

WAITAKI POWER TRUST

WAITAKI POWER TRUST

THIS DEED is made on the 26th day of April 1993

BETWEEN WAITAKI POWER LIMITED a duly incorporated company with its registered office at Oamaru (hereinafter called "the Company")

AND

Derek Edward	Austin
Ian Stuart	Beckingsale
William Donald	Borrie
Robert Walter Preston	Cameron
Brian Walter	Greaney

(hereinafter called "the Trustees")

WHEREAS

- A. The Waitaki Electric Power Board (the "Board") has formed a registered public company limited by shares, Waitaki Power Limited ("the Company"), in which the sole subscriber is the Board;
- B. Pursuant to section 27 of the Energy Companies Act 1992 the Minister responsible for 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.
- C. The Company wishes to establish the Waitaki Power Trust to enable the Trustees to acquire the shares in the Company 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 Beneficiaries, the benefits of trustee ownership of the shares in the Company and to carry out future ownership reviews involving consultation in accordance with the terms of this Deed.

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 31st day of March or any other date adopted as at the end of the Financial Year from time to time by the Company;
- (c) "Bank" means the ANZ Bank New Zealand Limited, Bank of New Zealand, Westpac New Zealand Limited, or 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" of this Trust are deemed to be the Consumers as defined **1.1.2** by this Deed.

- (e) "**Board**" means the Waitaki Electric Power Board constituted by section 10 of the Electric Power Boards Act 1925;
- (f) "**Company**" means and includes any successor company;
- (g) "**Consumers**" means the persons, who at any appropriate date designated from time to time by the Trustees who are named in the records of the Company as persons, organisations and companies, firms, partnerships or other entities who are connected to the Company's distribution network at the end point of supply as end users of electricity;
- (h) "**Debt Security**" has the meaning given to it in the Act;
- (i) "**this Deed**" means this deed and includes, where the context allows, the schedules and any amendments;
- (j) "**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;
- (k) "**District**" means the extent of the area 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;
- (l) "**Dividends**" means, in relation to the Company, any distributions paid in cash by the Company to the Trustees as holders under this Deed of shares in the Company;
- (m) "**Financial Year**" means any year or other accounting period ending on a Balance Date;
- (n) "**Local Authority**" means a territorial authority within the meaning of the Local Government Act 1974 and in the event that at any time such territorial authority does not exist then any such body whether incorporated or not which has assumed the responsibilities or obligations formerly undertaken by a territorial authority;
- (o) "**Consultative Procedure**" means the procedure for consultation set out in Schedule 2.
- (p) "**Termination Date**" means the earlier of 1 January 2072 and the date upon which the trust is wound up in accordance with Clause 15 provided however that if the perpetuity period restrictions cease to apply to this Trust or are amended to permit the Trust to continue beyond 1 January 2073, this definition shall be amended accordingly;
- (q) "**the Trust**" means the power trust established by this Deed;
- (r) "**the Trustees**" means the trustees for the time being of the Trust;

- (s) **"Trust Fund"** means all the funds of the Trust described as "the Trust Fund" in Clause 6 and includes all capital and income for the time being held by the Trustees of the Trust;
- (t) **"Trustee Act"** means the Trustee Act 1956;
- (u) **"Vesting Date"** means the date upon which the Governor-General by Order in Council under section 47 of the Act vests the undertaking of the Board in the Company and the shares in the Company in the Trustees.

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 the Deed and references to Schedules are references to schedules 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 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.

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 The trust established by this Deed as a power trust shall be known as the Waitaki Power 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 of the Trustees.

2.2 The sum of \$100.00 paid by the Company contemporaneously with execution of this Deed and all other monies or property of whatever kind hereafter paid, given, or transferred to 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 there from 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. OBJECTS

This Trust has been established to enable the Trustees:

- 3.1** On Vesting Date, to receive shares and the Debt Security in the Company vested in the Trustees by Order in Council made in accordance with section 47 of the Act.
- 3.2** If the Trustees so elect to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company.
- 3.3** To retain and hold such shares until such time as following an ownership review held in accordance with Clause 4, the shares or a portion of them are sold, transferred or disposed of.
- 3.4** In the event of any sale, transfer or other disposition of such shares following an ownership review, to hold the proceeds of any such sale, transfer or other disposition of such shares or the proceeds of repayment of the Debt Security upon the trust for capital in accordance with Clause 6.1.
- 3.5** To receive the Dividends and to distribute, pay apply or appropriate the Dividends and interest to or for the benefit of the Consumers in the manner provided in Clause 5 of this Deed.
- 3.6** Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in Clause 6.2.
- 3.7** To encourage the Company to meet its objective of being a successful business, and to distribute to Consumers in their capacity as Beneficiaries, the benefits of Trustees' ownership of the shares in the Company. This may include, but not exclusively, a discount, reliable service and timely supply of electricity.

4. REVIEW

- 4.1** Within 3 years of the date of this Deed 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. Such report shall contain the following detail:
 - (a) an analysis of the performance of the Company to the date of the report together with a discussion of the advantages and disadvantages of trust ownership;
 - (b) an analysis of the various ownership options considered including without limitation, a share distribution to Consumers, a sale of shares to the public, a sale of shares to institutional investors and retention by the Trust;
 - (c) a comparison of the performance by the Company with the performance of other energy companies;

- (d) 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 shall be included;
- (e) the matters contained in Clause 4.7 if a distribution of shares is recommended;
- (f) a summary of the professional advice (if any) obtained in respect of the preparation of the report; and
- (g) a statement as to whether or not the directors have had regard to any views expressed by Consumers with respect to ownership.

4.2 The Trustees shall comment on the report to the directors of the Company and upon completion of their review of the report, the Trustees shall make the report available to Consumers in accordance with Clause 13 together with a summary of their comments.

4.3 The Trustees shall in respect of the report and no later than 1 month after the date of the report, implement the Consultative Procedure.

4.4 Following completion of the Consultative Procedure and in any event not later than 6 months after the report required by Clause 4.1 is completed, the Trustees and the directors shall meet and, taking due account of the views expressed by Consumers and directors, the Trustees shall decide 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 of the shares.

4.5 If the shares are to be retained by the Trust the Trustees shall notify Consumers in accordance with Clause 13.

4.6 If the Trustees decide that the shares or any portion of them are to be distributed no such distribution shall be effected unless the Trustees have held a postal vote of Consumers and 75% of Consumers who vote on the question approve the distribution. The Trustees may in their discretion determine the method and procedure for carrying out the postal vote provided that:

- (a) the Trustees shall give written notice to all the Consumers of the postal vote and of the method or procedure adopted by the Trustees for carrying out the postal vote;
- (b) a period of not less than 21 days shall be allowed between the date the Consumers are notified of the postal vote and the date by which the votes of Consumers will be disallowed if not received by the Trustees;

- (c) each Consumer shall be entitled to one vote even if multiple names appear on the power account.;
- (d) the Trustees shall give notice of the vote to Consumers through the post directed to the address of each Consumer in the records of the Trust, or if there are no such records then the records of the Company or the relevant electricity retailers;
- (e) the notice referred to in clause 4.6(d) shall be deemed to have been duly received 5 days after the date of posting of the notice by the Trustees.

4.7 If the postal vote carried out in accordance with clause 4.6 confirms that 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 and if the directors fail to prepare a plan the Trustees shall prepare the Distribution Plan. The Distribution Plan shall contain the following details:

- (a) to whom the shares are to be distributed;
- (b) the time and manner in which the shares are to be distributed; and
- (c) whether the shares are to be distributed without consideration, at a concessionary consideration or for proper consideration.

The Trustees shall consider any plan prepared and make such amendments to it as they consider shall be necessary after consultation with the directors of the Company.

4.8 The Distribution Plan shall be notified to Consumers in accordance with Clause 13 and following notification the Trustees shall be obliged to comply with the requirements of and 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.

4.9 If the directors of the Company have failed to produce a report within 6 months of being required to do so by the Trustees, the Trustees shall prepare the report required by Clause 4.1.

4.10 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.

4.11 The Trustees shall conduct successive reviews in accordance with clause 4 until the Termination Date as to whether any or all of the shares of the Company are retained by the Trustees. A review shall be conducted at either five yearly or ten yearly intervals as follows:

- (a) Trustees shall, in the fifth year, and prior to the end of a five yearly interval following a review of ownership of the shares, consult with Consumers following the Consultative Procedure process in Schedule 2 attached to this Deed, as to whether there should be a ten yearly or five yearly interval until the next review.

- (b) Should a majority of Consumers making written submissions not approve a ten yearly interval before the next review, then Trustees shall, in their discretion, determine whether or not a ten yearly review rather than a five yearly review shall be proposed having regard to all submissions received and all other circumstances the Trustees consider relevant.

4.12 For the purposes of this Clause 4 any Debt Securities held by the Trust in the Company shall be deemed to be shares so that they may not be sold, transferred or otherwise disposed of unless the procedure in this Clause 4 has been implemented in relation to such Debt Securities provided however that if the debt is repaid by the Company this Clause 4 shall not apply.

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** 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.
- 5.2** The Trustees shall, subject to Clause 5.3 and Clause 5.4, pay apply or appropriate the whole or substantially all of the current net annual income in such manner and in such proportions as the Trustees in their absolute and unfettered discretion shall think proper for the benefit of the Consumers or such one or more of them to the exclusion of others or other of them in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall think proper.
- 5.3** The Trustees shall in respect of any Dividend received be entitled to pay, apply or appropriate that income to Consumers in accordance with Clause 5.2 at any time during the Financial Year to which that Dividend relates or the following Financial Year provided however that the Trustees may defer payment, application or appropriation of any sum or benefit to any Consumer until the Trustees are satisfied that all liability for taxation in respect thereof has been discharged.
- 5.4** The Trustees shall request the directors to produce a report in respect of each Dividend received by the Trustees which report recommends an appropriate allocation of the Dividend amongst the classes of Consumer based on the contribution made by each class of Consumer to the earning of that Dividend and in such report the directors may classify Consumers in any manner they see fit and in exercising their discretion in accordance with Clause 5.2 the Trustees shall have regard to those recommendations.
- 5.5** Any of the Consumers to whom or in respect of which income is paid, applied or appropriated by the Trustees pursuant to Clause 5.2 shall as from the date of such payment, application or appropriation take an absolute and indefeasibly vested interest in such income and as from such date the Trustees shall have no further obligations with respect to the application of such income.

- 5.6** 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.
- 5.7** 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 5.2, 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 5.2.
- 5.8** Each Trustee in its capacity as a Consumer shall notwithstanding the provisions of the 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 this Deed.
- 5.9** All payments made to Consumers unclaimed for one 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 before the Termination Date for the benefit of the Consumers, or to the extent that the shares are sold in order to raise funds for the Company, for the benefit of the Company, 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 this Deed, 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.

7. 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 the appointment, retirement and proceedings of the Trustees and associated matters.

8. GENERAL POWERS

- 8.1** 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 (except where otherwise specified in this Deed). For the avoidance of doubt, the Trustees shall have no power, authority or discretion to participate in the management or operation of the Company and in exercising the powers conferred by this clause and Clause 9 the Trustees shall be restricted to exercising their rights as a shareholder subject always to the provisions of this Deed and in particular Clause 4.

- 8.2** 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 the following powers, authorities and discretions.

- 9.1 To Appoint Directors:** To appoint directors of the Company in the manner provided by the Constitution of the Company provided however that prior to appointing any directors the Trustees shall make it known generally that prospective candidates as director are being sought and may procure an independent evaluation by a professionally qualified consultant engaged by the Trustees of the prospective candidates and in exercising any right of appointment the Trustees shall have regard to the recommendations of the consultant so engaged.
- 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:** 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 To Lend:** To lend moneys forming part of the Trust Fund to the Company at an interest rate to be determined by the Trustees and on such other terms and conditions as the Trustees think fit and to take security in respect of any such loan.
- 9.7 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.

- 9.8 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.
- 9.9 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.
- 9.10 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 modification of the rights of shareholders or any 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 shall be for the benefit of or in the interest of the Trust Fund or shall facilitate the rationalisation of the electricity industry in New Zealand, provided however that 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 Trustees have complied with Clause 4.
- 9.11 Increase in Capital:** To consider any recommendation made by the directors on any proposal to increase the capital of the Company and after giving due consideration to the recommendations of the directors to agree to such a proposal if the Company requires additional equity capital and the Trustees and the directors shall endeavour to ensure that except where the interests of the Trust Fund require some other method of distribution any new shares shall be offered to the following classes of persons in the following sequence:
- (a) first to Consumers on the basis of an equal number of shares for each consumer;
 - (b) second to the extent that any shares are not taken up by the Consumers to whom they are offered under (a) above they shall be made available to all Consumers and allocated to all those who apply for them and to the extent that the number of shares applied for exceeds the number of shares available the shares shall be allocated equitably by reducing progressively the entitlement of Consumers who applied beginning with those who applied for the greatest number of shares until the number of shares available equals the number to be allocated to all Consumers;

AND PROVIDED FURTHER that if any increase in capital would have the effect of reducing the percentage of shares held by the Trust in the Company to 51 per cent or less it shall not be approved by the Trustees unless the Trustees have first implemented the Consultative Procedure in respect of the proposal.

- 9.12 Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the Trusteeship of this Trust.

10. POWERS OF INVESTMENT

- 10.1** The power to invest conferred by trustees by section 13A(1) of the Trustee Act is hereby excluded.
- 10.2** 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;
 - (b) the stock, funds or other securities of the New Zealand Government;
 - (c) interest bearing deposit accounts with any Bank
- 10.3** The Trustees may hold all or any part of the Trust Fund uninvested in accordance with Clause 10.2 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** 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.
- 10.5** 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, act as a diligent shareholder and in particular monitor the performance of the directors of the Company with respect to the Company's statement of corporate intent, and exercise the rights of shareholders for the benefit of the Trust Fund and with due regard to the objective of the Company to be a successful business;
- 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** in each Financial year, hold an annual meeting of Consumers at which the Consumers shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual meeting in the manner prescribed by section 158C of the Electricity Amendment Act 2001. The auditor must:
- (a) be a person who is qualified to act as an auditor under section 199(1) of the Companies Act 1993 and, in selecting an auditor, the Consumers may seek the advice of the Auditor General; and
 - (b) not be disqualified under section 158(C)(4)(b) of the Electricity Amendment Act 2001.
- 12.4** if they so choose, fill any casual vacancy in the office of auditor in accordance with section 158(C)(2) of the Electricity Amendment Act 2001.
- 12.5** within 4 months after the end of each financial year:
- (a) prepare financial statements in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993, applied as if the Trust were a reporting entity) with respect to the affairs of the Trust for that Financial Year;
 - (b) submit those financial statements to an auditor for audit; and
 - (c) make available to the public in accordance with section 158B of the Electricity Amendment Act 2001 those audited financial statements and the auditor's report on those financial statements.
- 12.6** make the documents referred to in Clause 12.5(c) available to the public by making copies of them available:
- (a) for inspection at every office of the Trust or the Company (during ordinary office hours); and
 - (b) to be downloaded from the Waitaki Power Trust website.
- 12.7** notify the fact that copies are available (and where) by advertisement in the news section of 2 separate editions of each newspaper that is widely read by the Consumers.

- 12.8** within four months after the end of each Financial Year of the Trust, hold a 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 in the news section of two separate editions of each newspaper that is widely read by the Consumers of the holding of such a meeting.
- 12.9** in respect of any statement of corporate intent delivered to the Trustees by the Company make comments thereon to the directors of the Company within one month from the date of delivery of such statement by the Company to the Trustees and in making any comments the Trustees shall ensure that the statement of corporate intent is consistent with the obligation of the directors to operate the Company as a successful business.
- 12.10** at the meeting to be held in accordance with Clause 12.8 and while the Trustees are the majority shareholders of the Company comment on the Company's compliance with its then current statement of corporate intent.
- 12.11** 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;
- 12.12** make a copy of the Deed available to Consumers in accordance with Clause 13.

13. INFORMATION TO CONSUMERS

- 13.1** For the purpose of complying with any requirements under this Deed to make any document or information available to Consumers, it shall be sufficient for the Trustees to make such document or information available for inspection at any office of the Trust or any office of the Company 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 3 days' notice of the place at which and the time when such documents or information may be inspected by Consumers in a principal newspaper or newspapers circulating in the District.

14. VARIATION TO TRUST DEED

- 14.1** 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 Consultative Procedure.
- 14.2** Notwithstanding clause 14.1 no alteration or amendment may be made to this Deed that has the effect of limiting or restricting the obligations or powers of the trustees under this deed to:
- (a) Review proposals and available options for the ownership of the shares held by the trust in the company in accordance with clause 4; or

- (b) Sell, transfer or dispose of the shares following an ownership review held in accordance with clause 4.

15. WINDING UP OF TRUST

15.1 If the Trust holds less than 5 per cent of the total share capital of the Company (which for these purposes shall include any shares held by Trust in any company with which the Company has merged) and no longer holds any debt security issued by the Company or a resolution to wind up the trust has not been passed by 1 January 2072, the Trustees shall pass the resolutions requiring the trust to be wound up. If the resolutions have not been passed by 1 July 2072 or six months following the date upon which the Trust ceased to hold at least 5 per cent or more of the equity securities of the Company (whichever is earlier) the provisions of Clause 15.2 shall apply as if the resolution had been passed.

15.2 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 Consumers in accordance with Clause 6.2.

16. INTERESTED TRUSTEES

16.1 The Trustees shall not be employed in the service of or hold any office in or become a director of the Company.

16.2 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.

16.3 A Trustee required to disclose an interest by Clause 16.2 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 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.

16.4 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 interest 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 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 he or she 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 in respect of any expenses incurred by him or her in the management and administration of the Trust Fund unless such loss or liability is attributable to his or her dishonesty or to the wilful commission by him or her of an act known to him or her to be a breach of trust or to the wilful omission by him or her of any act when that omission is known by him or her to be a breach of trust.

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

SIGNED by Derek Edward Austin)
as a Trustee in the presence of:)

SIGNED by Ian Stuart Beckingsale)
as a Trustee in the presence of:)

SIGNED by William Donald Borrie)
as a Trustee in the presence of:)

SIGNED by Robert Walter Preston Cameron)
as a Trustee in the presence of:)

SIGNED by Brian Walter Greaney)
as a Trustee in the presence of:)

THE COMMON SEAL of)
WAITAKI POWER LIMITED)
was hereunto affixed)
in the presence of:)

Director

Director/Secretary

WAITAKI POWER TRUST

SCHEDULE 1

RULES GOVERNING THE ELECTION, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

1. INTERPRETATION

These Rules are those 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 1 - CONSTITUTION OF THE TRUSTEES

2. ELECTION OF TRUSTEES

- 2.1** The first Trustees of the Trust shall be the persons signing the Deed as Trustees. Two of these Trustees shall retire from office on 30 September 1994 and in every second year thereafter until 30 September 2010 three Trustees shall retire from office. From 30 September 2010 three Trustees shall retire from office every third year on 30 September.
- 2.2** The Trustees to retire in accordance with Rule 2.1 shall be those who have been longest in office since the last election, but as between persons who became Trustees on the same day (including the first Trustees) those to retire shall (unless they agree otherwise amongst themselves) be determined by lot.
- 2.3** Any Trustee elected in accordance with Rule 2.9 shall hold office only until the next following election and shall then be eligible for re-election but shall not be taken into account in determining the Trustees who are to retire by rotation at that election.
- 2.4** Nominations for election as a Trustee shall be invited from Consumers and must be made no later than 31 July in the year in which an election is to be held. A retiring Trustee shall be eligible for re-election.
- 2.5** No later than 31 August in each year in which an election is held, the Trustees shall arrange for a vote of Consumers to be held to elect the Trustees to replace the retiring Trustees.
- 2.6** The Trustees may in their discretion determine the method and procedures for carrying out the vote, but the vote shall be held in accordance with the following provisions:

- (a) Consumers with more than one connection will be treated as having one connection for the purposes of each election;
- (b) On the basis of the records of the Company the Trustees shall compile a roll of those entitled to vote which shall be made available for public inspection in accordance with Clause 13;
- (c) The Trustees shall appoint a suitable officer of the Company as a returning officer for the purposes of each election;
- (d) If the number of candidates does not exceed the number of vacancies to be filled, the candidate or candidates shall be duly elected as Trustees and notice given in accordance with Clause 13;
- (e) As soon as practicable but no later than 31 August in the year in which the election is to be held, the returning officer shall forward by post addressed to each Consumer, eligible to vote, at the address shown on the roll, one voting paper in respect of the election of Trustees together with an envelope stamped and addressed to the returning officer;
- (f) Where the Consumer is not a natural person, the Consumer shall appoint a natural person to exercise the Consumer's vote on its behalf;
- (g) No voting paper shall be valid unless it is delivered to the returning officer by the date 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 papers until after the date of the close of voting. After the close of voting the returning officer shall open the papers and 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) When all the voting papers have been dealt with the returning officer shall notify the result in accordance with Clause 13. Where there is an equality of votes between candidates the returning officer shall determine by lot the candidate to be elected.
- (j) Each candidate shall be given an opportunity to provide information to Consumers, about his or her qualifications and expertise to be elected as a Trustee and such details, to be no longer than one page in length, shall together with a photograph of the candidate be sent to each Consumer with the voting papers.

2.7 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 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 years and has been sentenced to imprisonment for that offence;
- (d) a person to whom an order made under section 135 of the Companies Act 1993 applies;
- (e) a person who is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
- (f) a person who is not a parliamentary elector for the purposes of the Electoral Act 1993;
- (g) a person who is holding office as a director of or is employed by the Company.
- (h) a person who does not reside in the area serviced by Network Waitaki Limited..

2.8 Following an election the number of Trustees shall be five.

- 2.9**
- (a) Should a casual vacancy arise between Trustee elections, the four remaining Trustees may appoint a Trustee and declare the appointee to be elected provided that such person is the first person to be so elected since the last election of Trustees, and holds office only until the next Trustee elections.
 - (b) whereby reason of any vacancy, the number of Trustees is reduced below four, an election shall be held for those vacancies.

3. TERM OF OFFICE

Trustees (including the first Trustees) shall (subject to the provisions of Rule 8) hold office for a term from the date of their appointment or election until the date of their retirement in accordance with Rule 2.1.

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.

4.2 Expenses: The Trustee shall be entitled to be indemnified by and reimbursed for any expenses incurred by them in the exercise of the 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 provided however that pending receipt of any invoice by the Trust the directors of the Company may advance sums to the Trust which sums be repaid immediately upon receipt by the Trust of any income.

5. CHAIRPERSON

The Trustees may elect a chairperson at their meetings and determine the period for which the chairperson is to hold office. The chairperson (or in the absence of the chairperson, a Trustee elected by the meeting) shall take the chair at all meetings of the Trustees and shall have a casting as well as a deliberative vote.

6. QUORUM

A quorum at meetings of the Trustees shall comprise four Trustees if the number of Trustees holding office is five. In all other cases the quorum shall be the number of the Trustees then holding office.

7. CESSATION OF TRUSTEESHIP

A Trustee shall cease to hold office if such Trustee:

- 7.1** by notice in writing to the secretary of the Trust or if there is no secretary to the then chairman, resigns his or her office;
- 7.2** refuses to act;
- 7.3** becomes of unsound mind or becomes a protected person under any statute for the time being in force;
- 7.4** becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors;
- 7.5** is absent without leave from three consecutive ordinary meetings of the Trustees;
- 7.6** is convicted of any indictable offence.

8. RECORDING OF CHANGE OF TRUSTEES

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

9. VALIDITY OF PROCEEDINGS

All acts done by any meeting of Trustees or of a committee of Trustees or by any person acting as a Trustees 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.

10. 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

11. ORDINARY MEETINGS

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

12. SPECIAL MEETINGS

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

13. 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 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 7 days before the date of the next meeting. No notice shall be necessary for adjourned meetings except to Trustees not present when the meeting was adjourned.

14. 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.

15. ADJOURNMENT

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

16. 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 Trustee 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 so that a quorum at any meeting of the committee shall comprise a majority of its members for the time being.

17. MINUTES

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

- 17.2** 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.
- 17.3** Where minutes have been made in accordance with the provisions of the 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.

18. 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.

19. MEETINGS USING ELECTRONIC TECHNOLOGY

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 secretary or a person acting secretorially shall be deemed to constitute a meeting and all the provisions in these Rules as to meetings shall apply to such meetings by electronic technology so long as the following conditions are met:

- 19.1** All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by electronic technology and to be linked by electronic technology for the purposes of such meeting. Notice of such meeting may be given by electronic technology;
- 19.2** Each of the participants taking part in the meeting by electronic technology, and the secretary or person acting secretorially, must be able to hear each of the others taking part at the commencement of the meeting;
- 19.3** 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;
- 19.4** A participant may not leave the meeting by disconnecting his or her electronic device 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 time during the meeting by electronic technology unless having obtained the express consent of the chairperson to leave the meeting as aforesaid;
- 19.5** If communication is lost, the meeting is to be adjourned until communication is restored.
- 19.6** 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 secretary or person acting secretorially.

20. 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.

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

22. 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

23. AMENDMENTS

23.1 The Rules set forth in Part I of the Schedule being rules relating to the constitution of the Trustees shall not be rescinded, amended or added to otherwise than by resolution of the Trustees passed by the affirmative vote of 75% of all of the Trustees and shall not be valid unless the resolution has received the consent in writing of the directors of the Company.

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

23.3 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.

WAITAKI POWER TRUST

SCHEDULE 2

CONSUMERS' CONSULTATIVE PROCEDURE

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

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to Consumers 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 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 Consumers;
- (f) Make all written submissions on the proposal available to the Consumers; 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 Consumers.

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