

Waitaki Power Trust
100% Shareholder of Network Waitaki Limited



Trustee Role and Responsibilities



Waitaki Power Trust

This document is in two parts

Part 1 – Roles and Responsibilities of Trustees

Part 2 – Roles and Responsibilities of the Chairperson

Name of Policy	Roles and Responsibilities
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	Designation	Signature
Written By:	Lichelle Guyan Jock Webster	 
Approved By:	Trustees	
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Version 2	Revision	Feb – June 2022

1. Purpose

The purpose of this policy is to assist Trustees to understand the legislative requirements of the role and core responsibilities.

2. Scope

This policy applies to all elected and appointed Trustees.

3. Objectives

That Trustees use this policy to guide decision making and process ensuring appropriate outcomes are achieved for shareholders.

4. Definitions

Detail any definitions relevant to this policy

- **Ibid** – is short for the Latin *ibidem*, which means “in the same place”. If you're referencing the same source but different page, follow 'Ibid' with a comma and the new page number(s).

5. Part 1 – Roles and Responsibilities of Trustees

Trustees formal role is set out prescriptively in various pieces of legislation including:

The Energy Companies Act 1992 - details how power Trusts came to be.

The Companies Act 1993 - details requirements of directors which Trustees should have a general understanding of.

The Waitaki Power Trust Deed (1993) – is the key document for Trustees.

The Trust Act 2019 – details responsibilities and obligations of Trustees.

The Electricity Amendment Act 2001 – details the regulations and standards for electricity providers.

It is the Trustees responsibility to be aware of their obligations under these, and any other relevant Acts. A brief overview is provided below from relevant legislation.

The Trust Act 2019

The Act sets out mandatory and other duties in sections 22-27 required of Trustees these are:

Mandatory duties

- a) must be performed by the trustee; and
- b) may not be modified or excluded by the terms of the trust.

Duty to

- know the terms of the trust.
- act in accordance with the terms of the trust.
- act honestly and in good faith.

- hold or deal with trust property and otherwise act—
 - a) for the benefit of the beneficiaries, in accordance with the terms of the trust:

b) in the case of a trust for a permitted purpose, to further the permitted purpose of the trust, in accordance with the terms of the trust.

- exercise the trustee's powers for a proper purpose.

The following duties are detailed in sections 28-39 unless modified or excluded.

General duty of care

When administering a trust (other than when exercising a discretion to distribute trust property), a trustee must exercise the care and skill that is reasonable in the circumstances, having regard, in particular,—

(a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and

(b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Duty to

- not exercise a power of a trustee directly or indirectly for the trustee's own benefit.
- consider actively and regularly whether the trustee should be exercising one or more of the trustee's powers.
- not bind or commit trustees to a future exercise or non-exercise of a discretion.
- avoid a conflict between the interests of the trustee and the interests of the beneficiaries.
- not make a profit from the trusteeship of a trust.
- not take any reward for acting as a trustee, but this does not affect the right of a trustee to be reimbursed for the trustee's legitimate expenses and disbursements in acting as a trustee.
- act unanimously.
- alert settlor to modification or exclusion of default duty.

Duty of impartiality

(1) A trustee must act impartially in relation to the beneficiaries and must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of the others.

(2) This section does not require a trustee to treat all beneficiaries equally (but all beneficiaries must be treated in accordance with the terms of the trust).

Duty to invest prudently

When exercising any power to invest trust property, a trustee must exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, having regard, in particular,—

- (a) to any special knowledge or experience that the trustee has or that the trustee holds out as having; and
- (b) if the person acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
- (c) To employ consultants if further advice is required.

The Waitaki Power Trust Deed

The Waitaki Power Trust Deed was adopted 26 April 1993. This followed the enactment of the 1992 Energy Companies Act where Power Boards at that time were dissolved and charged with settling the terms of an “establishment plan” to set the terms of the conversion of its business into financially stable commercial corporate ownership so that it shall operate as a successful business while having regards amongst other things to the desirability for ensuring the efficient use of energy.

This resulted in the transfer of Local Authorities energy undertakings to energy companies and the establishment of Energy or Power Trusts or Co-operatives, each Trustee of Waitaki Power Trust has held in trust, in their own name, on behalf of Network Waitaki consumers, an individual equal share of 100% of the shares in Network Waitaki Limited.

Key aspects of the Trustee role are:

- Know, understand and never violate the terms of the Waitaki Power Trust Deed
- Always act to promote the best interests of beneficiaries who in our case, are Network Waitaki Limited’s consumers and never act from self interest.
- Special principles apply where the trust estate includes a controlling shareholding in a company. In cases of this sort, the Trustee’s duty is to keep a close eye on the company’s activities and ensure the directors are operating the Company as a successful business while having regard to the efficient use of energy.
- Never try to interfere with the running of the company.
- To monitor and report to consumers the full and correct amounts of all financial transactions and balances of the trust.
- It is elementary trust law that trustees must act jointly – the trust is entitled to the trustees’ collective wisdom.

Trustees' shareholding in Network Waitaki requires:

- That the directors of the Company provides to shareholders in a timely manner a draft statement of corporate intent, for their consideration;
- That Trustees as shareholders approve the Company's statement of corporate intent;
- That the Company presents its Annual Report to Shareholders at an Annual Shareholder meeting;
- That the constitution of Network Waitaki Limited must allow Trustees as Shareholders to exercise their Powers and Rights as listed in the Company's constitution by Clauses 19, 20, 21, 22 and 23 at an Annual Meeting, a Special Meeting or by a resolution in lieu of a meeting, under certain conditions.

Specific powers

- To appoint or remove directors of the company in the manner provided by the constitution of the company.
- To carry out ownership reviews as specified.
- To appoint and pay a non-trustee as secretary.
- To employ consultants.
- To appoint custodian trustee of the trust fund.
- To invest or lend all or part of the trust fund.
- To consider any recommendations made by the directors on any proposal to increase the capital of the company and to agree/disagree to such a proposal.

Trustees Role as Consumer / Beneficiary Advocates:

Trustees advocacy role is wide ranging and includes both local and national issues which have the potential to impact NWL consumers. It is important that Trustees have a good understanding of how these issues could be adapted or modified to the advantage of local consumers.

6. Part 2 – Roles and Responsibilities of the Chairperson**Part One**

Waitaki Power Trust Deed provides that

- Trustees may elect a chairperson and determine the period for which the chairperson is to hold office.
- The chairperson shall chair all meetings of Trustees and shall have a casting as well as a deliberative vote.
- In the absence of the chairperson, a trustee elected by the meeting shall take the chair.
- It is a fundamental responsibility of the chairperson to be familiar with and to uphold all of clauses 1 to 23 of Schedule 1 of the Waitaki Power Trust Deed relating to the constitution and administrative provisions of the Trust.

- It is also a fundamental responsibility of the chairperson to uphold the terms and conditions of the Waitaki Power Trust Deed including all subsequent amendments along with the provisions of Trust law.

Part Two

The role of the Chairperson of Waitaki Power Trust covers a multiplicity of diverse functions including:

- Organiser of all Trust meetings and workshops.
- Chairperson of Trust meetings.
- Principal host to visitors and potential Company directors.
- Liaison contact between Trustees and Company directors.
- Public spokesperson on Trust matters.

In the context of a Trust meeting, the Chairperson

- Needs to ensure that prior to the meeting necessary documentation has been prepared and received by members in a timely way, and
- That a quorum of at least four Trustees are able to attend the meeting.

During a meeting it is the Chairperson's responsibility to ensure

- That the agenda is followed to enable the meeting to achieve its purpose;
- That meeting rules and procedures as outlined below are followed to the letter;
- That discussion is conducted fairly and without bias according to the rules of the Waitaki Power Trust Deed.
- That everyone present has an equal chance to address the meeting;
- That members do not use sexist or offensive language;
- That discussion does not wander off the point;
- That during discussion Trustees are mindful of the terms and conditions of the Trustees Code of Conduct; and
- That decisions are accurately recorded.

In exercising the Chairperson role at Trust meetings the Chairperson is required to be mindful of the following points:

- That above all else the Chairperson is to be impartial;
- That impartiality will be breached by the Chairperson entering a debate;
- That the chairperson's role is not to seek personal power;
- That the Chairperson needs to avoid taking over a meeting by advocating for their own opinion;
- That by accepting the office of Chairperson an individual is to serve the interests of others, not to advance their own opinions;

- That the Chairperson has the ultimate responsibility for the proper conduct of an maintenance of order at a meeting and when required needs to rule promptly on any points of order; and
- That unless challenged, the Chairperson's ruling on any such matter is final.

Outside of meetings the Chairperson

- Generally has only such authority outside of Waitaki Power Trust meetings as has been conferred on them during the meeting. The authority may include, for example, an instruction to discuss a particular matter with the Chairperson of Network Waitaki Limited and/or the Chief Executive of the Company or any other nominated third person and to report back on the issue to Trustees by a scheduled time line.
- Shall develop and maintain a very good trusting relationship between the trust and the Company.
- Uses discretion of what information is passed on to the other trustees.
- Should formally review directors performance with the NWL Chairperson under a formatted review policy. This will be reported to Trustees.

On such occasions the Chairperson needs to

- Remain impartial, not engage in argumentative debate; and
- Speak for the group, not for themselves.

A meeting of Trustees may also authorise the Trust Chairperson to

- Act as master of ceremonies;
- Make social speeches; or
- Provide information to the media.

On those occasions the Chairperson must

- Be properly prepared in advance;
- Be brief, sincere and courteous as is appropriate;
- Express the views democratically arrived at by Trustees; and
- Avoid using the occasion to air their own views.

The Chairperson's Role and Responsibilities at Workshops including Director Interviews

The Chairperson's role and responsibilities in a workshop situation are similar to those exercised at Trust meetings, with the addition of the role of host, and relaxation of strict adherence to the requirement following Trust meeting rules and procedures.

In workshop situations therefore, the Chairperson

- Will receive and welcome the workshop facilitator/director interviewee;
- Will facilitate orderly discussion by following an agenda; and

- Will enable members to obtain the level and type of information they require in order to make an informed decision by being able to speak more than once;
- Will ensure that the discussion proceeds in an orderly manner by inviting members to speak; and
- Will ensure that questions are appropriate and relevant by requiring members to work from a prepared list where appropriate and ruling on points of order if and when required.

The Chairperson's Role and Responsibilities as shareholders chairperson

All Shareholder meetings are to be chaired by the NWL Board Chairperson unless special circumstances prevail in which case the shareholder meeting may be chaired in order of priority by

- The deputy Board Chairperson; or
- Another director present at the meeting; or

Therefore, in general terms, the Chairperson of Waitaki Power Trust as chairperson of shareholders has no role or responsibilities so far as progressing a Shareholder Meeting is concerned apart from the powers and rights of all Shareholders of Network Waitaki Limited, under the Companies Act and those that are listed in the Constitution of Network Waitaki Limited.

Secondly, it is important to note that Special Meetings of Network Waitaki Shareholders

- May be called at any time by the Board (Constitution of Network Waitaki Limited, Clause 24.3.1); and
- Must be called by the Board on the written request of Shareholders holding not less than 50% of the voting rights entitled to be exercised on the issue (ibid, 24.3.2).

Additionally, Shareholder decisions may formally be made

- By a resolution in lieu of a meeting pursuant to Clause 25 of this Constitution (ibid, 20.1.2) incorporating either an Ordinary Resolution (ibid, 20.2) or a Special Resolution supported by shareholder voting rights entitled to be exercised on an issue. (ibid. 20.3).

Part Three

Waitaki Power Trust meeting Rules and Procedures

That the Chairperson understands meeting procedure and process, and adheres to it at all times including the necessary preparatory work prior to the actual meeting.