in each year and at any other time when either position becomes vacant.

5. QUORUM

- (a) A quorum at meetings of the Trustees shall comprise four (4) Trustees.
- (b) Notwithstanding rule 1.1, no business may be transacted at a meeting of Trustees if a quorum is not present.
- (c) Notwithstanding rule 5(b), where the number of Trustees in office at any relevant time is less than the number of Trustees required to form a quorum, then the remaining Trustees may convene a meeting for the sole purpose of appointing additional Trustee(s) so that there are at all times at least the minimum number of Trustees in office required to form a quorum.
- (d) Any new Trustee(s) appointed pursuant to rule 5(c) (other than an Appointed Trustee) shall hold office for the period from the date of their appointment until the next Annual General Meeting at which a Trustee election is held. Such new Trustee(s) shall retire at that next Annual General Meeting as if they had been appointed to fill a casual vacancy in terms of rule 1.3.
- (e) Any new Trustee appointed pursuant to rule 5(c) shall have all the powers and responsibilities of a Trustee as if elected to that office pursuant to rule 3.4 and no act or decision of the remaining Trustees pursuant to this rule 5 or of the new Trustee(s) pursuant to this Deed shall be called into question on such account.

6. VALIDITY OF PROCEEDINGS

- 6.1 All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee or person acting as aforesaid or that they or any of them were for any reason disqualified, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

7. RESCISSION OR VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any subsequent meeting by the same majority as was necessary to pass the resolution being rescinded or varied.

8. MEETINGS OF TRUSTEES

8.1 The Trustees shall hold an Annual General Meeting no later than 30 November in each calendar year.

8.2 The Secretary shall give no less than thirty (30) days' notice of the Annual General Meeting to the Trustees, such notice to specify the date, time and place of the Annual General Meeting.

8.3 (a) The business to be transacted at the Annual General Meeting shall be the receipt of the annual report (including a report on the performance of the Trust against its annual plan objectives for the relevant year), the annual plan and the audited Financial Statements and the setting of the remuneration (if any) of Trustees. Any other business shall be deemed special business and shall be dealt with in accordance with rule 8.4.

(b) At the conclusion of the Annual General Meeting or at such other time as the Trustees shall decide, the Annual General Meeting of Electors shall be convened pursuant to clause 8.5 for the purposes (among other things if the Trustees so decide) of appointing an Independent Returning Officer for the next Trustee election (in the case of a General Meeting held in a non-Trustee election year), fixing the Independent Returning Officer's fees and expenses, and, if applicable, fixing the amount of remuneration payable to Trustees pursuant to clause 10.1(b)(i).

8.4 Notice in writing of any special business shall be given to the Secretary no less than twenty-one (21) days prior to the Annual General Meeting. The Secretary shall circulate an agenda, including all special business, to the Trustees no later than fourteen (14) days prior to the Annual General Meeting and shall also give to Electors not less than fourteen (14) days prior written notice of the time, place, date and agenda of the annual General Meeting by an advertisement placed in a newspaper or newspapers circulating in all the areas of the District and by notice on a website maintained by the Trust.

8.5 Electors shall be entitled to attend and speak at the Annual General Meeting but shall not be entitled to vote at such meetings.

8.6 The Trustees shall otherwise meet at such times and places as they may agree to dispatch the business of the Trust. The Trustees shall be entitled from time to time to develop protocols and standing orders for the management of Trustee behaviour and for the orderly conduct of Trustee meetings, and any such protocols and / or standing orders so adopted shall bind Trustees in their administration of the Trust.

8.7 Other than a meeting of Trustees called pursuant to rule 5(c), any three (3) or more Trustees may at any time summon a meeting of Trustees.

9. NOTICE OF MEETINGS

Notice in writing of every meeting shall be sent by such method of delivery (whether electronic or otherwise) as is determined by the Trustees from time to time to each Trustee by the Secretary or other person acting under the direction of the Trustees. In the case of a meeting summoned pursuant to rule 8.7, the Trustees, persons

summoning it or the Secretary or other person acting under the direction of the Trustees shall give at least seven (7) working days' notice of that meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

The expression "working days" in this clause shall exclude weekends and public holidays and such notice period shall exclude the date of the notice and the date of the relevant meeting.

10. ADJOURNMENT

If a quorum is not present within thirty minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. Any meeting may be adjourned by the Chairperson upon the adoption of a resolution for its adjournment.

11. CONTENT OF NOTICE

Every notice of meeting shall state the place, day, and hour of the meeting and every notice of a meeting summoned pursuant to rule 8.7 shall state the matters to be discussed at that meeting. Notice of any meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgement or waiver.

12. COMMITTEES

The Trustees may from time to time appoint any one or more Trustees to be a committee for making any inquiry, for considering supervising or transacting any business of the Trust, for the investment and management of the Trust Funds or any part thereof, or for the performance of any duty or function which in the opinion of the Trustees will further the purposes and objects of the Trust. Subject to these rules and to any directions from time to time given by the Trustees every such committee may regulate its own procedure but so that a quorum at any meeting of the committee will be a majority of its members for the time being.

13. VOTING

13.1 Except as otherwise provided in this Deed and subject to the quorum requirements as to meetings, the Trustees shall exercise their powers and discretions by a simple majority vote of the Trustees present.

13.2 The Chairperson or Deputy Chairperson acting as the chairperson of a meeting of Trustees shall have a second and casting vote in addition to his or her deliberative vote provided that such casting vote may only be exercised in the case of Trustee deadlock when voting on any particular issue and where such casting vote is made for continuance of the status quo.

14. INTERESTED TRUSTEES

14.1 A Trustee who in any way, whether directly or indirectly, has a material interest in any contract or proposed contract or arrangement or dealing with the Trust shall

disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.

14.2 A Trustee required to disclose an interest by rule 14.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so vote the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by a unanimous vote of the other Trustees present given after the disclosure of the interest.

14.3 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and the Chairperson's ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interest of the Trustee concerned has not been fairly disclosed.

15. MINUTES

15.1 A minute book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the minute book.

15.2 Minutes signed by the chairperson of the meeting at which the proceedings were transacted or by the chairperson of the next succeeding meeting shall be evidence of the proceedings.

15.3 Where minutes of the proceedings at any meeting of Trustees have been made in accordance with the provisions of these rules then, until the contrary is proved, the meeting shall be deemed duly held and convened and all proceedings at that meeting to have been duly conducted.

16. RESOLUTIONS IN WRITING

Notwithstanding any other provisions in the Deed or these rules, a resolution in writing signed by all the Trustees or (as the case may be) by all the members of a committee, shall be as effective for all purposes as a resolution passed at a meeting of the Trustees or of such committee (as the case may be) duly convened, held and constituted. Such resolution may consist of several documents in the same form, each signed by one or more of the Trustees or members of the committee (as the case may be).

17. MEETINGS BY TELEPHONE

17.1 Notwithstanding any other provision in the Deed or these rules, the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") being not less than a quorum, together with the Secretary or a person acting as a secretary, shall be deemed to constitute a meeting and all the provisions in these rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

(a) All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by

telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;

- (b) Each of the participants taking part in the meeting by telephone, and the Secretary or person acting as a secretary, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid.

17.2 Minutes of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting or by the Secretary or person acting as a secretary.

18. EXECUTION OF DOCUMENTS

All documents required to be executed by the Trustees shall be deemed to be validly executed and binding on the Trust if these documents have been entered into and executed by the authority of the Trustees previously given and signed by at least two (2) Trustees or any other person approved by the Trustees for the purpose.

19. SECRETARY AND TREASURER

19.1 The Trustees shall appoint from time to time a Secretary and a Treasurer who may be the same person.

19.2 It shall be the duty of the Secretary to keep usual records of the business of the Trust and to notify Trustees of intended meetings and the business to be transacted at such meetings.

19.3 It shall be the duty of the Treasurer to keep usual and proper books of account and other financial records of the business to report to the Trustees from time to time on the finances of the Trust Fund to present annual statements of account for audit and for consideration by the Trustees and to prepare and file from time to time with the Inland Revenue Department all necessary tax accounts.

SCHEDULE THREE

TRUSTEES' SPECIFIC POWERS

Subject to any express terms in this Deed limiting or restricting such powers, the Trustees shall have the power to:

- (a) Invest the Trust Fund or any portion thereof, notwithstanding that it may be subject to any liability, in any property whether in New Zealand or overseas.
- (b) Sell all or any part of the property comprising the Trust Fund at such price on such terms and subject to such conditions as they in their absolute discretion think fit with power to allow the whole or any part of the purchase money to remain owing as a debt to the Trust.
- (c) Retain property forming part of the Trust Fund.
- (d) Borrow or raise moneys on such terms and subject to such conditions as the Trustees think fit, including giving such security as the Trustees think fit over all or any of the Trust Fund and its undertaking.
- (e) Lease or to take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- (f) Lend moneys on such terms and subject to such conditions as the Trustees think fit.
- (g) Maintain manage repair improve and develop any property which or an interest in which for the time being forms part of the Trust Fund in such manner as the Trustees shall think fit.
- (h) Employ and pay any person (including any Trustee) to do any act of whatever nature relating to the Trust including the receipt and payment of money.
- (i) Open an account or accounts at any time or times in any name or names and either on their own behalf or jointly with another at any bank and to overdraw any such account with or without giving security and in addition to the powers conferred by section 81 of the Trustee Act 1956 to make arrangements with any Bank for any one or more of the following, namely, the Trustees and/or any delegate or delegates named in writing by all the Trustees to operate upon any account at that Bank. All sums of money received on account of the Trust shall be forthwith paid into the credit of such account or accounts unless otherwise expressly ordered by the Trustees. All negotiable instruments and all receipts for money paid to the Trust shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Trustees from time to time determine.
- (j) Insure against loss or damage by any cause whatsoever any insurable property to any amount not exceeding the full insurable value thereof or the full replacement value thereof as the Trustees may in their absolute discretion from time to time think fit.

- (k) Enter into contracts of any nature whatsoever for the purpose of protecting maintaining or enhancing the value of all or any assets acquired or held by the Trustees or which the Trustees have the right to acquire or hold.
- (l) Delegate any of the powers and duties to any committee or committees consisting of such of the Trustees (or such other persons) as they may appoint for such purpose.
- (m) Subject to the provisions of this Deed, exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any shares forming part of the Trust Fund including to consider any recommendations made by the directors of the Company on any proposal relating to any reconstruction or amalgamation or merger of the Company or any subsidiary or any modification of the rights of shareholders or any increase or reduction of capital or other dealing with the shares and after giving due consideration to the recommendations of the directors to make a decision in respect of any such proposal as the Trustees may consider in their absolute discretion will be for the benefit of or in the interests of the Trust Fund.
- (o) Determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- (p) Determine all questions and matters of doubt which may arise in the course of the trusteeship of this Trust.
- (q) Do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purposes of the Trust.
- (r) Effect insurance for a Trustee in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a trustee of the Trust;
 - (ii) costs incurred by that Trustee in defending or settling any claim or proceedings relating to any such liability; and
 - (iii) costs incurred by that Trustee in defending any criminal proceedings in which he or she is acquitted.

In this clause the expressions:

“Trustee” includes a former trustee; and

“Effect insurance” includes paying, whether directly or indirectly, the costs of such insurance.

SCHEDULE FOUR**CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Electors in accordance with clause 9 of the Deed;
- (c) In every notice given under paragraph (b) of this schedule, specify a period within which Electors interested in the proposal may make submissions on the proposal to the Trustees;
- (d) Ensure that any Elector who makes written submissions on the proposal within the period specified in the notice given under paragraph (b) of this schedule is given a reasonable opportunity to be heard by the Trustees;
- (e) Ensure that every meeting at which submissions are heard are open to Electors; and
- (f) Make all written submissions on the proposal available to Electors.

The period specified pursuant to paragraph (c) above shall be not less than one (1) month and no more than three (3) months.