

DATED

2005

BETWEEN

**BRIAN ROBERT JEFFARES
SHIRLEY ANN STEPHENS
BRIAN GEORGE MATHIESON
JOHN TREVOR RICHARD WILLIAMS
GORDON REX KILSBY
FIONA MARY CLARK**

“Trustees”

AND

POWERCO LIMITED

TARANAKI ELECTRICITY TRUST
FOURTH CONSOLIDATED DEED OF TRUST
(CONSOLIDATED WITH ALL VARIATIONS TO DATE)
Draft of 11.05.05

Till Henderson King
Lawyers
New Plymouth

TARANAKI ELECTRICITY TRUST

THIS DEED is made on the day of 2004

BETWEEN

BRIAN ROBERT JEFFARES of Stratford, Mayor,
SHIRLEY ANN STEPHENS of Inglewood, Professional Caregiver,
BRIAN GEORGE MATHIESON of Stratford, Retired,
JOHN TREVOR RICHARD WILLIAMS of Waitara, Supermarket
 Proprietor,
GORDON REX KILSBY of Stratford, Sales Consultant, and
FIONA MARY CLARK of Tikorangi, Photographer
 (hereinafter called "the Trustees").

AND

POWERCO LIMITED at New Plymouth

BACKGROUND:

- A. The Trustees are all the present trustees of a Trust known as the Taranaki Electricity Trust ("the Trust") which is registered under the Charitable Trusts Act 1957.
- B. The Trust was established by a Deed dated 23 April 1993 ("the original Deed") between its then trustees and Taranaki Energy Limited.
- C. The original Deed has since been varied by -
 - (i) a Deed of Variation of Trust dated 23 August 1993; and
 - (ii) a Deed of Further Variation of Trust dated 21 December 1994; and
 - (iii) a Deed of Trust dated 10 May 1996 consolidated with all variations to that date; and
 - (iv) a Deed of Trust dated 17 September 1998 consolidated with all variations to that date; and
 - (v) a Deed of Trust dated 15 August 2002 consolidated with all variations to that date

- D. The Trustees have unanimously agreed to make a further variation in the original Deed (as varied) and have carried out the public consultative procedure set out in Section 83 of the Local Government Act 2002 and have considered the submissions received.
- E. The further variation of the Deed has been approved by the Board of Powerco Limited pursuant to clause 14(b)(i) of the said Third Consolidated Deed of Trust.
- F. This Deed consolidates the original Deed with all changes to date (including the changes referred to in Recitals D and E.

1. DEFINITIONS AND CONSTRUCTION

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

- (a) "Act" means the Energy Companies Act 1992;
- (b) "Balance Date" means the 30th day of June or any other date adopted as the end of the Trust's Financial year from time to time by the Trustees;
- (c) "Bank" means ABN AMRO Bank NV, AMP Bank Limited ANZ Banking Group (New Zealand) Limited, ASB Bank Limited, Bank of New Zealand, Bank of Tokyo-Mitsubishi (Australia) Limited, Citibank NA, Commonwealth Bank of Australia, Deutsche Bank AG, Kiwibank Limited, Kookmin Bank, Rabobank New Zealand Limited, Rabobank Nederland, The Hong Kong and Shanghai Banking Corporation, The National Bank of New Zealand Limited, TSB Bank Limited, Westpac Banking Corporation, and any other bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989;
- (d) "Beneficiaries" means any one or more of:
 - (i) charities;
 - (ii) charitable institutions and charitable organisations;

- (iii) Electors, the Territorial Local Authorities, and persons resident in or domiciled in the District or any class or classes of such persons,

but only to the extent they and each of them:

- (A) can benefit pursuant to the Trust's charitable objects and purposes as defined herein, and
 - (B) can benefit without detracting from or diminishing the Trust's charitable status and its charitable tax exemption.
- (e) "District" means the extent of the area over which the TEPB was authorised to supply electricity pursuant to the licence granted to the TEPB under section 20 of the former Electricity Act 1968;
 - (f) "Electors" means at any appropriate date designated by the Trustees, any person:
 - (i) Whose name appears on each published roll of parliamentary electoral districts (including the main roll and any supplementary rolls) the whole or part of which are situated within the District; or

Who satisfies the Returning Officer that he or she was entitled to have his or her name on the published roll or supplements by virtue of an application for enrolment made before the closing of that roll or supplement;
 - and -
 - (ii) Whose electoral address is within the District;
 - (g) "Financial Year" means any year or other accounting period ending on a Balance Date;
 - (h) "Local Authority" means a territorial authority within the meaning of the Local Government Act 2002;

- (i) "TEPB" means the former Taranaki Electric Power Board constituted under section 10 of the Electric Power Boards Act 1925 (since repealed by the Act);
- (j) "The Trust" means the electric power trust established by the original Deed and continued as a charitable trust by subsequent variations and by this Deed;
- (k) "The Trustees" means the Trustees for the time being of the Trust;
- (l) "This Deed" means this deed and includes the schedule and any amendments and also includes the original Deed and/or its variations where the context so requires;
- (m) "Trust Fund" means all the assets and property for the time being of the Trust less all liabilities thereof for the time being and includes all capital and accumulations of income and undistributed income for the time being held by the Trustees of the Trust;
- (n) "Trustee Act" means the Trustee Act 1956;
- (o) "Vesting Date" means the date upon which the Governor-General by Order in Council under section 47 of the Act vested the undertaking of the TEPB in Taranaki Energy Limited and the shares in Taranaki Energy Limited in the shareholders entitled to the allocation thereof under the establishment plan for Taranaki Energy Limited;
- (p) "the Original Deed" means the Deed dated 23 April 1993 which established the Trust and which is the Deed referred to in recital B;
- (q) "security" means an equity security or a debt security or a hybrid security as hereinafter defined;
- (r) "equity security" means a security -
 - (i) Which confers a present or future right to participate in the assets of an issuer after payment of all liabilities of that issuer; or

- (ii) Which confers a present or future right to participate in the income or profit of an issuer, other than at a fixed rate or at a rate fixed by reference to a formula or index external to that issuer; or
 - (iii) Which is an option to acquire any security of the nature referred to in immediately preceding (i) and (ii);
- and includes (without being limited to) an ordinary voting share, an ordinary non-voting share, a preference share, or a redeemable preference share;
- (s) “debt security” means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any asset) and includes (without being limited to) a debenture, debenture stock, bond, note, certificate of deposit, or any option to acquire any one or more of the same;
 - (t) “hybrid security” means any security which combines features of an equity security with features of a debt security and includes (without being limited to) any convertible note, any debt security convertible into equity securities, any equity security convertible into debt securities, and any option to acquire one or more hybrid securities;
 - (u) “Voluntary Termination Date” has the meaning given by clause 15.1;
 - (v) “Rates relief” means –
 - (i) any grant or payment to any of the Territorial Local Authorities in exchange for a reduction of the rates levied by such territorial local authorities in those parts of their respective districts as lie within the District; or
 - (ii) any grant or payment to any of the Territorial Local Authorities where the Trustees are of the opinion that such grant or payment will, or is likely to, or will tend to, reduce the rates of such

Territorial Local Authorities in those parts of their respective districts as lie within the District;

- (w) “Territorial Local Authority” means a Territorial Local Authority the whole or part of whose district is situated within the District.

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

- (a) references to one gender include each other gender;
- (b) references to the singular include the plural and vice versa;
- (c) the headings and the index shall not affect the construction of the Deed;
- (d) references to Clauses are references to clauses of this Deed and references to Schedules are references to the Schedule to this Deed;
- (e) 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 or substituted and includes substituted provisions that substantially correspond to those referred to;
- (f) 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.

2. **DECLARATION OF TRUST**

The declaration of trust is hereby confirmed as follows:

- 2.1. The Trust established by the original Deed as an electric power trust is and shall continue to be known as the Taranaki Electricity Trust. The name of the Trust may be changed from time to time by resolution of the Trustees that has received unanimous affirmative vote of all the Trustees.
- 2.2. Any monies or other property of whatever kind either received contemporaneously with execution of the original Deed or paid, given,

transferred, purchased or acquired by (or agreed to be transferred to or purchased or acquired by) the Trustees since then shall be held upon the Trust hereby declared and 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 Trust and for the purposes and with the powers, authorities, and discretions hereinafter appearing.

3. PURPOSES

The purposes and objects for which the Trust is established are:

- 3.1. To hold and apply the income of the Trust Fund for the charitable purposes, objects, and beneficiaries set out in clause 4 and its subclauses and with and subject to the rights, powers, liabilities, immunities, obligations, and restrictions expressed and implied in this Deed.
- 3.2. To hold and apply the capital of the Trust Fund, including accumulations of income and accretions to the capital, for the charitable purposes, objects, and beneficiaries set out in clause 5 and its subclauses and with and subject to the rights, powers, liberties, immunities, obligations, and restrictions expressed and implied in this Deed.

4. TRUSTS OF INCOME

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:

- 4.1. The Trustees shall from the net annual income derived by the Trust fund first pay the cost of administering the Trust including remuneration and allowances payable to Trustees as hereinafter provided and costs incurred in pursuance of their duties.
- 4.2. The Trustees shall, subject to clause 4.3 and subject to the right to accumulate pursuant to clause 4.6, pay apply or appropriate the whole of the current net annual income in one or more of the following ways in such manner and in such

proportions as the Trustees in their absolute and unfettered discretion shall think proper:

- (a) For "**Charitable Purposes**" being purposes or objects in the District or for the benefit of the District which are or is charitable in accordance with the law of New Zealand **PROVIDED HOWEVER** that if by reason of any alteration in the law relating to income tax it is at any time necessary to amend such purposes in order to preserve the right to exemption from income tax of the kind referred to in sections CW 34 and CW35 of the Income Tax Act 2004 such purposes shall thereupon be deemed to be amended to the extent necessary; and "charitable purposes" shall include the following to the extent they are charitable within the foregoing meaning:
 - (i) For the support of projects benefiting Electors of the District as may be nominated by the Territorial Local Authorities in the District from time to time;
 - (ii) For other purposes which in the uncontrolled discretion of the Trustees consider will benefit Electors in the District;
 - (iii) For purposes which the Trustees in their uncontrolled discretion consider will benefit the persons resident in or domiciled in the District or any class or classes of them;
 - (iv) For the support of the economic development of the District.
- (b) For "**Energy Related Charitable Purposes**" being Charitable Purposes which relate to some aspect of the beneficial use, application or enjoyment in the District of New Zealand's energy resources including:
 - (i) Improvements to the safety of the general public including, by way of example, 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 the general public in the District including the awarding of research scholarships or prizes and the funding of research and development projects;
- (iv) The provision of financial assistance to charitable organisations in the District to enable them to make better use of energy resources available to them or to subsidise the cost to such charitable organisations of existing supplies of energy;
- (v) The support of works relating to electrical supply including undergrounding of overhead lines, conversion of the network to a higher operating voltage, construction of new services with low revenue earning potential, and maintenance of uneconomic rural spur lines, but the provisions of this paragraph shall not be limited to such examples;
- (vi) For the promotion of energy efficiency and conservation through general promotion, investment in demonstration projects or contributions to research and development;
- (vii) For the provision of bursaries and other educational assistance in support of technical or business careers allied to the energy industry to Electors or their families;
- (viii) For the assistance of new businesses being started in the District where significant employment opportunities are to be created by partial subsidy of their energy costs for a fixed period of time.
- (ix) If and to the extent it is a charitable purpose as defined, to grant rebates of electricity accounts of electricity consumers in the District or any class or classes of such electricity consumers; to subsidise such electricity accounts or any class or classes of them; to grant relief in respect of such electricity accounts or any class or classes of them.

- 4.3. The Trustees shall in respect of any Dividends or other income received be entitled to pay, apply or appropriate that income in accordance with clause 4.2 at any time during the Financial year to which those Dividends relate or during any following Financial Year.
- 4.4. Any of the Electors to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to clause 4.2, shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income.
- 4.5. 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 Electors.
- 4.6. Subject to the foregoing, so far as any part or parts of the income derived by or credited to or to be derived by or credited to the Trust Fund in any Financial Year is not paid, applied or appropriated in accordance with clause 4.2, the same shall be accumulated by investing the same so that all such accumulations shall be held by the Trustees upon the same trusts and with the powers herein declared in respect of the income from the Trust Fund and so that the Trustees may at any time or times resort thereto and pay, apply or appropriate the whole or any part thereof as if it were income of the Trust Fund in accordance with clause 4.2.
- 4.7. Each Trustee in his capacity (if any) as an Elector shall notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as an Elector which may be distributed to Electors in accordance with clause 4.2 or clause 5.
- 4.8. For the avoidance of doubt, any benefits of an indirect or intangible or non-cash nature arising out of any investment(s) or arrangement(s) entered into by the Trustees may be allocated or directed by the Trustees to any one or more of the purposes, persons, or classes of persons referred to in clause 4.2 in such manner and in such proportions as the Trustees in their unfettered discretion think fit. Such benefits may include (without being limited to) any price reductions given by any companies in which a shareholding is held to or for any one or more of the said purposes, persons, or classes of persons in exchange for the Trustees lending monies to any company or individual.

5. TRUSTS OF CAPITAL

5.1. **Trusts prior to Voluntary Termination Date:** The assets owned by the trust and the proceeds of sale or disposition or redemption of such assets or any returns of capital thereon (less any liabilities of the Trust) shall be held by the Trustees upon trust to pay, apply or allocate the same or any part or parts of the same as the Trustees shall think fit from time to time, on or before the Voluntary Termination Date (defined in clause 15.1) for the purposes set out in clause 4.2 or in clause 5.2 in such manner and in such proportions as the Trustees in their absolute and unfettered discretion consider fair and equitable.

5.2. **Trusts from and after the Voluntary Termination Date:** From and after the Voluntary Termination Date (defined in clause 15.1) the Trustees shall stand possessed of the then remaining corpus of the Trust Fund and the income thereof and any income previously derived by the Trustees that has not been paid, applied or appropriated in accordance with this Deed, together with any other assets of the Trust (less any liabilities of the Trust) upon trust to pay, apply or appropriate the same to or for or otherwise howsoever in the unfettered discretion of the Trustees for "Charitable Purposes" being purposes or objects in the District or for the benefit of the District which are or is charitable in accordance with the law of New Zealand **PROVIDED HOWEVER** that if by reason of any alteration in the law relating to income tax it is at any time necessary to amend such purposes in order to preserve the right to exemption from income tax of the kind referred to in sections CW 34 and CW35 of the Income Tax Act 2004 such purposes shall thereupon be deemed to be amended to the extent necessary; and "charitable purposes" shall include the following to the extent they are charitable within the foregoing meaning:

- (a) For the purposes set out in clause 4.2;
- (b) For distribution to the Electors and other persons residing in or domiciled in the District or to any class or classes of them as the Trustees may in their unfettered discretion select or define;

- (c) For distribution to the Territorial Local Authorities or any one or more of them for “Charitable Purposes” as defined above (including, without being limited to, rates relief to the extent same is charitable);

in such manner and in such proportions (including if permitted by law by establishing a further trust or trusts on the same terms mutatis mutandis as this Trust or on similar terms as this Trust) as the Trustees shall in their absolute and unfettered discretion consider fair and equitable **PROVIDED HOWEVER** that if the Trustees have not paid, applied or appropriated any or all of such Trust Fund and income and assets (less liabilities) on the day before the second anniversary of the Voluntary Termination Date the amount so remaining shall be paid to the territorial Local Authorities the whole or any part of whose district is situated within the District in such proportions as the number of Electors who are resident in each such Local Authority Area bears to the aggregate number of Electors as at the second anniversary of the Termination Date for “Charitable Purposes” as defined above (including, without being limited to, rates relief to the extent same is charitable).

6. APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES

The rules set forth in the Schedule hereto (with such amendments, deletions and additions thereto as may lawfully be made in manner therein appearing) shall upon the execution of this Deed govern and continue to govern the appointment, retirement and proceedings of the Trustees and associated matters.

7. OFFICE OF EXECUTIVE SECRETARY

There shall be an Executive Secretary of the Trust, such position to be filled by the Trustees. The Executive Secretary shall not be one of the Trustees and may be appointed or removed and replaced as the Trustees see fit. The Executive Secretary will be the Secretary and Chief Executive Officer (CEO) of the Trust. The functions and powers of the Executive Secretary are set out in Rule 26 in the Schedule.

In any case of doubt, the Executive Secretary’s written decision as to the scope of his functions and powers when mailed, faxed, or emailed to the trustees shall thenceforth be

final and binding until the trustees pass a resolution negating, modifying, overruling, or varying that written decision, but any such trustees resolution shall not invalidate anything done by the Executive Secretary pursuant to that written decision prior to the passing of such trustees resolution.

8. GENERAL POWERS

- 8.1. The Trustees may exercise the powers, authorities, and discretions conferred by this Deed in addition to the powers, authorities and discretions conferred upon the Trustees generally by the Trustee Act (except where otherwise specified in this Deed).
- 8.2. Subject to the express terms of this Deed (and without limiting the generality of the foregoing) the Trustees shall have in relation to the Trust Fund and the income arising from the Trust Fund all the same powers as a natural person acting as beneficial owner of the property from time to time comprising the Trust Fund and such powers shall not be restricted by any principle of construction or rule of law except to the extent that such is obligatory.
- 8.3. Without limiting the generality of the preceding paragraph 8.2 and merely by way of example the Trustees shall have the powers set out in clauses 9, 10 and 11 of this Deed which may be exercised either alone or jointly with any other person.
- 8.4. For the avoidance of doubt, it is hereby agreed the Trustees have been entitled to exercise all powers conferred by this Deed and to benefit all purposes and objects in clauses 4.2 and 5.2 since the formation of the Trust.

9. SPECIFIC POWERS

For the direct or indirect attainment or benefit of the objects, purposes, and beneficiaries of the Trust, the Trustees shall have and may exercise either alone or together with any other person or persons the following powers, authorities and discretions in addition to any other powers, authorities and discretions they may have under this Deed or (subject to the express provisions of this Deed) at Law or in Equity:

- 9.1. **To Appoint Executive Secretary:** To appoint and pay an Executive Secretary to the Trust who is not a Trustee and to remove such person and appoint a replacement Executive Secretary as they think fit who shall exercise the functions set out in Rule 26 of the Schedule.
- 9.2. **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.
- 9.3. **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.
- 9.4. **To Invest:** 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 purpose of the Trust.
- 9.5. **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). Pursuant to powers conferred by section 81 of the Trustee Act the Trust bank accounts can be operated and cheques signed by either the Executive Secretary plus any one trustee or by any two trustees.
- 9.6. **Capital Income and Blended Funds:** To determine whether any money for the purposes of this Deed is to be considered as income or capital and what expenses ought to be paid out of income and capital respectively and also to apportion payments and every such determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund and income thereof.
- 9.7. **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 that form part of the trust fund.
- 9.8. **Reorganisation, Reconstruction, Merger, Takeover etc:** To agree to and implement any proposal, scheme, or offer whereby any company in which the

trust owns shares or has any other interest is reorganised or reconstructed or merges with or is taken over by another corporate entity or entities and to agree to and implement any ancillary transactions including (but not limited to) exchanging all or any part of the shares for securities in any reorganised or reconstructed company or companies merging with or taking over the company in which shares are held or any part of the companies assets or undertaking on such terms and conditions as the Trustees think fit.

- 9.9. **Increase in Capital:** If any of the companies in which shares or any other interests are held resolves in accordance with its particular company constitution to increase its capital, any new shares to which the Trustees are entitled may either be accepted or taken up by the Trustees as part of or as an accretion to the Trust Fund or may be disposed of or otherwise dealt with as the Trustees think fit including (without being limited to) the rights or options to take up such new shares being disposed of or otherwise dealt with as the Trustees think fit.
- 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 accept any redemption, return of capital, or other distribution on any shares held by the Trust whether or not such redemption, return of capital, or other distribution is income or capital for any purpose at law.
- 9.12. To institute, join in and defend proceedings at law or by way of mediation or arbitration or before any Tribunal or Statutory Body and to proceed to the final end and determination and to compromise and settle any such dispute or proceedings for such consideration and upon such terms and conditions as the Trustees may decide; and for the avoidance of doubt any such proceedings may be on behalf of the Trust or on behalf of the Electors or any Electricity Customers or Consumers or on behalf of any section or class of the Electors or Electricity Customers or Consumers.
- 9.13. To settle, establish, promote, invest in (by way of equity or loan capital), or participate in, any trust, joint venture, partnership, company, or corporate body which in the opinion of the Trustees will or will tend to promote the objects of the Trust; and for the avoidance of doubt this power may be exercised by the

Trustees as part of or pursuant to their powers of applying the income or accumulated income of the Trust in which case any such application of income or accumulated income shall not be deemed to be an investment of any part of the Trust Funds.

- 9.14. The Trustees may in their discretion at the expense of the Trust put in place any insurance policy or policies covering the then Trustees and any former trustees of the Trust from and against any and all liabilities and obligations for which they may be liable arising out of their acts or omissions as trustees of the Trust PROVIDED ALWAYS they shall have no power to put in place any insurance cover which covers a Trustee for that Trustee's own dishonesty.
- 9.15. To transfer any shares or other interests held to any Holding Company or corporate entity established by the Trust or established by others and to accept in exchange any one or more types of security in that Holding Company or corporate entity and in such proportions (if 2 or more types of security are received in exchange) and on such terms and conditions as the Trustees think fit.
- 9.16. To exchange any shares held in a particular company for one or more types of other securities in that company and in such proportions (if 2 or more types of security are received in exchange) and on such terms and conditions as the Trustees think fit.
- 9.17. To lend or advance any sum or sums to any company or to any other corporate entity or Bank or other organisation or partnership or individual(s) with or without security and either interest-free or at such rate(s) of interest as the Trustees think fit and on such other terms and conditions as the Trustees think fit if the Trustees are of the opinion any such loan or advance will promote or tend to promote the objects of the Trust and the benefit of the Trust's beneficiaries and purposes. Any such loan or advance may comprise or include (without being limited to) a suspensory loan on such terms and conditions as the Trustees think fit.
- 9.18. To incorporate or register the Trust under any enactment.

- 9.19. To enter into any contract, arrangement, or understanding with any one or more of the companies in which shares are held, any other corporate entity or entities, any Government or Government Authority, any Local Authority or Authorities, any other Trust or Trusts, any person or persons, and any other body whether incorporated or unincorporated, on such terms and conditions and providing for such matters as the Trustees think fit if the Trustees are of the opinion that such contract, arrangement, or understanding will promote or tend to promote the objects of the Trust and the benefit of the Trust's beneficiaries and purposes.
- 9.20. For the avoidance of doubt, the Trustees have power to decide a project or purpose or object is for the benefit of the District even if such project or purpose or object may be physically located outside or partly outside the District and even if such project or purpose or object may only benefit some of the residents of the District or may benefit residents of the District (or some of them) along with benefiting persons residing outside the District.
- 9.21. For the avoidance of doubt, while the Trust is for the primary benefit of the District, the Trustees have power to support, assist, fund, or subsidise Economic Development Programs and initiatives of all kinds for the benefit of the District even if they also simultaneously benefit other areas.

10. POWERS OF INVESTMENT

- 10.1. The Trustees shall have the powers of investment conferred on trustees by section 13A of the Trustee Act.
- 10.2. Notwithstanding the provisions of section 13B of the Trustee Act 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) The stock, funds or other securities of the New Zealand Government;
 - (b) Interest bearing deposit accounts with any Bank;

- (c) The securities and instruments mentioned in subsections 9.8, 9.13, 9.15, 9.16 and 9.17 pursuant to those subsections;
- (d) Debt Securities, Equity Securities, Participatory Securities and units in any Unit Trust, all as defined in the Securities Act 1978;

and may retain such investments.

10.3. 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 such 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.

10.4. 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 or that a prudent person engaged in a profession, employment or business that is or includes acting as a trustee or investing money on behalf of others would exercise in managing the affairs of others merely (in either case) because the investments of the Trust Fund are not diversified.

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 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. Subject to clause 8, as long as the Trust owns or continues to own shares in publicly listed companies on any stock exchange, act as a diligent shareholder and exercise the rights of shareholders for the benefit of the Trust Fund (and for the avoidance of doubt the duty imposed by this clause 12.1 may be delegated by the Trustees to any fund Manager, Investment Advisor, Stock Broker, Banker, or other Professional Person/Professional Firm);
- 12.2. Ensure that full and correct accounts of all the financial transactions of the Trust and its assets and liabilities and funds are kept;
- 12.3. After the end of each Financial Year cause to be prepared financial statements including a balance sheet and 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. The financial statements shall show separately the names of persons or organisations to whom distributions of income have been made by the Trust in that Financial Year and the amounts distributed;
- 12.4. Appoint from time to time on such terms as they think fit as auditor of the Trust a person who is either:
 - (a) a member of the Institute of Accountants of New Zealand;
 - (b) a member, fellow, or associate of an Association of Accountants constituted outside New Zealand and for the time being approved for the purpose of the audit of company accounts under section 199(1)(c) of the Companies Act 1993;
- 12.5. Ensure that the financial statements are audited;
- 12.6. Immediately upon completion of the audit of the financial statements insert advertisements in a principal newspaper or newspapers circulating in the District,

notice that the statements are available for public inspection at the office of the Trustees;

- 12.7. Make the financial statements available to the public in accordance with clause 13;
- 12.8. 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 fourteen (14) days' notice in a principal newspaper or newspapers circulating in that District of the holding of such a public meeting.
- 12.9. For so long as the Trust owns any shares or has any other interest in any company, in respect of which they receive a statement of corporate intent, the Trustees within one (1) month from the date of delivery of such statement may make comments on such statement and report them back to the particular company;
- 12.10. For so long as the Trust owns any shares or has any other interest in a company make any completed statement of corporate intent available to the public in accordance with clause 13;
- 12.11. For so long as the Trust owns any shares or has any other interest in any company, exercise where appropriate and to the extent that its shareholding in the particular company entitles it to do so its rights to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject to the requirements of section 40(3) of the Act;
- 12.12. Make a copy of this Deed available to the public in accordance with clause 13.

13. INFORMATION TO THE PUBLIC

- 13.1. 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 at any

office of the Trust, or at any other place in the District during normal business hours on any business day.

- 13.2. The Trustees shall give not less than three (3) days' notice of the place at which and the times when such documents or information may be inspected by the public in a principal newspaper or newspapers circulating in the District.

14. VARIATION TO TRUST DEED

Subject to Rule 27 of the Schedule, 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 and until -

- (a) it has been subject to the public consultative procedure held in accordance with section 83 Local Government Act 2002; and
- (b) either -
 - (i) it has been approved by the Charities Commission (when established); or
 - (ii) it has been approved by the Attorney-General of New Zealand; or
 - (iii) it has been approved by the High Court of New Zealand; or
 - (iv) it has been approved by all the Territorial Local Authorities as defined in clause 1.1(w).

For the avoidance of doubt, the Trustees may unanimously resolve to make such variations as they consider fit to the proposed amendment at the conclusion of the public consultative procedure before seeking any approval under clause 14(b) without any necessity of submitting such variations to a further public consultative procedure.

This clause is subject to Rule 27 of the Schedule.

15. VOLUNTARY WINDING UP OF TRUST

- 15.1. Notwithstanding the provisions of this Deed, the Trustees may voluntarily at any time pass a resolution to wind up the Trust on any date (“the Voluntary Termination Date”) if:
- (i) In the opinion of the Trustees circumstances justify that course of action; and
 - (ii) If such resolution is passed unanimously by the then Trustees; and
 - (iii) The proposed winding up has been subjected to the public consultative procedure prescribed by section 83 of the Local Government Act 2002.
- 15.2. On the Voluntary Winding up of the Trust, all surplus assets after payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for the benefit of the beneficiaries and objects in clause 5 and in accordance with clause 5.

16. INTERESTED TRUSTEES

- 16.1. A Trustee who in any way, whether directly or indirectly has a material interest in any contract or proposed contract or arrangement or dealing with the Trust shall disclose the nature of that interest at a meeting of the Trustees and such disclosure shall be recorded in the minutes of the meeting.
- 16.2. A Trustee required to disclose an interest by clause 16.1 may be counted in a quorum present at a meeting but shall not vote in respect of the matter in which the Trustee is interested (and if the Trustee does so the vote shall not be counted) provided that the Trustee may be expressly permitted to vote by unanimous vote of the other Trustees present given after the disclosure of the interest.
- 16.3. If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the Chairperson of the meeting and 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. 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 his or her own dishonesty or to the wilful commission or omission by him or her of an act where such commission or omission is known by him or her to be a breach of trust and in particular no Trustee shall be bound to take or be liable for failure to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

17.2. Every Trustee shall be chargeable only for such moneys as he or she shall actually have received although he or she may have joined in any receipt for money received by any other of them and shall not 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 or insufficiency or 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, officer or employee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees, officers or employees under this Deed and in respect of any expenses incurred by the Trustees, officers or employees in the management and administration of the Trust Fund unless such loss or liability is attributable to the dishonesty of any such Trustee, officer or employee or to the wilful commission by such Trustee, officer or employee of an act known to that Trustee, officer or employee to be a breach of trust or to the wilful omission by such Trustee, officer or employee of any act when that omission is known by such Trustee, officer or employee to be a breach of trust.

19. CONSOLIDATED DEED OF TRUST

It is agreed that:

- (a) Where this Deed differs from the original Deed (as amended by its five previous variations dated 23 August 1993, 21 December 1994, 10 May 1996, 17 September 1998 and 15 August 2002 respectively), the differences constitute a further variation to the original Deed (as previously varied); and
- (b) That by executing this Deed the parties are executing such further variation; and
- (c) This Deed shall henceforth be treated as the Deed of Trust which governs the operation of the Trust and the Trust Fund.

20. VARIATION PROCEDURE COMPLIED WITH

In respect of the Variations to the original Deed (as amended) effected by this Deed, it is hereby stated and declared that clause 14(a) and Clause 14(b)(i) of the Third Consolidated Deed of Trust dated 15 August 2002 have been complied with.

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

SIGNED by the said)
BRIAN ROBERT JEFFARES)
 as Trustee in the presence of:)

SIGNED by the said)
BRIAN GEORGE MATHIESON)
 as Trustee in the presence of:)

SIGNED the said)
SHIRLEY ANN STEPHENS)
 as Trustee in the presence of:)

SIGNED the said **JOHN TREVOR**)
RICHARD WILLIAMS)
as Trustee in the presence of:)

SIGNED the said)
GORDON REX KILSBY)
as Trustee in the presence of:)

SIGNED the said)
FIONA MARY CLARK)
as Trustee in the presence of:)

SIGNED on behalf of)
POWERCO LIMITED by two)
of its directors)

Director

Director

SCHEDULE

RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1. INTERPRETATION

These Rules are those referred to in clause 6 of the deed and accordingly:

- 1.1. Terms in these Rules to which are ascribed special meanings in the Deed have the meanings 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 OF TRUSTEES

- 2.1. The first Trustees of the Trust were the persons signing the original Deed as Trustees. An election for six (6) trustees was held in 1993 and resulted in the Trustees named in the Consolidated Deed of 10 May 1996 being elected as Trustees. Further elections for six (6) Trustees were held in August 1996 and in 1999 and in 2002 and the last-mentioned election resulted in the Trustees named in this Deed being elected as the Trustees.
- 2.2. In 2005 and in every third (3rd) year thereafter, an election shall be held so that results can be declared as near as reasonably practicable to 30 June in each election year. All Trustees shall retire in each election year.
- 2.3. All Trustees retiring under the provisions of Rule 2.2 shall retire and all trustees elected (whether an election is necessary or not) pursuant to the provisions of this

Rule 2 shall take office as Trustees on the day after the declaration of the poll by the Returning Officer.

- 2.4. (a) All elections shall be held on a Ward system;
- (b) Ward A shall be that part of the District in the territorial area of the New Plymouth District Council and Ward B shall be the balance of the District;
- (c) Nominations for election shall be for the Ward in which the candidate has his electoral address and candidates shall be elected to represent each Ward in such manner as will ensure that after the election there are three (3) Trustees representing each Ward;
- (d) Those eligible to vote shall be the Electors as at an appropriate date to be designated by the Trustees;
- (e) Electors having an electoral address in Ward A shall only vote for candidates for Ward A and Electors having an electoral address in Ward B shall only vote for candidates for Ward B;
- (f) If there are less candidates for Trustees for one Ward than are required and more than the required number of candidates for the other Ward but so that the total number of candidates equals the total number of vacancies then the surplus number of candidates in one Ward (the actual persons to be decided by agreement or lot) shall become Trustees to represent the other Ward but at any subsequent election he or she shall only be eligible to be nominated for the Ward in which he or she has his or her electoral address;
- (g) If there are insufficient candidates for one Ward and more than sufficient candidates for the other Ward to fill all the vacant positions then there shall be an election only for the Ward in which there is a surplus number of candidates. The highest polling candidates shall fill the vacancy or vacancies in that Ward and the next highest candidates shall fill the vacancy or vacancies in the Ward in which there is a shortage of candidates;

- (h) Nominations shall be on forms prepared by the Returning Officer. Each candidate shall state the Ward in which he or she has his electoral address.

2.5. All elections of Trustees shall be held in accordance with the following provisions:

- (a) All elections after the date of this Deed shall be held by postal vote;
- (b) For each election the Trustees shall appoint a suitable person as a Returning Officer who shall have the same freedom from liability as is contained in clause 17.1 of the Deed;
- (c) Nominations for candidates shall be invited from electors not later than 1 April in the year in which the election is to be held by advertisement in a newspaper circulating throughout the District. Nominations shall remain open for the period specified by the Trustees being not less than ten (10) clear days. Additional advertisements may be placed in the same or other newspapers circulating in the District. Each nomination shall be proposed by two (2) electors who reside in the Ward for which the candidate is standing and shall include the candidate's acceptance of nomination;
- (d) If the number of candidates does not exceed the number of vacancies the Returning Officer shall forthwith declare such candidate or candidates to be duly elected as Trustees and shall publicly notify the same;
- (e) The Trustees shall designate the appropriate date referred to in Rule 2.4(d) and in Clause 1.1(g) of this Deed;
- (f) No later than 15 May in the year in which the election is to be held, the Returning Officer shall forward by post addressed to each elector at the address shown on the roll, one voting paper in respect of the election of Trustees within the Ward in which he is entitled to vote together with an envelope stamped and addressed to the Returning Officer;
- (g) No voting paper shall be valid unless it is in the hands of the Returning Officer by the date and time specified for the close of voting to be not less than two weeks after posting of the voting papers;

- (h) The Returning Officer shall not open any voting envelopes until after the close of voting but may from time to time carry out a scrutiny of the rolls from the unopened envelopes. After the close of voting the Returning Officer shall make arrangements for an official count of the votes. Any candidate for election as a Trustee shall be entitled to appoint a representative to attend the official count;
- (i) The opening and closing dates of the election shall be nominated by the Trustees and shall be publicly notified by the Returning Officer by a notice appearing in two issues of a newspaper circulating throughout the District. The second notice shall be given not less than three (3) days and not more than six (6) days (in each case excluding Saturdays, Sundays and Public Holidays) after publication of the first notice. Additional notices of the election may be placed in the same newspaper or in other newspapers circulating in the District as the Trustees shall decide;
- (j) The electors shall be entitled to vote for less than the required number of candidates if they so wish;
- (k) All other matters relating to elections, including but not limited to,
 - preparation of rolls
 - preparation of nomination and voting papers
 - sorting of voting papers and scrutiny of rolls
 - procedure after close of voting, counting of votes and declaration of poll
 - plural voting and other irregularities
 - appointment of scrutineers during the official count
 - appointment of assistants

shall be decided by the Returning Officer in accordance with good election practise.

- 2.6. Failure to comply with the times hereinbefore stated in this Rule 2 and in any way related to the election of trustees or failure to comply with any other of the provisions hereinbefore stated in this Rule 2 related to the election and which do not affect the fairness of the election shall not invalidate that election.
- 2.7. Where for any reason the number of Trustees is reduced below six (6) the remaining Trustees may continue to act for the purpose of appointing another Trustee or Trustees to bring the number of Trustees up to six (6) and for no other purpose. Any such person so appointed shall take office on the day of his appointment and shall hold office until the next election of Trustees held pursuant to the provisions of this Schedule. Any person appointed under this Rule shall have his electoral address in the Ward in which the vacancy has occurred.
- 2.8. The following persons may not hold office as a Trustee:
- (a) A bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
 - (b) A person who has been convicted of any offence punishable by a term of imprisonment of two (2) or more years;
 - (c) A person who has been convicted of any offence punishable by imprisonment for a term of not less than two (2) years and has been sentenced to imprisonment for that offence;
 - (d) A person to whom an order made under section 383 of the Companies Act 1993 applies;
 - (e) A person who has a mental disorder within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or its subsequent amendment Acts;
 - (f) A person who is not an elector for the purposes of the Electoral Act 1993;
 - (g) A person who is not an Elector PROVIDED HOWEVER it is agreed that the provisions of this paragraph "g" did not and do not apply to the

signatories to the original Deed during their first term of office or to the signatories of the original Deed who were re-elected at the 1993 election during the first term of such re-election.

3. TERM OF OFFICE

Trustees shall (subject to the provisions of Rule 9) hold office for a term from the date of their appointment or election until the date of their retirement in accordance with Rules 2.2 and 2.3.

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 Trustees as may be reasonable having regard to their duties and responsibilities. The amount of such remuneration shall not exceed the amount recommended by an independent person or firm having expertise in the area and appointed from time to time by the President for the time being of the Taranaki Branch of the Institute of Accountants of New Zealand.

4.2. **Expenses:** The Trustees shall be entitled to be indemnified by 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.

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 to any person, who has been approved by the other Trustees, during any period for which that Trustee may be absent from New Zealand or incapable of performing his or her duties as a Trustee, all or any trusts powers authorities and discretions vested in him or her as a Trustee of the Trust.

6. CHAIRPERSON

At the first meeting of Trustees following the public meeting in each year under clause 12.8, the trustees shall appoint a Chairperson and Deputy Chairperson for the following year. At the first meeting following an election of trustees a Chairperson and Deputy Chairperson may be appointed immediately if the previous Chairperson or Deputy Chairperson are not re-elected.

In the event that there is a deadlock as to who should be appointed as Chairperson following an election then the previous Chairperson if re-elected shall continue in Office as Chairperson until the next Annual General Meeting of the Trust. If the previous Chairperson has not been re-elected at the election and there is a deadlock as to who shall be appointed as Chairperson, such office will be filled by the trustees drawing lots.

In the event that there is a deadlock as to who should be appointed as Deputy Chairperson following an election, then the previous Deputy Chairperson if re-elected shall continue in office as Deputy Chairperson until the next Annual General Meeting of the Trust. If the previous Deputy Chairperson has not been re-elected at the election and there is a deadlock as to who should be appointed Deputy Chairperson, such office will be filled by the Trustees drawing lots.

If the Chairperson or Deputy Chairperson is not present at any meeting of the Trustees then those Trustees present may choose one of their number to be Chairperson of the meeting. The Chairperson at any meeting shall have a casting as well as a deliberative vote.

7. QUORUM

A quorum at meetings of the Trustees shall comprise four (4) Trustees present in person or by proxy or by telephone conference call, if the number of Trustees holding office is six (6) or five (5). In all other cases the quorum shall be the number of Trustees then holding office present in person or by proxy or by telephone conference call.

8. PROXIES

- 8.1. A Trustee may exercise the right to vote on a specific issue either by being present in person or by proxy.
- 8.2. A proxy for a trustee is entitled to attend and be heard at a meeting of trustees as if the proxy were the trustee, but may only vote on those issues authorised in the notice appointing the proxy and in accordance with any directions given as to voting in such notice.
- 8.3. A proxy must be appointed by notice in writing signed by the trustee and the notice must state what meeting the appointment is for and the specific issue(s) the proxy is to vote on.
- 8.4. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

9. CESSATION OF TRUSTEESHIP

A Trustee shall cease to hold office if such Trustee:

- 9.1. Has served for the term prescribed herein as a Trustee provided however that at each election the Trustee may seek re-election for a further term; and for the avoidance of doubt there shall be no limit on the number of successive terms a Trustee may serve;
- 9.2. By notice in writing to the Executive Secretary or to the then Chairman, resigns his or her office;
- 9.3. Refuses to act;
- 9.4. Becomes of unsound mind or becomes a protected person under any statute for the time being in force;
- 9.5. Becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors;
- 9.6. Is absent without leave from three (3) consecutive ordinary meetings of the Trustees.

9.7. Is convicted of any indictable offence.

10. RECORDING OF CHANGE OF TRUSTEES

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

11. 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.

12. RESCISSION OR 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

13. ORDINARY MEETINGS

The Trustees shall convene and hold meetings at such intervals and times as they deem appropriate to the conduct of the affairs of the Trust.

14. SPECIAL MEETINGS

Three (3) Trustees may at any time summon a special meeting for any reason deemed by them to justify the same.

15. MEETINGS TO BE PUBLIC

All meetings of the Trustees shall be held in public but with power to exclude the public for the reasons set out in section 48 of the Local Government and Official Information Act 1987 (and as if the Trust were a local authority named or specified in Schedule 2 to that Act). While meetings of the Trustees are open to the public, the Trustees are not obliged to give notice of any of their meetings in any newspaper or in any other media available to the public except for the purposes of any public consultative procedure required by this Deed.

16. NOTICE OF MEETINGS

Notice in writing of every meeting whether ordinary or special shall be delivered or sent by post to each Trustee by the Executive Secretary (or other person acting under the direction of the Trustees) or (in the case of a special meeting) by or under the direction of the persons summoning it at least seven (7) days before the date of the next meeting but this is subject to the following exceptions:

- 16.1. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned;
- 16.2. Notice of less than seven (7) days prior to the meeting may be given where a majority of the trustees for the time being agree to such lesser period of notice but a meeting called on such lesser period of notice shall be deemed to be a committee meeting only of the trustees and any resolutions passed at any such committee meeting shall be conditional upon being ratified at the next ordinary meeting of the Trustees provided however any third party may rely upon any such committee resolutions as unconditional where a majority of all trustees undertake in writing to pass such resolutions at the next ordinary meeting of the trustees;
- 16.3. Any such sub-seven day notice may be given by any one or more of telephone, emails, and facsimile transmission where the majority of trustees agreeing to such sub-seven day notice also agree to notice being given by any one or more of those methods.
- 16.4. A copy of the agenda for the meeting is to be included with the notice convening a meeting of the trustees, but this is not to be taken as precluding other items

being raised at the trustees meeting. It is in the Chairpersons discretion as to whether supplementary items for the agenda should be notified and by what means prior to the actual meeting.

17. 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. In addition to any notice abridgement permitted under Rule 16.2, notice of any general or special, or emergency meeting may be abridged or waived if all the Trustees who are for the time being in New Zealand consent in writing to such abridgment or waiver.

18. 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.

19. COMMITTEES

The Trustees may from time to time appoint any one or more members of their body to be a committee for making any inquiry, for superintending 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 and in particular:

- 19.1. Any committee may decide what period and form of notice is required to be given to its members for its own meetings;
- 19.2. Any committee may decide its own quorum requirement so long as a committee quorum comprises of at least a majority of its members for the time being.

20. MINUTES

- 20.1. A Minute Book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the Minute Book.
- 20.2. Any such minute if purporting to be signed by the Chairperson of the meeting at which the proceedings were had or by the Chairperson of the next succeeding meeting shall be evidence of the proceedings.
- 20.3. Where minutes have been made in accordance with the provisions of this Rule of the proceedings at any meeting of Trustees 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.
- 20.4. Any resolution passed pursuant to Rules 20 and 21 shall be recorded in the minutes and, unless it has been resolved that the Trustees go into committee, shall be made available to the public.

20.5. Written minutes are to be taken of any meetings that go into Committee, but these minutes will not be available to the public. Only the Executive Secretary is allowed to take written minutes of any in-committee meeting, and any such minutes will be kept by the Executive Secretary but will be available to be read by any one or more of the Trustees at any reasonable time on the basis they are allowed to read such minutes but not allowed to take copies or notes of such minutes without a resolution of the Trustees permitting copies or notes to be taken.

21. RESOLUTIONS IN WRITING

A resolution in writing signed by all the Trustees or 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 form, each signed by one or more of the Trustees or members of the committee, as the case may be.

22. MEETINGS BY TELEPHONE

For the purposes of these Rules the contemporaneous linking together of a number of the Trustees or members of a committee ("the participants") not less than a quorum together with the Executive 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:

22.1. 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;

22.2. Each of the participants taking part in the meeting by telephone, and the Executive Secretary or person acting secretarially, must be able to hear each of the others taking part at the commencement of the meeting;

- 22.3. At the commencement of the meeting each participant must acknowledge his or her presence of the purpose of such meeting to all the others taking part;
- 22.4. 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;
- 22.5. A minute 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 Executive Secretary or person acting secretarially.

23. BANK ACCOUNTS

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

24. 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 Executive Secretary or by another Trustee or any other person approved by the Trustees for the purpose PROVIDED ALWAYS any Deed effecting a future variation of this Deed must be signed by all the then Trustees of the Trust .

25. 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.

26. FUNCTIONS AND DUTIES OF THE EXECUTIVE SECRETARY

Subject to any resolution of the Trustees which may for the time being be in force, the Executive Secretary shall have the following functions and powers:

- 26.1. Chief Executive Officer of the Trust;
- 26.2. Taking minutes of meetings of the trustees and of meetings of committees of the trustees;
- 26.3. Receiving and filing inwards correspondence and reporting thereon to the trustees as appropriate;
- 26.4. Outwards correspondence on behalf of the Trust;
- 26.5. Ensuring the accounting records and books of account of the Trust are properly maintained and written up.
- 26.6. Liaising as required with the Trust's auditors, professional advisors, bankers, Government organisations, beneficiaries, insurers, Electricity Trust associations, the media, applicants for grants, recipients of grants, and others;
- 26.7. Receipt, disbursement, banking, investing, and realisation of the Trust's funds and investments in accordance with the policies, directives, and resolutions of the trustees.
- 26.8. Advising the trustees on compliance issues in relation to relevant statutes, regulations, ordinances, and rules;
- 26.9. Arranging for and supervising elections of trustees and public consultative procedures as required by and in conformity with the Trust Deed;

- 26.10. Providing such reports to the trustees as they require from time to time;
- 26.11. Preparing or arranging for the preparation of annual financial statements and other periodical financial reports for the Trust;
- 26.12. Public relations and marketing of the Trust and its mission;
- 26.13. Risk management of the Trust's assets and affairs;
- 26.14. Such other functions and powers as may from time to time be delegated to the Executive Secretary by the trustees or by any committee of the trustees or by the Trust Chairman or Trust Deputy Chairman;
- 26.15. Such other functions and powers that are reasonably incidental to the foregoing or that are reasonably required to effectuate the foregoing or that are reasonably required to ensure the effective and efficient operation of the Trust and its affairs;
- 26.16. Appointing, supervising and liaising with financial advisors, investment advisors, and other financial services professionals as required.

PART III - AMENDMENT TO RULES

27. AMENDMENTS

- 27.1. The Rules set forth in Part II of the Schedule being administrative provisions may be rescinded, amended or added to by a resolution that is approved by a two-thirds majority of the trustees or better and is signed by the said majority of trustees approving it and registered as required by the Charitable Trusts Act 1957 or by any other applicable legislation but no other formalities shall be required for any such rescission, amendment or addition to the Rules in Part II of the Schedule.
- 27.2. 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 the Act.