

In the High Court of New Zealand  
Tauranga Registry  
I Te Kōti Matua o Aotearoa  
Tauranga Moana Rohe

CIV-2021-470-

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*under:* the Trusts Act 2019 and Part 18 of the High Court Rules 2016

*in the matter of:* an application under sections 130 and 133 of the Trusts Act 2019 by **William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen**, as trustees of the Tauranga Energy Consumer Trust  
*First plaintiffs*

*and in the matter of:* an application under section 133 of the Trusts Act 2019 by **William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen**, as trustees of the TECT Charitable Trust  
*Second plaintiffs*

## Statement of Claim

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Dated: 13 May 2021

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Reference: M D Arthur (michael.arthur@chapmantripp.com)

L C Bercovitch (liora.bercovitch@chapmantripp.com)

Counsel: Justin Smith QC (Justin.smith@stoutstreet.co.nz)

chapmantripp.com  
T +64 9 357 9000  
F +64 9 357 9099

PO Box 2206  
Auckland 1140  
New Zealand

Auckland  
Wellington  
Christchurch



## STATEMENT OF CLAIM

The plaintiffs by their solicitor say:

### Parties

- 1 The first plaintiffs, William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen, are the trustees of the Tauranga Energy Consumer Trust (**TECT**).
- 2 The second plaintiffs, William Beau Holland, Natalie Anne Bridges, Peter John Blackwell, Peter John Farmer, Mark Edmond Arundel and Tina Lynn Jennen, are the trustees of the TECT Charitable Trust (the **2002 Charitable Trust**).

### Establishment of TECT

- 3 TECT is an energy trust. It was established:
  - 3.1 by the Tauranga Energy Consumer Trust Deed dated 21 December 1993 (the **TECT Trust Deed**);
  - 3.2 as part of the reform of the electricity sector that took place from the mid-1980s to late 1990s;
  - 3.3 to hold a substantial shareholding in Trustpower for the benefit of current and future electricity consumers in the district that was previously supplied by the Tauranga Electric Power Board, and (later) the Tauranga City Council electricity business (the **TECT Consumer District**).
- 4 The settlor of TECT was the company then known as Trustpower Limited, a company with company number 604040 that was registered from 29 October 1993 until 7 July 2017, when it was removed from the Companies Register (the **Settlor**).
- 5 As part of the electricity market reforms, the Settlor succeeded to the assets of the Tauranga Electricity Power Board (the **Board**). When it settled TECT, the Settlor was a retail supplier and generator of electricity and the owner of the local distribution lines.
- 6 In accordance with the Board's Establishment Plan, in 1993, TECT acquired 50% of the shares in the Settlor, for the benefit of the then current and future customers of the Settlor. The majority of the remaining shares were transferred to consumers of the Board.
- 7 In 1999, the Electricity Industry Reform Act 1998 required electricity companies to separate ownership of their distribution (lines) businesses from supply (retail and generation) businesses. The Settlor chose to focus on generation and retailing of electricity, and exit the distribution business.

- 8 Since its establishment, TECT's shareholding in the Settlor has changed, including as a result of it variously acquiring and selling certain shares. Those transactions included the 2015 sale of certain shares in the Settlor (following a Consumer Consultative Procedure), which enabled TECT to invest the proceeds in a diversified portfolio with the aim of diversifying the asset base of TECT.
- 9 TECT is currently (via TECT Holdings Limited (**TECT Holdings**)) a substantial shareholder holding 26.8% of Trustpower Limited (company number 565426) (**Trustpower**), a new company formed in 2016 when the Settlor underwent a demerger.

#### **Variations to the TECT Trust Deed**

- 10 Since TECT was settled, the original TECT Trust Deed has been variously amended, including as follows:
- 10.1 In 1999, to comply with the Electricity Industry Reform Act 1998 which required electricity supply and lines businesses to be separated, the Settlor chose to focus on its generation and supply business and exited its distributions business. The original definition of Consumer referred to the Settlor's "distribution network" which was therefore redundant. Following a consultation process, the definition of Consumer was amended to refer to those people situated in the Board supply area who purchased their electricity from the Settlor.
- 10.2 In 2002, the 2002 Charitable Trust was established. The definition of Consumer was amended so that the 2002 Charitable Trust was added as a beneficiary of TECT.
- 10.3 Also in 2002, the TECT Trust Deed was amended to include a broader community object as part of the Trustees' distributive powers (clause 5.3(d)).
- 10.4 In 2004, the definition of District was amended so that Trustpower account holders in Tauranga Council's old supply area would become beneficiaries of TECT.
- 10.5 In 2016 the Settlor underwent a demerger in which the operation of the business was separated between:
- (a) Trustpower Limited (company number 565426), previously known as Bay Energy Limited (**Trustpower**); and
  - (b) Tilt Renewables Limited (company number 1212113) (**Tilt Renewables**).

At the time of the demerger, the definition of Company in the Trust Deed was amended to include the new Trustpower, and to exclude Tilt Renewables and its subsidiaries.

### **Current terms of the TECT Trust Deed**

- 11 The current terms of the TECT Trust Deed are relied upon as if pleaded in full, and include that:

#### 11.1 "Company" means:

*Scarlett Limited (formerly Trustpower Limited) (company number 604040) and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company, including (without limitation) Trustpower Limited (company number 565426) but excluding Tilt Renewables Limited (company number 1212113) and any subsidiary companies of Tilt Renewables Limited.*

(clause 1.1)

#### 11.2 "Consumer" means:

- (i) *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;*
- (ii) *the TECT Charitable Trust as constituted pursuant to a deed of trust dated 27 March 2002; or*
- (iii) *any other entity wholly owned and/or controlled by TECT and whose beneficiaries and objectives are substantially the same as TECT's.*

(clause 1.1)

#### 11.3 "District" means:<sup>1</sup>

- (i) *the territory over which the Board was authorised to supply electricity immediately prior to the Vesting Date pursuant to the Tauranga Electricity 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*

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<sup>1</sup> Defined in this Statement of Claim as the "TECT Consumer District".

*Tauranga City peninsula north of the centreline of 17<sup>th</sup> Avenue, Tauranga.*

(clause 1.1)

11.4 The Termination Date of TECT, following the enactment of s 16 of the Trusts Act 2019, is December 2118 (clause 1.1).

11.5 The purposes and objects for which TECT was established are:

- 4.1 *On Vesting Date, to receive Shares vested in the Trustees by order in council made in accordance with section 47 of the Act.*
- 4.2 *If the Trustees so elect to subscribe for, purchase or otherwise acquire Other Securities in the capital of the Company.*
- 4.3 *To retain and hold the Shares and Other Securities, until such time as the Shares or Other Securities, as the case may be, are sold, transferred or disposed of.*
- 4.4 *In the event of any sale, transfer or other disposition of Shares or Other Securities to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with clause 6.1.*
- 4.5 *To receive Dividends and to distribute, pay, apply or appropriate the Dividends and other income of the Trust Fund which the Trustees do not resolve to accumulate to or for the benefit of the Consumers in the manner provided in clause 5 of this Deed.*
- 4.6 *Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in clause 6.2.*

(clause 4)

11.6 The provisions relating to distribution of TECT's income include:

- 5.3 *The Trustees shall distribute the balance of the current net annual income 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 the benefit of the Consumers and where such distributions comprise Dividends the Trustees may have regard to any report of Directors*

given pursuant to clause 5.4 **AND IT IS DECLARED** that distributions of income for the benefit of Consumers may be made in any one or more of the following ways and no such distribution shall be called into question by any Consumer:

- (a) By payment in cash to any one or more of the Consumers to the exclusion of other Consumers in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper;
- (b) By the provision of goods or services or an entitlement to goods and services to any Consumer or Consumers and generally in such form and at such value as the Trustees shall determine including the giving of an entitlement by voucher or some other form of entitlement (which may be transferable or not transferable as the Trustees decide) to goods and services which the Trustees may have purchased or provided for out of the income of the Trust Fund;
- (c) By carrying out or causing to be carried out works which in the opinion of the Trustees will benefit Consumers such as:
  - (i) Improvements to the safety of Consumers by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
  - (ii) Avoiding, remedying or mitigating any adverse effects of energy related activities on the Environment;
  - (iii) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of Consumers in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
  - (iv) Subsidising the installation of the means of supply of energy to Consumers which would otherwise be uneconomic;

- (d) *By carrying out or causing to be carried out or funding in whole or in part (whether by way of Consumer distribution, loan, investment, the underwriting of project liabilities, the giving of financial support or otherwise) the carrying out of projects or other community initiatives which in the opinion of the Trustees will benefit Consumers.*

(clause 5.3)

11.7 The provisions relating to variation of the TECT Trust Deed include:

13.1 *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 other than clause 13.2 and the provisions set out in clause 13.2 which shall only be capable of being altered or amended in the manner set out in clause 13.2.*

13.2 *The Trustees shall have power on a unanimous resolution of all the Trustees after the Trustees have implemented a Consumer Consultative Procedure in respect of such proposal to alter or amend:*

- (a) *the definition of "Consumers" or "District"; and*  
 (b) *clauses 4, 5, 6, 9.3 or 13.*

13.3 *Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:*

- (a) *review proposals and available options for the ownership of the Shares; or*  
 (b) *sell, transfer or dispose of the Shares in accordance with clause 9.3.*

(clause 13)

11.8 Clause 11 and Schedule 3 set out a process for consultation with Consumers prior to certain decisions of Trustees (described as a Consumer Consultative Procedure).

11.9 Schedule 2 sets out Trustees' specific powers, which are subject to any express terms in the Trust Deed limiting or restricting such powers.

### **The 2002 Charitable Trust**

12 The 2002 Charitable Trust was established by way of a deed of trust dated 27 March 2002 for Charitable Purposes for the benefit of the Charitable Consumers, each as defined in the trust deed (the **2002 Charitable Trust Deed**). The trustees of the 2002 Charitable Trust are and must be, under that trust deed, the same as the trustees of TECT.

13 The 2002 Charitable Trust was added as a beneficiary of TECT in 2002, as part of an amendment of the TECT Trust Deed.

14 The current terms of the 2002 Charitable Trust Deed are relied upon as if pleaded in full, and include that:

14.1 "Charitable Consumers" means each and every Consumer which is a Charitable Body (clause 1.1);

14.2 "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 premise situate in the District (clause 1.1).

14.3 The 2002 Charitable Trust is established for Charitable Purposes for the benefit of Charitable Consumers (clause 4.1).

### **Operation of TECT**

#### *Beneficiaries*

15 When TECT was formed in 1993, 100% of the electricity consumers in the then District, being the old Tauranga Power Board supply area, were beneficiaries. The Tauranga City Council's old supply area was not initially included in the definition of District. In 2003, the definition of "District" in the TECT Trust Deed was amended to include consumers in the former Tauranga City Council electricity business supply area.

16 There are currently approximately 49,000 Consumers, all of whom are eligible to receive benefits under the TECT Trust Deed. Those Consumers own approximately 53,000 Installation Control Points in the TECT Consumer District, and comprise approximately 59% of electricity consumers in the TECT Consumer District.

#### *Trustees*

17 The TECT Trust Deed requires TECT to have six trustees, who are elected by Consumers for a four-year term. To be elected, every

Trustee must be a Consumer. Three trustees retire every two years.

*Structure and portfolio*

18 TECT and the 2002 Charitable Trust each holds various assets, including via TECT Holdings, being a company that is wholly owned by TECT. Collectively these entities form the TECT group. The TECT group also includes TECT Property Limited, which no longer holds any material assets and will be wound up as part of normal operations.

19 As reported in the audited consolidated financial statements to 31 March 2020, the overall portfolio across the TECT group (net of liabilities) was valued at \$871,027,375. The total assets of \$880,676,313 were made up of approximately:

19.1 61% (\$537m) held in Trustpower shares; and

19.2 39% (\$344m) held in diversified investments and other assets. Approximately \$193m of those assets were held by the 2002 Charitable Trust.

20 TECT's current shareholding in Trustpower represents 26.8% of the shares in Trustpower. All of the Trustpower shares held by TECT are owned through TECT Holdings.

*Distributions to Consumers*

21 TECT's income and capital is used to provide benefits to Consumers. TECT and the 2002 Charitable Trust's current policy is to distribute at least 75% of their annual net income. The remaining amount is accumulated and invested to pay future rebates and make future community donations.

22 In accordance with its distributions policy, the TECT group provides benefits to Consumers through:

22.1 the TECT rebate sent to Consumers each year, which comprises approximately 80% of the total distribution; and

22.2 grants and donations to community organisations throughout the TECT Consumer District, which comprises approximately 20% of the total distribution.

23 Since TECT was established, the TECT group has distributed approximately \$440m directly to Consumers and \$122m to community organisations and initiatives.

**Trustpower strategic review**

24 On 28 January 2021, Trustpower publicly announced a strategic review of its retail business. The stated purpose was to test market

interest in its retail business and explore the merits and business case to establish a standalone generation business.

- 25 A potential outcome of the strategic review is a sale by Trustpower of its retail business.
- 26 Prior to its announcement, Trustpower alerted TECT to its likely strategic review and potential sale of the retail business, following which the Trustees began considering how TECT might respond.
- 27 If a sale of Trustpower's retail business proceeds, changes to the TECT Trust Deed will be required because:
- 27.1 the current retail and consumer customers of Trustpower's retail business would cease to be Consumers under the TECT Trust Deed (approximately 49,000 Consumers); and
- 27.2 the only Consumers of Trustpower for the purposes of the Trust Deed would be the small number of larger commercial and industrial electricity customers (approximately 150 Consumers) retained by Trustpower in the TECT Consumer District.
- 28 As a result of that announcement, the Trustees considered updating the structure of TECT in terms of their powers to do so under the TECT Trust Deed.

#### **Proposal to restructure TECT**

- 29 On 29 January 2021, the Trustees unanimously agreed:
- 29.1 that there is a need for a restructure of TECT, whether or not a sale by Trustpower occurs following its strategic review; and
- 29.2 on a preferred restructure proposal to put to Consumers under the Consumer Consultative Procedure (the **Proposed TECT Restructure**).
- 30 In the Proposed TECT Restructure:
- 30.1 TECT would continue, but the TECT Trust Deed would be substantially amended, to provide that TECT would exist for the sole purpose of paying rebates to existing Consumers under the TECT Trust Deed (and not any new customers) for up to 30 years;
- 30.2 a new charitable trust would be established which would be the primary vehicle to hold and manage TECT's assets and benefit the local community in Tauranga and the Western Bay of Plenty through, primarily, donations and grants; and

30.3 the 2002 Charitable Trust would be wound up.

31 The key particulars of the Proposed TECT Restructure are:

- 31.1 **Establish a new charitable trust:** a new charitable trust would be established for charitable purposes which benefit the community in Tauranga and the Western Bay of Plenty, primarily through donations and grants (the **TECT Community Trust**).
- 31.2 The trustees of the TECT Community Trust would be elected on periodic election cycles in the same way as for current TECT trustees. The electors would be widened to all persons registered on the Parliamentary electoral rolls and having an address in Tauranga and the Western bay of Plenty. Two additional trustees may be appointed by the elected trustees.
- 31.3 The boundaries of the district would be slightly broader than the boundaries of the current TECT Consumer District. The TECT Community Trust would cover the area currently administered by the Tauranga City Council and the Western Bay of Plenty District Council.
- 31.4 **Variation to the TECT Trust Deed:** TECT would remain in existence but would be renamed the **TECT Consumer Trust**.
- 31.5 The TECT Trust Deed would be amended under clause 13.2 of that deed, and TECT would continue in existence for the sole purpose of paying electricity rebates to a fixed class of beneficiaries, being:
- (a) the retail customers of Trustpower on 28 January 2021 (being the date that Trustpower announced the strategic review, the **Record Date**) for so long as each of them continues as a customer of Trustpower or the purchaser of Trustpower's retail business (or any subsequent purchaser) in the TECT Consumer District; and
  - (b) the commercial and industrial customers of Trustpower on the Record Date for so long as each of them continues as a customer of Trustpower or of the purchaser of Trustpower's retail business (or any subsequent purchaser) in the TECT Consumer District.

No new customers of Trustpower or of Trustpower's retail business (irrespective of who owns it) would receive rebates.

- 31.6 The rebate would be \$500 a year for the first ten years, would increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation.
- 31.7 There would be an end date for rebates of 2050.
- 31.8 TECT would retain an amount as a separate fund for the purpose of paying a yearly rebate to the beneficiaries until up to the end of 2050. TECT would loan that amount to the TECT Community Trust by way of an interest-bearing loan, and repayments of the principal of the loan and interest would fund the rebate payments. TECT would only be able to use its funds to pay rebates, and its proper expenses.
- 31.9 The Trustees have considered the amount that TECT will need to retain in order to pay continued rebates until 2050. The Trustees have yet to finalise the exact amount of the loan / retention.
- 31.10 The trustee governance structure of TECT would be substantially the same as that currently in place. The procedures for the election and appointment of trustees would be contained in the TECT Community Trust trust deed. Trustees elected or appointed under that deed would automatically become trustees of TECT, and would cease to be trustees of TECT when they cease to be trustees of the TECT Community Trust.
- 31.11 **Transfer of assets to the TECT Community Trust:** TECT would transfer the balance of its assets, including TECT's shareholding in Trustpower held through TECT Holdings, to the TECT Community Trust.
- 31.12 All the assets and liabilities of the 2002 Charitable Trust would be distributed to the TECT Community Trust.
- 31.13 The TECT Community Trust would invest those assets, and the funds loaned to it by TECT, in a variety of investments to generate returns.
- 31.14 In 2050, TECT would be wound up and any remaining assets distributed to the TECT Community Trust. This may occur earlier if at any time TECT has insufficient assets to continue to pay rebates (for example if the amount retained by TECT was exhausted).
- 31.15 **2002 Charitable Trust:** The 2002 Charitable Trust would be wound up.

32 The Trustees are obtaining advice from KPMG on exactly how to transfer and hold the various assets in an appropriate and efficient way.

33 The Trustees considered alternative restructuring options and unanimously agreed that the Proposed TECT Restructure was the most appropriate option to put to Consumers under a Consumer Consultative Procedure.

#### **TECT – Consumer Consultative Procedure**

34 In accordance with clause 13.2 of the Trust Deed, the proposed variation of the TECT Trust Deed to implement the Proposed TECT Restructure requires the Trustees to follow the Consumer Consultative Procedure set out in the Trust Deed, followed by a unanimous resolution of Trustees to approve the restructure.

35 No comparable procedure is required under the 2002 Charitable Trust Deed.

36 Clause 11 and Schedule 3 of the TECT Trust Deed prescribes the steps the Trustees must take to implement the required Consumer Consultative Procedure with Consumers, including the provision of prescribed information to Consumers and the requirement for a submission process for Consumers to have their say on the amendments.

37 The Trustees complied with the Consumer Consultative Procedure by way of the following steps:

##### *Notice of the Proposed TECT Restructure*

37.1 On 29 January 2021 the Trustees placed a notice of the Proposed TECT Restructure before a meeting of the Trustees.

37.2 On 18 February 2021 the Trustees gave notice of the Proposed TECT Restructure to Consumers in a two page notice entitled "Notice of Proposal" (the **Notice**) and a consumer information memorandum on the Proposed TECT Restructure titled "The Future of TECT" (the **CIM**).

37.3 The Trustees:

- (a) made copies of the Notice and the CIM available for inspection at the TECT's offices;
- (a) published a copy of the Notice and the CIM on TECT's website;
- (b) mailed a copy of the Notice to every Consumer;

- (c) emailed details of the Proposed TECT Restructure, with a link for Consumers to inspect the Notice and access additional information about the Proposed TECT Restructure, to every Consumer for whom TECT has a current email address. The Trustees also emailed updates during the consultation process; and
- (d) advertised details of the Proposed TECT Restructure with a link for Consumers to access information about the Proposed TECT Restructure, including the Notice, in the Bay of Plenty Times and the Weekend Sun.

37.4 The Notice stated that:

- (a) Consumers could make written submissions on the Proposed TECT Restructure to the Trustees until 4pm on 22 March 2021; and
- (b) hearings of Consumers' oral submissions would be held on 25 and 26 March 2021.

*Additional information about the Proposed TECT Restructure*

37.5 In addition to the notice required under the Consumer Consultative Procedure, the Trustees also made available for inspection at the office of TECT and on TECT's website various additional information about the Proposed TECT Restructure, including:

- (a) the current versions of the TECT Trust Deed and 2002 Charitable Trust Deed;
- (b) the proposed TECT Consumer Trust Deed in clean and marked up versions;
- (c) a summary of the proposed changes to the TECT Consumer Trust;
- (d) the proposed TECT Community Trust Deed;
- (e) a memorandum from Chapman Tripp to the Consumers with information on the Proposed TECT Restructure and the application for directions under section 133 of the Trusts Act 2019; and
- (f) a letter from Trustpower confirming that it supported the Proposed TECT Restructure.

*Consumer information sessions and submissions hearing*

- 37.6 The Trustees held three Consumer Information Sessions throughout Tauranga and the Western Bay of Plenty on 3, 4 and 7 March 2021.
- 37.7 The hearing of Consumers' oral submissions was held on 25 March 2021. The meeting was open to Consumers and to the general public, and all Trustees were present. Every Consumer who wished to make an oral submission was given the opportunity to do so.
- 37.8 The Trustees received 791 written submissions from Consumers. Of those 791 submissions, 780 were received by the closing date, and 11 further submissions were received late. The Trustees accepted and considered all submissions, including the 11 that were received late.
- 37.9 The Trustees made all written submissions received on the Proposed TECT Restructure available to Consumers at TECT's office and on its website.

**Trustees' decisions**

- 38 At respective meetings of the Trustees of TECT and the 2002 Charitable Trust on 15 April 2021, after considering the oral and written submissions, the Trustees agreed in principle to proceed with the Proposed TECT Restructure and resolved to have formal resolutions prepared to record those decisions.
- 39 At respective meetings of the Trustees of TECT and the 2002 Charitable Trust on 22 April 2021, the Trustees considered the formal resolutions that had been prepared and resolved as follows:
- 39.1 the first plaintiffs unanimously resolved to proceed with the Proposed TECT Restructure, subject to obtaining orders from this Court approving that decision; and
- 39.2 the second plaintiffs unanimously resolved to proceed with the Proposed TECT Restructure, subject to obtaining orders from this Court approving that decision.
- 40 The resolutions set out above completed the steps required by clause 13.2 of the TECT Trust Deed to amend that deed to effect the Proposed TECT Restructure, namely the required Consumer Consultative Procedure was implemented and, following that procedure, the Trustees unanimously approved the Proposed TECT Restructure.
- Trustpower entered due diligence stage**
- 41 On 28 April 2021, Trustpower announced that it had received a number of non-binding indicative proposals to acquire its retail

business, following its announcement of a strategic review in January. The announcement stated that Trustpower's Board had reviewed the proposals and progressed into the due diligence stage of the process.

**FIRST CAUSE OF ACTION: DIRECTIONS TO THE TECT TRUSTEES UNDER S 133 TRUSTS ACT 2019**

The first plaintiffs repeat paragraphs 1 to 42 above and say further:

- 42 In implementing the Proposed TECT Restructure, including by:
- 42.1 amending the TECT Trust Deed;
  - 42.2 establishing the TECT Community Trust;
  - 42.3 making various transfers to the TECT Community Trust from TECT and the 2002 Charitable Trust to effect the restructure (including the transfer of TECT shares in TECT Holdings (which holds TECT's shareholding in Trustpower); and
  - 42.4 entering into a loan by which funds would be advanced from TECT to the TECT Community Trust, being an asset intended for use to pay dividends;

the Trustees will be exercising their powers under the TECT Deed.

- 43 The requirements of clause 13.2 of the TECT Trust Deed to amend that deed have been complied with, namely the required Consumer Consultative Procedure has been implemented and following that process the Trustees have unanimously approved the Proposed TECT Restructure.
- 44 The decision to implement the Proposed TECT Restructure is a decision that a reasonable body of trustees, properly instructed as to the proper meaning of the relevant provisions of the Trust Deed, and acting in the best interests of the beneficiaries and for a proper purpose, could properly have made.
- 45 In deciding to implement the Proposed TECT Restructure the Trustees have not been impaired by any conflict of interest.

*Restrictions on disposal of Trustpower shares*

- 46 As part of the Proposed TECT Restructure, the shares in TECT Holdings (which holds TECT's shareholding in Trustpower) would be transferred to the TECT Community Trust on settlement of the TECT Community Trust. Notwithstanding the restrictions on disposing more than a base level of Trustpower shares under clause 9.3 of the TECT Trust Deed, such a transfer is permissible where the Trustees

have first implemented a Consumer Consultative Procedure in respect of the proposed disposal.

- 47 The Trustees have complied with the clause 9.3 requirement that a Consumer Consultative Procedure be implemented before the Trustpower shares are transferred.
- 48 Accordingly, the Proposed TECT Restructure, to the extent it includes a disposal of TECT's Trustpower shares, is permitted under clause 9.3.

#### **AND THE FIRST PLAINTIFFS CLAIM**

- (a) an order under section 133 of the Trusts Act 2019 and/or the Court's inherent jurisdiction directing that it is proper and lawful for the TECT Trustees to implement the Proposed TECT Restructure (as described in paragraphs 30 to 31 above).

#### **SECOND (PARTIAL ALTERNATIVE) CAUSE OF ACTION: DIRECTIONS TO THE TECT TRUSTEES UNDER S 130 TRUSTS ACT 2019**

The first plaintiffs repeat paragraphs 1 to 42 above and say further, in partial alternative to the first cause of action:

- 49 Clause 9.3 of the TECT Trust Deed requires that a disposition of more than a Base Level for Securities (as defined in the TECT Trust Deed) can only be undertaken if the Trustees have first implemented a Consumer Consultative Procedure in respect of the proposed disposal.
- 50 Clause 13.3 of the TECT Trust Deed provides:

*Notwithstanding clauses 13.1 and 13.2, no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the Trustees under this Deed to:*

- (a) *review proposals and available options for the ownership of the Shares; or*
- (b) *sell, transfer or dispose of the Shares in accordance with clause 9.3.*

- 51 As part of the Proposed TECT Restructure:
- 51.1 TECT's shares in TECT Holdings (which holds TECT's shareholding in Trustpower) would be transferred to the TECT Community Trust (the **Trustpower Shareholding Transfer**); and

51.2 The TECT Trust Deed would be amended by removing clauses 9.3 and 13.3.

52 The Trustees have complied with the clause 9.3 requirement that a Consumer Consultative Procedure be implemented before the Trustpower Shareholding Transfer occurs, and therefore clauses 9.3 and 13.3 thereafter would have no relevance and should be removed from the TECT Trust Deed.

53 If, contrary to the first cause of action, clause 13.3 prevents the Trustees from amending the TECT Trust Deed by removing clauses 9.3 and 13.3, an order under section 130 of the Trusts Act 2019 and/or the Court's inherent jurisdiction removing clauses 9.3 and 13.3 would be appropriate because such a variation:

53.1 is necessary for the proper management of TECT in implementing the Proposed TECT Restructure.

53.2 does not alter a beneficiary's interest under the TECT Trust Deed.

53.3 does not involve a power to distribute trust property to a beneficiary.

#### **AND THE FIRST PLAINTIFFS CLAIM**

(a) an order under section 130 of the Trusts Act 2019 and/or the Court's inherent jurisdiction removing clause 9.3 and clause 13.3 from the TECT Trust Deed.

#### **THIRD CAUSE OF ACTION: DIRECTIONS TO THE 2002 CHARITABLE TRUST TRUSTEES UNDER S 133 TRUSTS ACT 2019**

The second plaintiffs repeat paragraphs 1 to 42 above and say further:

54 In implementing the Proposed TECT Restructure, including by:

54.1 winding up the 2002 Charitable Trust; and

54.2 making various transfers to effect the restructure;

the Trustees will be exercising their powers under the 2002 Charitable Trust Deed.

55 The decision to implement the Proposed TECT Restructure is a decision that a reasonable body of trustees, properly instructed as to the proper meaning of the relevant provisions of the Trust Deed,

and acting in the best interests of the beneficiaries and for a proper purpose, could properly have made.

- 56 In deciding to implement the Proposed TECT Restructure the Trustees have not been impaired by any conflict of interest.

**AND THE SECOND PLAINTIFFS CLAIM**

- (a) an order under section 133 of the Trusts Act 2019 and/or the Court's inherent jurisdiction directing that it is proper and lawful for the 2002 Charitable Trust Trustees' to implement the Proposed TECT Restructure (as described in paragraphs 30 and 31 above).

This document is filed by Michael David Arthur, solicitor for the plaintiffs, of the firm Chapman Tripp. The address for service of the plaintiffs is at the offices of Chapman Tripp, Level 34, 15 Customs Street West, Auckland.

Service on the plaintiffs should be effected by emailing the documents to each of the email addresses on the front page of the document. Provided that the documents are served by email, documents may also be:

- (a) posted to the solicitor at PO Box 2206, Shortland Street, Auckland 1140; or
- (b) hand delivered to Level 34 PwC Tower, 15 Customs Street West, Auckland 1010; or
- (c) posted or hand delivered to The Kollektive, 145 17<sup>th</sup> Avenue, Tauranga.