

**HAWKE'S BAY POWER CONSUMERS'
TRUST**

DEED OF TRUST

AMENDED VERSION

**(INCORPORATING AMENDMENTS MADE IN JULY 1998,
SEPTEMBER 1998 AND SEPTEMBER 2018)**

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THIS **DEED** dated the 24th

day of May

1993

BETWEEN HAWKE'S BAY POWER DISTRIBUTION LIMITED a duly incorporated Company having its registered office at Hastings (hereinafter called "the Company")

AND ARTHUR JAMES ABELSON of Hastings, **COLIN ROBERT APPERLEY** of Hastings, **VICTOR SYDNEY CRISP** of Poukawa, **EWING ROBERTSON** of Havelock North, and **RONALD SHAKESPEARE** of Hastings, all Retired (hereinafter together with their successors in office called "the Trustees")

BACKGROUND

- A. **HAWKE'S BAY ELECTRIC POWER BOARD** ("the Board") has formed a registered public liability company called Hawke's Bay Power Distribution Limited ("the Company").
- B. **PURSUANT** to the Energy Companies Act 1992 the Minister responsible for the administration of the Act has approved the establishment plan prepared and submitted in respect of the company which establishment plan provides for the allocation of shares in the company to the Trustees upon the terms set out in this Deed.
- C. **THE** Board wishes to establish the Hawke's Bay Power Consumers' Trust to enable the Trustees to acquire the shares in the Company which are to be vested in the Trustees in accordance with the establishment plan.
- D. **THE** object of the Trust is to hold the shares in the Company on behalf of the consumers and distribute to the Consumers, in their capacity as owners, the benefits of ownership of the shares in the Company, and to carry out future ownership reviews involving public consultation in accordance with the terms of this Deed.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions: In this Deed, unless the context otherwise requires:

"**Act**" means the Energy Companies Act 1992;

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

"**Bank**" means any bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989;

"**Board**" means the Hawke's Bay Electric Power Board constituted by section 10 of the Electric Power Boards Act 1925;

"**Closure of the Poll**" means closure of the poll in terms of Rule 2.20 of the first schedule to this Deed;

"**The Company**" means Hawke's Bay Power Distribution Limited and includes any successor company or any company arising out of any reconstruction, amalgamation or merger of the Company;

"**Consumers**" means persons who, at any appropriate date designated by the Trustees from time to time, are named in the records of the Company as persons whose premises are directly connected to the Company's lines network within the District, and who are either:

- (i) end customers who are liable (whether alone or jointly or with any other person) for the payment for electricity conveyed to them over those lines or for services in relation to those lines; or
- (ii) end customers of any Electricity Supply Business that is liable for payments for services in relation to those lines;

unless any such person who qualifies as a consumer in accordance with this definition advises the Company or the Trustees irrevocably in writing that he, she or it does not wish to be a consumer for the purposes of this Deed;

"**Declaration of Result**" means a declaration of result in terms of Rule 2.24 of the first schedule to this Deed.

"**This Deed**" means this deed and includes the schedule and any amendments;

"**Distribution Plan**" means a plan for the distribution of the shares in the capital of the Company prepared by the Trustees in accordance with Clause 4;

"**District**" means the territory over which the Board was authorised to supply electricity pursuant to the licence granted to the Board under section 20 of the Electricity Act 1968; **provided however** that in the event of the Company or any Subsidiary Company expanding its lines assets beyond such licence area the Trustees may from time to time by unanimous resolution in writing extend the boundaries of the District to include the whole or any part of such extended territory if they consider such extension is appropriate having regard to all the circumstances including the circumstances relating to the extension, any payment made for facilities in the extended area, and any benefit received or to be received or detriment incurred or to be incurred by Consumers in that extended area; **provided further** that in the event of the Company (including its Subsidiaries) ceasing to be involved in any part of the District the Trustees may from time to time by unanimous resolution in writing restrict the boundaries of the District if they consider such restriction is appropriate having regard to all the circumstances including the circumstances relating to

termination of involvement in part of the District, any payment received by the Company or any Subsidiary, and any benefit received or to be received or detriment incurred or to be incurred by the consumers in that part of the District.

[Amended November 2009 – from 75% majority resolution to a unanimous resolution.]

"Dividends" means, in relation to the Company, any distributions paid in cash or otherwise by the Company to the Trustees as holders, under this Deed, of shares in the Company;

"Election Date" means an election date in terms of Rule 2.7 in the first schedule to this Deed;

"Electricity Supply Business" has the meaning set out in the Electricity Industry Reform Act 1998;

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

"Local Authority" means Territorial Authorities and Regional Councils within the meaning of the Local Government Act 1974; and in the event that at any time any such Territorial Authority or Regional Council ceases to exist then any body whether incorporated or not which has assumed the responsibilities or obligations formerly undertaken by the Territorial Authority or Regional Council. **For the avoidance of doubt, "local authority" does not mean a district health board.**

[Added November 2009.]

"Meeting" in relation to shareholders of the Company or Subsidiary shall mean any meeting of shareholders including general meetings and extraordinary general meetings.

"Member" in relation to a Local Authority means an elected or appointed member and includes Mayors, Chairpersons, and Councillors;

"Month" means a calendar month;

"Persons" includes Companies, other incorporated and unincorporated bodies, and Local Authorities;

"Public Consultative Procedure" means the procedure for consultation set out in Schedule II.

"Register of Members" means the Register of Members of the Company or any Subsidiary in which the Trustees hold shares;

"**Roll**" and "**the Roll**" means the roll of consumers referred to in Rule 2.12 of the first schedule to this Deed;

"**Signatories**" in relation to the Trustees of this Deed means the persons who have signed their names as the initial Trustees under this Deed;

"**Subsidiary Company**" and "**Subsidiary**" includes a subsidiary of the Company as defined by Section 158 of the Companies Act 1955, and also includes any other company in which the Company holds shares.

"**Termination Date**" means the earlier of 1 January 2072 and the date upon which the trust is wound up in accordance with Clause 15 of this Deed; **provided however** that if any statutory perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2072 this definition shall be amended accordingly;

"**The Trust**" means the Hawke's Bay Power Consumers' 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 appointed by the Governor-General pursuant to section 47 of the Act for the vesting of the undertaking of the Board in the Company and for the vesting of the shares in the Company in the Trustees.

"**Working Day**" means any day of the week other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Queen's Birthday, Labour Day, Waitangi Day, Hawke's Bay Provincial Anniversary Day, and the period commencing on 24 December in any year and ending on 5 January in the following year.

1.2 Construction: In this Deed, unless the context otherwise requires:

- references to one gender include the other gender;
- references to the singular include the plural and vice versa;
- the headings and the index shall not affect the construction of the Deed;
- references to clauses are references to Clauses of the Deed and references to schedules are references to Schedules to this Deed;

- references to a statute include references to regulations, orders or notices made under or pursuant to such statute. References to any statute, regulation, 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;
- words, terms or expressions which are defined in the Act but are not defined in this Deed shall have the meaning attributed to them in the Act;

1.3 Perpetuity Period: For the purposes of the Perpetuities Act 1964 the perpetuity period applicable to this deed shall be the period from the date of execution hereof until the first anniversary of the Termination Date.

2. DECLARATION OF TRUST

The Company hereby declares and directs and the Trustees declare and acknowledge as follows:

- 2.1 Name:** The trust established by this Deed as an electric power trust shall be known as the **HAWKE'S BAY POWER CONSUMERS' TRUST**. The name of the Trust may be changed from time to time by unanimous resolution of the Trustees.
- 2.2 Trust Fund:** The sum of \$100.00 paid by the Board contemporaneously with execution of this Deed and all other monies 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 shall be held upon the Trust hereby declared and any accumulations of income therefrom and all monies, investments and property of whatever kind from time to time representing the same shall be held upon the trusts and for the purposes and with the powers, authorities and discretions appearing in the Deed (including the Schedule attached hereto).

3. OBJECTS

The objects for which the Trust is established are:

- 3.1 Shares in Company:** On Vesting Date, to receive shares in the Company vested in the Trustees by Order in Council made in accordance with section 47 of the Act.
- 3.2 Acquisition of Further Shares:** If the Trustees so elect, to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company or any Subsidiary Company.
- 3.3 Holding Shares:** To hold such shares upon trust for the benefit of the Consumers, and not to sell any shares unless the review procedure set out in Clause 4 shall have been followed in respect of each such sale.

- 3.4 **Proceeds of Sale or Disposition:** To hold the proceeds of any sale, transfer or other disposition of the shares or any to them upon the trust for capital in accordance with Clause 6.1.
- 3.5 **Dividends:** To receive Dividends and to distribute, pay, apply or appropriate such Dividends to or for the benefit of the Consumers in the manner provided in Clause 5.
- 3.6 **Capital:** Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in Clause 6.2.

4. **REVIEW PROCEDURE**

- 4.1 **Report:** Within three (3) years of the Vesting Date, but not earlier than two (2) years after the Vesting Date, the Trustees shall require the directors of the Company to prepare a report considering proposals and available options for the future ownership of the shares. If the directors of the Company have failed to produce a report within six (6) months of being requested to do so by the Trustees, the Trustees shall prepare such report. Such report shall contain the following:
 - 4.1.1 an analysis of the performance of the Company to the date of the report together with a summary of the advantages and disadvantages of Trust ownership and the benefits or otherwise of such ownership to Consumers;
 - 4.1.2 an analysis of other ownership options including, without limitation, share distribution to Consumers, sale of shares to the public, sale of shares to institutional investors, compared with retention of ownership by the Trust;
 - 4.1.3 a comparison of the Company's performance with the performance of other companies engaged in energy distribution;
 - 4.1.4 the conclusions of the directors as to the most appropriate form of ownership together with an indication whether the conclusions are unanimous and, if the decision is not unanimous, a summary of the conclusions of the dissenting directors;
 - 4.1.5 if a distribution of shares is recommended the matters contained in paragraphs (a), (b) and (c) of Clause 4.6;
 - 4.1.6 a statement as to whether or not the directors have had regard to any views expressed by the public with respect to ownership;
 - 4.1.7 a summary of the professional advice (if any) obtained in respect of the preparation of the report;

- 4.2 **Public Availability:** The Trustees shall make the report available to the public in accordance with Clause 13.
- 4.3 **Public Consultative Procedure:** The Trustees shall no later than 1 month after the date of the report, implement the Public Consultative Procedure. (Refer Schedule II).
- 4.4 **Decision:** Following completion of the Public Consultative Procedure, and in any event not later than 42 months after the Vesting Date, the Trustees and the directors of the Company shall meet and, after taking due account of the views expressed by the public and the directors, the Trustees shall decide (subject to Clause 4.8) whether to:
- (a) retain the shares in the Trust; or
 - (b) dispose of a portion of the shares and retain the remainder in the Trust; or
 - (c) dispose of all the shares.
- 4.5 **Notification of Decision:** If the shares are to be retained by the Trust the Trustees shall notify the public in accordance with Clause 13.
- 4.6 **Distribution Plan:** If at any time the shares or any portion of them are to be distributed the Trustees shall request the directors of the Company to prepare a Distribution Plan which shall include the following:
- (a) to whom the shares are to be distributed;
 - (b) the time and manner in which the shares are to be distributed;
 - (c) whether the shares are to be distributed without consideration, at a concessionary consideration, or for full consideration.

The Trustees shall consider any Plan prepared and, after consultation with the directors of the Company, make such amendments to it as the Trustees consider necessary. If the Directors of the Company fail to prepare a Distribution Plan then the Trustees shall prepare such Plan.

The Distribution Plan to be notified under clause 4.7 shall be:

- (a) the Distribution Plan prepared by the directors of the Company if the Trustees approve such Plan without amendment; or
- (b) the amended Distribution Plan adopted by the Trustees if, after consultation with the directors of the Company, the Trustees decide to make any amendments to the Distribution Plan prepared by the directors of the Company; or

- (c) the Distribution Plan prepared by the Trustees if the directors of the Company fail to prepare one.
- 4.7 Notification of Distribution Plan:** The Distribution Plan shall be notified to the public in accordance with Clause 13 and following notification the Trustees shall be obliged to ensure that the Distribution Plan is implemented unless the Trustees are unable to do so as a result of matters beyond the reasonable control of the Trustees.
- 4.8 Subsequent Reviews:** If following the initial review all or any of the shares are retained by the Trustees, and so long as all or any of the shares are retained by the Trustees, the following provisions shall apply:
- (a) within five (5) years of the decision of the Trustees on the initial review and at five (5) yearly intervals thereafter until Termination Date, the Trustees shall initiate a review, such review to be completed in accordance with the preceding review provisions of Clauses 4.1 to 4.7. **For the purpose of assessing the five yearly intervals referred to in this clause each period of five (5) years shall commence to run on the date of the Trustees' decision;**
 - (b) any legislative or other Governmental requirement or direction that the shares or any of them be distributed, transferred, or otherwise disposed of by the Trustees shall immediately give rise to a review which shall be completed in accordance with clauses 4.1 to 4.7.
- 4.9 Costs:** The Company shall be entitled to be paid out of the Trust Fund all reasonable costs incurred in connection with the ownership review carried out pursuant to this Clause 4.

5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

The Trustees shall stand possessed of the income arising from the Trust Fund upon the following trusts and with and subject to the following powers:

- 5.1 Remuneration and Expenses:** The Trustees shall from the net annual income first pay the cost of administering the Trust including remuneration and allowances payable to Trustees as provided by this Deed and expenses incurred in pursuance of their duties.
- 5.2 Discretion as to Income:** The Trustees may subject to Clause 5.3 and Clause 5.4 pay, apply or appropriate the whole or any part of the current net annual income derived by or credited to the Trust Fund in any Financial Year to or for or otherwise howsoever for the benefit of the Consumers or such one or more of them to the exclusion of the others or other of them in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall consider proper.

- 5.3 Accumulation:** The Trustees shall have the 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.
- 5.4 Retention of Dividends:** The Trustees are authorised to retain any Dividend received for such period as they consider to be proper.
- 5.5 Directors Report:** The Trustees shall request the Directors of the Company to produce a report in respect of each Dividend received by the Trustees recommending an appropriate allocation of the Dividend amongst the Consumers or classes of Consumer, but the Trustees shall not be bound by such recommendation.
- 5.6 Vesting:** All the Consumers to whom any income is paid, applied or appropriated by the Trustees pursuant to the provisions of Clause 5.2, shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income as from such date the Trustees shall have no further obligations with respect to the application of such income.
- 5.7 Not to Affect Corpus:** The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Consumers.
- 5.8 Trustees not Disqualified:** Each Trustee in his capacity as a Consumer shall, notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Consumer which may be distributed to Consumers in accordance with Clause 5.2.
- 5.9 Unclaimed Moneys:** All payments made to consumers unclaimed for one (1) year after having been sent to any Consumer may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund.

6. TRUSTS OF CAPITAL

- 6.1 Trusts Prior to Termination Date:** The shares in the Company or the proceeds of sale or other disposition of such shares shall be held by the Trustees upon trust to pay, apply or allocate the same on or, in the absolute and unfettered discretion of the Trustees, before the Termination Date for the

benefit of the Consumers in such manner and in such shares as the Trustees in their absolute and unfettered discretion consider fair and equitable.

- 6.2 Trusts from and after Termination Date:** From and after the Termination Date the Trustees shall stand possessed of the corpus of the Trust Funds and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with Clause 6.1 of, upon trust to pay, apply or appropriate the same to or for or otherwise howsoever for the benefit of the Consumers in such manner and in such shares as the Trustees shall in their absolute and unfettered discretion consider fair and equitable provided however that if the Trustees have not so paid, applied or appropriated all of such Trust Fund and income on or before 1 January 2073 the amount so remaining shall be paid in equal shares to all Consumers existing on 1 January 2073.
- 6.3 Report from Directors:** Before making a distribution to Consumers under Clause 6.1 or Clause 6.2 the Trustees shall request the Directors to produce a report recommending an appropriate distribution but the Trustees shall not be bound by such recommendation.
- 6.4 Vesting:** All Consumers to whom any distribution is made pursuant to clause 6.1 and/or clause 6.2 shall as from the date of such distribution take an absolute and indefeasibly vested interest in the funds so distributed.

7. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The Rules set forth in the Schedule hereto (with such amendments, deletions and additions thereto as may be permitted by this Deed or at law) shall, upon the execution of this Deed, govern the appointment, retirement and proceedings of Trustees and associated matters.

8. GENERAL POWERS

- 8.1 Powers in Addition to Trustee Act:** Except where otherwise specified in this Deed, the Trustees may exercise the powers, authorities, and discretions conferred by this Deed in addition to and not by way of limitation of the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act; Provided however that the Trustees shall have no power, authority or discretion to participate in the management or operation of the Company or any Subsidiary, except to the extent that may be necessary to enable them to fulfil their obligations as Trustees hereunder and in exercising the powers conferred by this Deed the Trustees shall be restricted to exercising their rights as shareholders in their capacity as Trustees holding shares pursuant to the provisions of this Deed in accordance with their duties under Clause 12.
- 8.2 To Deal Only with Consumers:** 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 Consumers as defined in this Deed

and in particular shall not be required to recognise any trust or other arrangement affecting any Consumer.

9. SPECIFIC POWERS

The Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions:

- 9.1 To Appoint Directors:** To appoint directors of the Company or of any Subsidiary in which it may hold shares where the Articles of Association of the Company or Subsidiary vest that power in the Trustees as shareholders.
- 9.2 To Appoint Secretary:** To appoint and pay any person, who is not a Trustee, as secretary of the Trust and to remove such person and appoint replacement secretaries as they think fit.
- 9.3 To Employ:** To employ and pay any person, firm, company or corporation to do any act of whatever nature relating to the Trust including the receipt and payment of money without being liable for loss incurred thereby.
- 9.4 To Appoint Custodian Trustee:** To exercise the powers conferred by section 50 of the Trustee Act to appoint any corporation to be a custodian trustee of the Trust Fund.
- 9.5 To Invest:** Subject to clause 10.2, to invest or reinvest in any form of investment authorised by this Deed or by law, all or any part of the Trust Fund, whether income or capital, not immediately required for the purposes of the Trust.
- 9.6 Bank Accounts:** To open an account or accounts at any time or times in the name of the Trust at any Bank (and to overdraw any such account with or without giving any security) and, in addition to the powers conferred by section 81 of the Trustee Act, to make arrangements with any Bank for the Trustees or any two or more of the Trustees named in writing by all of the Trustees to operate upon any account from time to time opened or subsisting at that Bank.
- 9.7 Capital Income and Blended Funds:** To determine whether any money for the purpose 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.
- 9.8 Shareholders Powers:** Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any shares in the Company forming part of the Trust Fund **provided however** that in exercising such powers they shall act as Trustees in the best interests of the Trust Fund and of the Consumers as beneficiaries.

- 9.9 Reorganisation, Reconstruction, Merger etc:** To consider any recommendations made by the directors 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 such 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 will be for the benefit of or in the interests of the Trust Fund. The Trustees shall not be bound by the recommendations of the directors. The Trustees shall not agree to any proposal which would result in the disposal or sale of any shares held by the Trust unless the review procedure set out in clause 4 mutatis mutandis shall have been followed in respect of such disposal or sale of shares, irrespective of the passage of time since the Vesting Date or the last review.
- 9.10 Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the Trusteeship of this Trust.
- 9.11 To Borrow:** To borrow moneys on such terms and subject to such conditions and for such purposes as the Trustees think fit.
- 9.12 To Lease:** To lease or take on a 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.
- 9.13 General:** To do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the general purpose of the Trust.

10. POWERS OF INVESTMENT

- 10.1 Exclusion:** The power to invest conferred on trustees by section 13A(1) of the Trustee Act is hereby excluded.
- 10.2 Authorised Investments:** The Trustees may invest all or any of the Trust Fund held by them under this Deed, either alone or in common with any other person or persons, in all or any of the following investments:
- (a) shares or other equity securities or debt securities of the Company or any Subsidiary Company;
 - (b) the stock, funds or other securities of the New Zealand Government;
 - (c) interest bearing deposit accounts with any Bank.
- 10.3 Power to Hold Uninvested:** Notwithstanding clause 10.2 the Trustees may hold all or any part of the Trust Fund uninvested for any period or periods for the purpose of:

- (a) accumulating sufficient funds for the purposes of investment; or
- (b) holding sufficient funds to meet payments as they fall due.

10.4 Trustees to Act as Prudent Person of Business: Notwithstanding the provisions of section 13C of the Trustee Act 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, it is hereby declared that the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of each persons by the said section 13C, but shall at all times be the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

10.5 No Requirement to Diversify: Notwithstanding anything 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 merely because the investments of the Trust Fund are not diversified.

11. ADVICE OF COUNSEL

Without derogating from the generality of the foregoing powers, the Trustees are hereby further empowered to take and act upon the opinion of any barrister, or barrister and solicitor, of the High Court of New Zealand of not less than seven years' standing whether in relation to the interpretation of this Deed or any other document or any statute, as to the administration of the Trust declared and authorised by this Deed or by any other document, without being liable to any person who may claim to be in any way beneficially interested in respect of any act done in accordance with such opinion provided that nothing in this clause shall prohibit the Trustees from applying to the Court should the Trustees think fit.

12. DUTIES OF TRUSTEES

The Trustees shall:

12.1 As Shareholders: Act as diligent shareholders and in particular monitor the performance of the Directors of the Company and exercise the rights of shareholders for the benefit of the Trust Fund and of the Consumers as beneficiaries. No Trustee shall exercise or attempt to exercise any rights or powers as a shareholder other than in the capacity of a Trustee, and in particular shall not exercise or attempt to exercise beneficial ownership of the shares. In exercising their rights and powers as shareholders the Trustees shall recognise and observe their status as Trustees holding shares in the Company and/or its Subsidiaries, and shall always endeavour to act collectively in the best interests of the Trust Fund and of the Consumers as beneficiaries.

12.2 Proxy in Respect of Jointly Held Shares: Notwithstanding any other provision herein the Trustees shall, at Meetings of the Company or any

subsidiary, collectively exercise their vote in respect of their jointly held shares. To this end, the Trustees shall from time to time deposit, in accordance with the articles of association (or other rules concerning voting) of the Company or Subsidiary, an instrument of proxy appointing a proxy for each Meeting of the Company or Subsidiary in respect of the Trustees' jointly held shares. Such instrument shall direct the proxy as to the way the Trustees' votes are to be cast, or leave the proxy to vote as the proxy thinks fit. The Trustees shall have power to appoint a substitute proxy or proxies to act in the event of death, incapacity, or other inability of the proxy. Unless the Trustees shall otherwise decide, any proxy appointed pursuant to this Clause shall be a Trustee. Any proxy shall be appointed in accordance with this clause for specific meetings, or for any period or periods that the Trustees may decide. This clause shall not preclude Trustees other than the proxy from attending Meetings, but those other Trustees shall not interfere with or defeat, or attempt to interfere with or defeat, the proxy in the exercise of the proxy's powers.

- 12.3 Hold Shares Jointly:** Except to the extent necessary to comply with any requirements as to the minimum number of shareholders in a public company, hold all shares in the Company or any Subsidiary in the joint names of the Trustees for the time being.
- 12.4 Automatic Vesting of Shares:** Only retain the shares in the Company or any Subsidiary while holding office as a Trustee. Upon retirement as a Trustee, removal from office as a Trustee for any reason, death, or upon a Trustee for any other reason ceasing to hold office as a Trustee, all the shares held by that Trustee (whether jointly or individually) shall immediately, and without further formality, vest in the successor in office of that Trustee upon and subject to the terms of this Deed. The Secretary, or any other person or persons nominated by the Trustees from time to time, shall be entitled to execute all documents and give all notices to the Company or the Subsidiary that may be necessary to give effect to this clause and to ensure that the Register of Members records the Trustees for the time being as shareholders.
- 12.5 Records:** Ensure that full and correct records and accounts of all the financial transactions of the Trust and its assets, liabilities and funds are kept;
- 12.6 Accounts:** After the end of each Financial Year cause to be prepared financial statements including a balance sheet, income and expenditure account, and notes to those documents giving a true and fair view of the financial affairs of the Trust for that Financial Year.
- 12.7 Auditor:** Appoint from time to time, on such terms as they think fit, as auditor of the Trust being a person who is either:
- (a) a member of the New Zealand Society of Accountants; or
 - (b) a member, fellow, or associate of an Association of Accountants constituted in some part of the British Commonwealth outside New Zealand and for the time being approved for the purpose of the audit

of the company accounts under section 165(4) of the Companies Act 1955.

- 12.8 Audit:** Ensure that the financial statements are audited.
- 12.9 Publication of Financial Statements:** Immediately upon completion of the audit of the financial statements, insert notice in a principal newspaper or newspapers circulating in the District to the effect that the statements are available for public inspection at the office of the Trustees.
- 12.10 Availability to Public:** Make the financial statements available to the public in accordance with Clause 13.
- 12.11 Public Meeting:** Within four (4) months after the end of each Financial Year of the Trust, hold a public meeting in the District and at that meeting report on the operation of the Trust during the preceding Financial Year and on the financial statements of the Trust for that Financial Year. The Trustees shall give not less than 14 days' notice of such meeting in a principal newspaper or newspapers circulating in the District.
- 12.12 Comments on Draft Statement of Corporate Intent:** In respect of any draft statement of corporate intent delivered to the Trustees by the Company make comments thereon to the Directors of the Company within two (2) months of the commencement of the Financial Year.
- 12.13 Statement of Corporate Intent Available to Public:** Each year make the completed statement of corporate intent available to the public in accordance with Clause 13.
- 12.14 Statement in Annual Report:** While the Trustees are the majority shareholders of the Company, prepare a statement for inclusion in the annual report of the Company commenting on the Company's compliance with its then current statement of corporate intent.
- 12.15 Modification of Statement of Corporate Intent:** Exercise, where appropriate, its right to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject always to the requirements of section 40(3) of the Act.
- 12.16 This Deed Available to Public:** Make a copy of this Deed available to the public in accordance with Clause 13.
- 12.17 Comply with Act:** The Trustees shall comply with the Electricity Industry Reform Act 1998.

13. INFORMATION TO THE PUBLIC

- 13.1 Inspection:** For the purpose of complying with any requirement under this Deed to make any document or information available to the public, it shall be

sufficient for the Trustees to make such document or information available for inspection on any business day at any office of the Trust or any office of the Company or a subsidiary or at any other place in the District during normal business hours.

- 13.2 Notice:** The Trustees shall give public notice in a principal newspaper or newspapers circulating in the District of the place at which and the time or times when such documents or information may be inspected by the public.

14. VARIATION OF TRUST DEED

This Deed may be altered or amended only by the unanimous resolution of the Trustees in writing; **Provided however** that no amendment shall be effective unless it has been approved in writing by the Directors and the proposed amendment has been subject to the Public Consultative Procedure; **And provided further** that this provision shall not affect the application of Clause 24 of Schedule I; **And provided finally** that no alteration or amendment may be made of 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 held by the Trust in the Company in accordance with Clause 4;
- (b) Sell, transfer or dispose of the shares following a review in accordance with Clause 4.

15. WINDING UP OF TRUST

15.1 Resolution: If the Trust no longer holds any equity security or debt security issued by the Company or a subsidiary Company or a resolution to wind up the Trust has not been passed by 1 January 2072, the Trustees shall pass the necessary resolutions for the trust to be wound up. If such resolutions have not been passed by 1 July 2072 the provisions of Clause 15.2 shall apply as if the resolutions had been passed.

15.2 Distribution: On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of the Consumers in accordance with Clause 6.2.

16. INTERESTED TRUSTEES

16.1 Disclosure: 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 (other than as a Consumer or as a member, officer, or employee of any firm, Company or organisation that is a Consumer) 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.

16.2 Voting: A Trustee required to disclose an interest by Clause 16.1 may be counted in 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.

16.3 Questions as to Materiality of Interest: 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 request shall be referred to the Chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive except in a case where the nature or extent of the interests of the Trustee concerned have not been fairly disclosed.

17. LIABILITY

17.1 Limitation on Liability: 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 the Trustee of an act not known by that Trustee to a breach of trust. 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.

17.2 Moneys Received: Each Trustee shall be chargeable only for such moneys as shall have actually 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 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 his or her neglect or default.

18. INDEMNITY

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 may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed and also in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission by such Trustee of an act known by the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

SCHEDULE 1

RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1. INTERPRETATION

These are the Rules referred to in Clause 7 of the Deed, and accordingly:

- 1.1 **Terms** in these Rules to which are ascribed special meanings in the Deed have the meanings so ascribed to them unless otherwise provided or the context otherwise requires.
- 1.2 **These** Rules shall be construed subject to the provisions of the Deed, and in the case of conflict between the provisions of these Rules and those of the Deed the provisions of the Deed shall prevail.

PART I - CONSTITUTION OF THE TRUSTEES

2. APPOINTMENT AND ELECTION OF TRUSTEES

- 2.1 **Number:** The number of Trustees shall be five (5). If at any time the number of Trustees shall fall below five (5) the remaining Trustees shall forthwith appoint a person or persons to fill the vacancy or vacancies and for this purpose the number of Trustees for the time being shall constitute a quorum.
- 2.2 **Eligibility:** The following person shall not be eligible for election or appointment as a Trustee and may not hold office as a Trustee:
 - (a) **Bankrupt:** 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 111 of the Insolvency Act 1967;
 - (b) **Conviction:** 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) **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
 - (d) **Restraining Order:** a person to whom an order made under section 189 of the Companies Act 1955 applies;
 - (e) **Mentally Disordered:** a person who is mentally disordered within the meaning of the Mental Health Act 1969;

- (f) **Property Order:** 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) **Director or Employee of Company/Subsidiary:** a person who currently holds office as a director of the Company or any subsidiary or is employed by the Company or any subsidiary;
- (h) **Member of Parliament, or Member of Local Authority:** a person who is a Member of Parliament, or a Member of a Local Authority;
- (i) **Not a Consumer:** a person who is not a Consumer having a principal place of residence within the District;
- (j) **Seeking more than three (3) consecutive terms:** a person seeking to serve more than three (3) consecutive terms of office in contravention of Rule 3.

2.3 The Disqualification from Trusteeship shall not Take Effect Until:

- (a) In any case to which Rule 2.2(b) applies 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 2.2(c) applies 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.

2.4 Vacancies: Where by reason of any vacancy, the number of Trustees is reduced below five (5), the remaining Trustees shall appoint some other eligible person or persons (as the case may be) to be a Trustee for the balance of the term of office.

2.5 First Trustees: The first Trustees of the Trust shall be the persons signing the Deed as Trustees. Such Trustees shall retire from office on 1 December 1993.

2.6 Election of Trustees: Subject to Rules 2.4 and Rule 2.5 all subsequent Trustees shall be elected by the Consumers pursuant to the following rules.

2.7 Election Date:

- (a) The election date for the first election of Trustees shall be 1 December 1993 and thereafter tri-annually on 1 October. Reference in these Rules to "Election Date" shall mean 1 October in the relevant election year except for 1993 when it shall mean 1 December 1993.

- 2.8 Returning Officer:** There shall be a Returning Officer for each election. The Returning Officer shall be appointed by the Trustees not less than five (5) months before Election Date. A Trustee or the secretary of the Trust or Director of the Company or any subsidiary may not be a Returning Officer. In the event of the Trustees failing to appoint a Returning Officer as required by this Rule the Directors of the Company may appoint a Returning Officer.
- 2.9 Substitute Returning Officer:** In the event of the death or incapacity of the Returning Officer a replacement Returning Officer may be appointed in the manner provided in Rule 2.8.
- 2.10 Functions of Returning Officer:** The Returning Officer shall conduct the election of Trustees. Where no procedure is prescribed by these Rules the Returning Officer shall be entitled to specify the procedure and act accordingly. The Returning Officer shall be entitled to utilise the services of such persons and companies as the Returning Officer deems appropriate, and to arrange payment for such services from the Trust Fund. In the event of doubt or dispute as to any matter affecting the election, the Returning Officer shall be entitled to resolve such doubt or dispute, and the decision of the Returning Officer shall be final and conclusive.
- 2.11 Payment of Returning Officer:** The Returning Officer shall be entitled to receive such reasonable remuneration and payment of expenses as the Trustees shall determine after consultation with the Returning Officer. In the event that it is necessary for the Directors of the Company to appoint a Returning Officer pursuant to Rule 2.8, the Directors of the Company shall be entitled to fix and pay the remuneration and expenses of the Returning Officer, and to forthwith recover the same, together with any additional expenses incurred by the Company or the Directors, from the Trust Fund.
- 2.12 Preparation of Roll of Consumers:** Not later than four (4) months before election date the Returning Officer shall establish a Roll of consumers by obtaining from the Company (and if necessary any subsidiary) a list or lists of the names and addresses of all Consumers as at a date (to be decided by the Company) as close a practicable to the date on which the request is made. Such date shall be deemed to be a date designated by the Trustees. The Returning Officer shall accept the lists provided as accurate and correct, but shall be entitled to add names and addresses to the Roll if satisfied that the name or address of any Consumer has been left off the Roll. The decision of the Returning Officer as to the addition or not of name or address to the Roll shall be final and conclusive. The list or lists of Consumers provided (subject to any addition that the Returning Office may make) shall be deemed, for all purposes relating to the election, to be the roll of Consumers (the "Roll").
- 2.13 Advertising of Elections and Calling for Nominations:** Not later than three (3) months before Election Date the Returning Officer shall insert appropriate notice in at least one principal newspaper circulating within the district giving:

- (a) a general indication of the nature of the election;
- (b) the place or places at which nomination forms may be obtained;
- (c) the day and time nominations close;
- (d) the day and time the poll closes.

2.14 Nominations: Every nomination of a candidate shall be in writing. All candidates shall be nominated, and signed by a person on the Roll. Nomination forms shall be in such form as the Returning Officer may decide, but shall include:

- (a) the full name and address of the candidate;
- (b) 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 Election Date, disqualified from holding office as a Trustee by reason of any of the matters set out in Rule 2.2;
- (c) the signature of the nominator and candidate.

The Returning Officer shall require each candidate to pay a deposit of such amount as the Returning Officer shall consider reasonable. All candidates for any election shall be required to pay the same deposit. Such deposit shall accompany the candidate's nomination form and shall be refundable to the candidate provided the candidate receives not less than ten per cent (10%) of the votes cast. If the candidate shall fail to receive such percentage, the deposit shall be forfeited and shall become part of the Trust Fund. **For the avoidance of doubt, "votes cast" shall mean the number of valid voting papers received by the Returning Officer.**

The 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 2.2.

2.15 Withdrawal: The nomination of a candidate shall be deemed to have never been made, and the candidate shall be ineligible for election, if the:

- (a) nominator withdraws the nomination by notice received by the Returning Officer before closure of nominations;
- (b) candidate withdraws by notice received by the Returning Officer before a result is declared;
- (c) candidate dies before a result is declared;
- (d) candidate becomes disqualified by virtue of Rule 2.2 before a result is declared.

2.16 Closure of Nominations: Nominations shall close at 5.00pm on the day two (2) months before election date ("Closure of Nominations").

2.17 Circumstances where No Election Necessary: If by Closure of Nominations five (5) valid nominations have been received the Returning Officer shall forthwith declare the five (5) candidates duly elected, and no election shall be held. If, by such time, less than five (5) nominations have been received, the Returning Officer shall forthwith declare those nominated to be duly elected and the Trustees so elected shall forthwith fill the vacancy or vacancies by appointment. A declaration of the Returning Officer pursuant to this clause shall be deemed to be Declaration of Result.

2.18 Eligibility to Vote: The following provisions shall apply:

- (a) Subject to Rule 2.18(b) below, each consumer on the Roll shall be entitled to one (1) vote for each entry of that consumer's name on the Roll; **Provided however** that no consumer shall be entitled in whatever capacity to more than three (3) votes;
- (b) Joint holders shall only be entitled to one (1) vote, and the person whose name appears on the Roll first as a member of that joint holding shall exercise the vote for that joint holding to the exclusion of the other joint holders;
- (c) Subject to Rule 2.18(a), Companies, other incorporated or unincorporated bodies (other than joint holders), and Local Authorities shall be entitled to one (1) vote through a representative (who may be a consumer on the Roll exercising a personal vote);
- (d) Eligible voters shall vote for not more than five (5) candidates.

2.19 Election: Not later than ten (10) days before Election Date the Returning Officer shall complete distribution, in whatever manner the Returning Officer deems appropriate (including progressively over a period), to every person on the Roll:

- (a) A printed voting paper containing:
 - (i) names of all candidates validly nominated in alphabetical order of their surnames;
 - (ii) appropriate provision for voting;
- (b) Notification (which may be on the voting paper) as to the date and time the Poll closes;
- (c) A postage paid return addressed envelope.

- 2.20 Closure of the Poll:** A vote is invalid, and shall not be counted, unless the Returning Officer receives the voting paper not later than 5pm on Election Date ("Closure of the Poll").
- 2.21 Invalid Votes:** A vote is invalid and shall not counted if:
- (a) It is received after closure of the Poll;
 - (b) The voter votes more than once unless authorised to do so by Rule 2.18;
 - (c) The voter votes for more candidates than there are trustees to be elected;
 - (d) In the opinion of the Returning Officer, the voting paper does not indicate clearly enough the candidate or candidates for whom the voter intended to vote;
 - (e) The Returning Officer believes, on reasonable grounds, that the voting paper was not issued to the voter by the Returning Officer.
- 2.22 Counting of Votes:** The Returning Officer shall as soon as practicable after Election Date, but in any event not later than fourteen (14) days after Election Date, count the valid votes cast for each candidate and ascertain the candidates elected.
- 2.23 Tied Poll:** Where, because two (2) or more candidates have received the same number of valid votes, the Returning Officer cannot determine which of them has been elected, the Returning Officer shall decide which of them is elected by lot drawn by those candidates in the presence of the Returning Officer and such other person or persons (if any) as the Returning Officer may decide.
- 2.24 Declaration of Result:** Forthwith after ascertaining which candidates have been elected, the Returning Officer shall forthwith declare the names of the Trustees so elected ("Declaration of Result"), and shall publish those names in one or more principal newspapers circulating in the District.
- 2.25 Destruction of Voting Papers:** After the Declaration of Result the Returning Officer shall decide when to destroy the voting papers.
- 2.26 General Duties of Returning Officer:** The Returning Officer and every person assisting the Returning Officer shall faithfully and impartially perform the duties of that office, and shall not, directly or indirectly:
- (a) before the declaration of result make known the state of the poll, or give or pretend to give any information by which the state of the poll might be known;

- (b) make known for which candidate or candidates any person has voted;
- (c) give any person any information likely to defeat the secrecy of the election.

2.27 Changes of Trustees: Notwithstanding any other provision in the Deed or these Rules, retiring Trustees shall remain in office until the Returning Officer shall have made a Declaration of Result pursuant to Rule 2.17 or Rule 2.24. Forthwith upon the Declaration of Result the candidates declared elected shall assume office in place of the retiring Trustees.

2.28 Calculation of time: If any day or days specified in Rules 2.1 to 2.27 upon or by which any step is to be taken shall fall on a day that is not a working day then the date for performance shall be deemed to be the working day immediately following.

3. TERM OF OFFICE

Trustees (including the first Trustees) shall (subject to the provisions of Rule 2.27 and Rule 8) hold office for a term from the date of their appointment or election until the Declaration of Result of the next election. A Trustee may seek re-election for a further term of three (3) years and may at the expiration of that term seek further re-election for one further term of three (3) years; **provided however** that no Trustee shall serve more than three (3) consecutive terms. For the purpose of calculating three (3) consecutive terms the term of office as a Trustee prior to the Declaration of Result for the election held on 1 December 1993 shall be excluded from consideration.

4. REMUNERATION AND EXPENSES OF TRUSTEES

4.1 Remuneration: The Trustees 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.

4.2 Expenses: The Trustee 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.

4.3 Payments to be made from Trust Funds: The payments of remuneration and expenses to the Trustees pursuant to Rule 4.1 or Rule 4.2 shall be paid out of the Trust Fund or any other fund available for that purpose.

5. DELEGATION BY TRUSTEES

Any Trustee may, in any of the circumstances permitted by section 31 of the Trustee Act, exercise the powers under that section of delegating all or any trusts powers authorities and discretions to any person, who has been approved by all other Trustees, during any period of absence from New Zealand or of incapacity.

6. CHAIRPERSON

The Trustees shall annually elect a chairperson and may from time to time elect a deputy chairperson and determine the period for which the deputy chairperson is to hold office. The chairperson (or in the absence of the chairperson, the deputy chairperson or in the absence of both a Trustee elected by the meeting) shall chair all meetings of Trustees.

7. **QUORUM**

Subject to Rule 2.1 a quorum at meetings of the Trustees shall comprise three (3) Trustees.

8. **CESSATION OF TRUSTEESHIP**

8.1 A Trustee shall cease to hold office if such Trustee:

- (a) **Expiry of Term:** Has served for the term referred to in Rule 3 and has not been re-elected;
- (b) **Resignation:** Resigns office as Trustee by notice in writing to the secretary of the Trust or, if there is no secretary, to the chairperson;
- (c) **Refuses to act:** Refuses to act as a Trustee;
- (d) **If Unsound Mind:** Becomes of unsound mind in terms of the Mental Health Act 1969;
- (e) **Subject to a Property Order:** Becomes subject to a property order made under Section 30 or 31 of the Protection of Personal and Property Rights Act 1989.
- (f) **Bankrupt or Arrangement with Creditors:** Becomes bankrupt or enters into a composition or assignment for the benefit of creditors;
- (g) **Absence:** Is absent without leave from three consecutive ordinary meetings of the Trustees;
- (h) **Conviction:** Is convicted of any offence punishable by imprisonment for a term of two (2) years or more;
- (i) **Imprisonment:** Is sentenced to imprisonment for any offence;
- (j) **Member of Parliament or Member of Local Authority:** Becomes a Member of Parliament, or a Member of a Local Authority;
- (k) **Director or Employee of Company/Subsidiary:** Becomes a director or employee of the Company or any subsidiary company;
- (l) **Dies:** Dies while holding office as a Trustee.

8.2 Operation of Disqualification: The provisions of Rule 2.3 shall apply, mutatis mutandis, to Rules 8.1(h) and 8.1(i). 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.

9. RECORDING OF CHANGE OF TRUSTEES

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.

10. VALIDITY OF PROCEEDINGS

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.

11. RESCISSION OF VARIATION OF RESOLUTIONS

Any resolution of the Trustees may be rescinded or varied from time to time by the Trustees at any ordinary or special meeting.

PART II - ADMINISTRATIVE PROVISIONS

12. ORDINARY MEETINGS

The Trustees shall meet at such intervals as they deem appropriate for the proper conduct of the affairs of the Trust.

13. SPECIAL MEETINGS

Three (3) Trustees may at any time summon a special meeting for any reason they consider justifies such a meeting.

14. NOTICE OF MEETINGS

Notice in writing of every meeting whether ordinary or special shall be delivered or sent by post, facsimile, email or other electronic means to each Trustee by the secretary or other person acting under the direction of the Trustees. In the case of a special meeting, persons summoning it or the secretary or other person acting under the direction of the Trustees shall give at least seven (7) days notice of the next

c meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

[Amended September 2018 – allow for email as notice of a meeting.]

15. **CONTENT OF NOTICE**

Every notice of meeting shall state the place, day and hour of the meeting and every notice of a special meeting shall state the matters to be discussed at that meeting. Notice of any general or special 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.

16. **ADJOURNMENT**

If a quorum is not present within thirty (30) 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.

17. **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.

18. **MINUTES**

18.1 Minute Book: A Minute Book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the Minute Book.

18.2 Evidence of Proceedings: Minutes, if purporting to be 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.

18.3 Meetings Deemed to be Regular: 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 convened.

19. **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).

20. MEETINGS BY TELEPHONE

20.1 Deemed to be a Meeting: 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 secretarially, 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) **Notice:** 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) **Hear Each Other:** Each of the participants taking part in the meeting by telephone, and the secretary or person acting secretarially, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) **Acknowledge Presence:** 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) **Not to Leave:** 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.

20.2 Evidence: 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, and by the secretary or person acting secretarially.

21. BANK ACCOUNTS

Bank accounts in the name of the Trust shall be opened and kept with a bank or banks selected from time to time by the Trustees. 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.

22. 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 and countersigned by the secretary or by another Trustee or any other person approved by the Trustees for the purpose.

23. GENERAL POWERS

Subject to the provisions of the Deed and of the preceding Rules the Trustees shall have the power to do all acts and things which they may consider proper or advantageous for accomplishing the purposes and objects of the Trust.

PART III - AMENDMENT TO RULES

24. AMENDMENTS

24.1 The rules set forth in Part II of this Schedule being administrative provisions may be rescinded, amended or added to by the unanimous resolution of the Trustees.

24.2 No such resolution shall be effective unless notice thereof shall have been given in the notice convening the meeting and no such rescission, amendment or addition shall conflict with any of the provisions of the Deed, or Part I or Part II of this Schedule or any relevant provisions of the Act.

SCHEDULE II

PUBLIC CONSULTATIVE PROCEDURE (As governed by the Local Government Act 1974)

In respect of any provisions of this Deed which requires the Trustees to implement a Public Consultative Procedure, the Trustees shall debate all relevant reports, options and information available to it and determine on a particular proposal and shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to the public in accordance with clause 13 of the Deed;
- (c) In every notice given under paragraph (b) of this Schedule, specify a period within which persons interested in the proposal may make submissions on the proposal to the Trustees (and the Trustees shall make a copy of those submissions available to the directors of the Company);
- (d) Ensure that any person 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 or at which the Trustees deliberate on the proposal are open to the public;
- (f) Make all written submissions on the proposal available to the public; and
- (g) Ensure that the final decision in relation to the proposal is made at a meeting of the Trustees which is open to the public.

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

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

**THE COMMON SEAL of HAWKE'S BAY
POWER DISTRIBUTION LIMITED** was
hereunto affixed in the presence of:
