

**DATED 30th April 1993**

**WAIPA NETWORKS TRUST  
(FORMERLY WAIPA POWER TRUST)**

**CONFORMED COPY INCLUDING AMENDMENTS NOVEMBER 1996  
AND AMENDMENTS OF DECEMBER 1998  
AND AMENDMENTS OF OCTOBER 2000  
AND AMENDMENTS OF OCTOBER 2003  
AND AMENDMENTS OF DECEMBER 2008  
AND AMENDMENTS OF JUNE 2015**

INDEX

	Page Nos.
1. DEFINITION AND CONSTRUCTIONS	
1.1 Definitions	9
1.2 Construction	12
1.3 Perpetuity Period	13
2. DECLARATION OF TRUST	
2.1 Name	13
2.2 Trust Fund	13
3. OBJECTS	
3.1 Shares in Company	13
3.2 Acquisition of Further Shares	13
3.3 Holding Shares	14
3.4 Proceeds of Sale or Disposition	14
3.5 Dividends	14
3.6 Capital	14
3.7 Objective	14
4. REVIEW PROCEDURE	
4.1 Report	14
4.2 Public Availability	15
4.3 Special Consultative Procedure	15
4.4 Decision	15
4.5 Notification of Decision	16
4.6 Distribution Plan	16
4.7 Notification of Distribution Plan	16
4.8 Payment for Review	16
4.9 Sale of Shares	16
4.10 Result of Sale of Shares	17
4.11 Postal Vote	17

5.	TRUSTS OF INCOME UNTIL DISTRIBUTION DATE	
5.1	Remuneration and Expenses	17
5.2	Accumulation	18
5.3	Discretion as to Income	18
5.4	Retention of Dividends	18
5.5	Directors Report	18
5.6	Vesting	18
5.7	Not to Affect Corpus	19
5.8	Trustees not Disqualified	19
5.9	Unclaimed Payments	19
6.	TRUSTS OF CAPITAL	
6.1	Trusts prior to Termination Date	19
6.2	Trusts from and after Termination Date	19
6.3	Report from Directors	20
6.4	Vesting	20
7.	APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES	
7.1	Rules	20
7.2	Trustee Ceasing Office	20
8.	GENERAL POWERS	
8.1	Exercise of Powers	20
8.2	Obligation to Recognise	20
9.	SPECIFIC POWERS	
9.1	To Appoint Directors	21
9.2	To Appoint Secretary	21
9.3	To Employ	21
9.4	To Appoint Custodian Trustee	21
9.5	To Invest	21

9.6	Bank Accounts	21
9.7	Capital Income and Blended Funds	21
9.8	Shareholders Powers	22
9.9	Reorganisation, Reconstruction, Merger etc.	22
9.10	Increase Capital	22
9.11	Determining Questions	23
9.12	To Borrow	23
9.13	To Lease	23
9.14	General	23
10.	POWERS OF INVESTMENT	
10.1	Exclusion	23
10.2	Authorised Investments	23
10.3	Power to Hold Uninvested	24
10.4	Trustees' to Act as Prudent Person of Business	24
10.5	No Requirement to Diversify	24
11.	ADVICE OF COUNSEL	24
12.	DUTIES OF TRUSTEES	
12.1	As shareholders	25
12.2	Records	25
12.3	Accounts	25
12.4	Auditor	25
12.5	Audit	26
12.6	Publication of Financial Statements	26
12.7	Availability to Public	26
12.8	Public Meeting	26
12.9	Comments on Draft Statement of Corporate Intent	26
12.10	Statement of Corporate Intent available to Public	27
12.11	Comment on Company's Compliance with Statement of Corporate Intent	27
12.12	Modification of Statement of Corporate Intent	27
12.13	This Deed available to Public	27
12.14	Compliance	27

13.	INFORMATION TO THE PUBLIC	
13.1	Inspection	27
13.2	Notice	28
14.	VARIATION TO TRUST DEED	28
15.	WINDING UP OF TRUST	
15.1	Resolution	28
15.2	Distribution	28
16.	INTERESTED TRUSTEES	
16.1	Trustee Not an Employee or Director of the Company	29
16.2	Disclosure	29
16.3	Voting	29
16.4	Questions as to Materiality of Interest	29
17.	LIABILITY	
17.1	Limitation of Liability	29
17.2	Moneys Received	29
18.	INDEMNITY	30
SCHEDULE 1 - RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES		
1.	INTERPRETATION	
1.1	Terms	32
1.2	Deed Prevails over Rules	32

## PART I - CONSTITUTION OF THE TRUSTEES

2.	APPOINTMENT AND ELECTION OF TRUSTEES	
2.1	Number	32
2.2	Eligibility	33
2.3	The Disqualification from Trusteeship shall not Take Effect Until	34
2.4	First Trustees	34
2.5	Election of Trustees	34
2.6	Election Date	34
2.7	Returning Officer	34
2.8	Substitute Returning Officer	34
2.9	Functions of the Returning Officer	34
2.10	Payment of the Returning Officer	35
2.11	Preparation of Roll of Connected Consumers	35
2.12	Advertising of Elections and Calling for Nominations	35
2.13	Nominations	36
2.14	Withdrawal	36
2.15	Closure of Nominations	36
2.16	Circumstances where No Election Necessary	37
2.17	Eligibility to Vote	37
2.18	Election	37
2.19	Closure of Poll	38
2.20	Invalid Votes	38
2.21	Counting of Votes	38
2.22	Tied Poll	38
2.23	Declaration of Result	38
2.24	Destruction of Voting Papers	39
2.25	General Duties of Returning Officer	39
2.26	Change of Trustees	39
2.27	Calculation of Time	39
3.	TERM OF OFFICE	39
4.	REMUNERATION AND EXPENSES OF THE TRUSTEES	
4.1	Remuneration	39

4.2	Expenses	39
4.3	Payments to be Made from Trust Funds	40
5.	CHAIRPERSON	40
6.	QUORUM	40
7.	CESSATION OF TRUSTEESHIP	
7.1	Trustee shall Cease to Hold Office	40
8.	RECORDING OF CHANGE OF TRUSTEES	41
9.	VALIDITY OF PROCEEDINGS	41
10	RESCISSION OR VARIATION OF RESOLUTIONS	41
PART II - ADMINISTRATIVE PROVISIONS		
11.	ORDINARY MEETINGS	41
12.	SPECIAL MEETINGS	41
13.	NOTICE OF MEETINGS	42
14.	CONTENT OF NOTICE	42
15.	ADJOURNMENT	42
16.	COMMITTEES	42
17.	MINUTES	
17.1	Minute Book	42
17.2	Evidence of Proceedings	43
17.3	Meetings Deemed to be Regular	43
18.	RESOLUTIONS IN WRITING	43

19.	MEETINGS BY TELEPHONE	
19.1	Deemed to be a Meeting	43
19.2	Evidence	44
20.	BANK ACCOUNTS	44
21.	EXECUTION OF DOCUMENTS	44
22.	GENERAL POWERS	44
PART III - AMENDMENTS TO RULES		
23.	AMENDMENTS	44
SCHEDULE 2 - PUBLIC CONSULTATIVE PROCEDURE		
		46



**WAIPA NETWORKS TRUST  
(FORMERLY WAIPA POWER TRUST)**

**THIS DEED** is made on the 30th day of April 1993

**BETWEEN**        **WAIPA POWER LIMITED** a duly incorporated company with its registered office at Cambridge (hereinafter called "the Company")

**AND**             Ronald James COOPER

Christopher Pickering FIRTH J.P.

Kenneth Elliott JONES

James Ross MITCHELL

Rex Woodroffe PILKINGTON J.P.

Arnold James WILKINSON J.P.

(hereinafter called "the Trustees")

**WHEREAS**

- A.        The Cambridge Electric Power Board and the Te Awamutu Electric Power Board (the "Boards") have formed a registered public company limited by shares, Waipa Power Limited ("the Company"), in which the sole subscribers are the Boards;
  
- B.        Pursuant to section [27] of the Energy Companies Act 1992 the Minister responsible for administration of the Act has approved the joint establishment plan prepared and submitted in respect of the Company which joint establishment plan provides for the allocation of shares in the Company to the Trustees;

- C. The Company wishes to establish the Waipa Networks Trust (formerly Waipa 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 Connected Consumers (being the Beneficiaries) and distribute to the Connected Consumers in their capacity as owners, the benefits of ownership of the shares in the Company, and to carry out future ownership reviews involving public consultation in accordance with the terms of this Deed.

## 1. DEFINITIONS AND CONSTRUCTION

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

- (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 any bank listed in the register of registered banks referred to in section 69 of the Reserve Bank of New Zealand Act 1989;
- (ca) **"Beneficiary"** means a Connected Consumer;
- (d) **"Boards"** means the Cambridge Electric Power Board and Te Awamutu Electric Power Board constituted by section 10 of the Electric Power Boards Act 1925;
- (e) **"Company"** means and includes any successor company;
- (f) **"Connected Consumers"** means persons who, at any appropriate date designated by the Trustees from time to time, are named in the records of the Company and/or any Electricity Supply Business as persons whose premises are connected to the Company's lines network, and who are either:
- (i) end customers of the Company who are liable (whether alone or jointly or with any other person) for the payment of services in relation to those lines; or

- (ii) end customers of any Electricity Supply Business that is liable for payments for services in relation to those lines;

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

- (g) **"this Deed"** means this deed and includes the schedule and any amendments;
- (h) **"Directors"** means the directors for the time being of the Company;
- (i) **"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;
- (j) **"District"** means the extent of the areas over which the Boards were authorised to supply electricity pursuant to the licence granted to the Boards under section 20 of the Electricity Act 1968; **provided however** that in the event of the Company or any subsidiary company expanding its lines assets beyond such licence area the Trustees may from time to time by resolution carried by a majority of not less than seventy five percent (75%) of Trustees extend the boundaries of the District to include the whole or any part of such extended area if they consider such extension is appropriate having regard to all the circumstances including the circumstances relating to the extension, any payment made for facilities in the extended area, and any benefit received or to be received or detriment incurred or to be incurred by Connected Consumers in that extended area; **provided further** that in the event of the Company (including its subsidiaries) ceasing to be involved in any part of the District the Trustees may from time to time by resolution carried by the above majority of 75 per cent (75%) restrict the boundaries of the District if they consider such restriction is appropriate having regard to all the circumstances including the circumstances relating to termination of involvement in part of the District, any payment received by the Company or any subsidiary, and any benefit received or to be received or detriment incurred or to be incurred by the Connected Consumers in that part of the District.
- (k) **"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;
- (l) **"Electors"** means at the first anniversary of the Termination Date, any person:

- (i) whose name appears on a roll of the electors of a Local Authority the whole or any part of whose district is situated within the District; and
- (ii) whose electoral address is within the District;
  
- (m) **"Electricity Supply Business"** has the meaning set out in the Electricity Industry Reform Act 1998;
  
- (n) **"Financial Year"** means any year or other accounting period ending on a Balance Date;
  
- (o) **"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;
  
- (p) **"Network Connection Point"** (Point of Supply) means a metered connection point which is subject to a standard line hiring charge;
  
- (q) **"Pay"** includes "apply and appropriate" and "payment" has a corresponding meaning.
  
- (r) **"Person"** includes company or other body corporate.
  
- (s) **"Premises"** means any land building or installation, or any part of any land, building or installation.
  
- (t) **"Public Consultative Procedure"** means the procedure for consultation set out in Schedule 2;
  
- (u) **"Sell"** includes transfer or otherwise dispose of with or without consideration, and "sale" and "sold" each have a corresponding meaning.
  
- (v) **"Resolution of the Trustees"** means a resolution that is approved by a simple majority of the Trustees entitled to vote and who vote on the question.
  
- (w) **"Share Capital"** means ordinary voting shares in the capital of the company.

- (x) **"Special Resolution of the Trustees"** means a resolution which has been approved by not less than 75% in number of the Trustees who are entitled to vote and who vote on the question.
- (y) **"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;
- (z) **"the Trust"** means the electric power trust established by this Deed;
- (aa) **"the Trustees"** means the trustees for the time being of the Trust;
- (ab) **"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;
- (ac) **"Trustee Act"** means the Trustee Act 1956;
- (ad) **"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 Boards 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 **Name:** The trust established by this Deed as an electric power trust shall be known as the Waipa Networks Trust (formerly Waipa 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 **Trust Fund:** 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 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. **OBJECTS**

This Trust has been established to enable the Trustees to:

3.1 **Shares in Company:** On Vesting Date, to receive shares in the Company vested in the Trustees by Order in Council made in accordance with section 47 of the Act.

3.2 **Acquisition of Further Shares:** If the Trustees so elect to subscribe for, purchase or otherwise acquire additional shares in the capital of the Company.

- 3.3 **Holding Shares:** To retain and hold such shares until such time as following an ownership review held in accordance with Clause 4 (if such a review is required), the shares or a portion of them are sold, transferred or disposed of.
- 3.4 **Proceeds of Sale or Disposition:** In the event of any sale, transfer or other disposition of such shares, to hold the proceeds of any such sale, transfer or other disposition upon the trust for capital in accordance with Clause 6.1.
- 3.5 **Dividends:** To receive the Dividends and to distribute, pay, apply or appropriate the Dividends to or for the benefit of the Connected Consumers in the manner provided in Clause 5 of this Deed.
- 3.6 **Capital:** Following the Termination Date to pay, apply and appropriate the capital of the Trust in the manner provided in Clause 6.2.
- 3.7 **Objective:** To encourage and facilitate the Company in meeting its objective of being a successful business by achieving an adequate return on the company's assets, and distribute the benefits to Connected Consumers in their capacity as owners, the benefits of ownership of the shares in the Company.
- 3.8 **Represent Connected Consumers:** To represent Connected Consumers in respect of electricity industry matters, including but not limited to, proposed new legislation which may impact upon the electricity industry.

#### 4. **REVIEW PROCEDURE**

##### 4.1 **Report:**

Within 3 years of the date of this Deed and thereafter at intervals of no more than five years or at any time upon request by not less than 10% of Connected Consumers, the Trustees shall prepare a report considering proposals and available options for the future ownership of the shares and the other assets comprising the Trust Fund. Such report shall contain the following detail:

- 4.1.1 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;

- 4.1.2 an analysis of the various ownership options considered including without limitation, a share distribution to Connected Consumers, a sale of shares to the public, a sale of shares to institutional investors and retention by the Trust;
  - 4.1.3 a comparison of the performance by the Company with the performance of other similar energy companies;
  - 4.1.4 the conclusions of the Trustees 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 Trustees shall be included;
  - 4.1.5 the matters referred to in clauses 4.6(a) to 4.6(c) if a distribution is recommended;
  - 4.1.6 a statement of the view of the Directors of the Company regarding future ownership of the shares and other assets together with an indication whether the views are unanimous, and if not, a summary of the views of the dissenting Directors;
  - 4.1.7 a summary of the professional advice (if any) obtained in respect of the preparation of the report; and
  - 4.1.8 a statement as to whether or not the Trustees have had regard to any views expressed by the public with respect to ownership.
- 4.2 **Public Availability:** The Trustees shall make the report available to the public in accordance with Clause 13.
- 4.3 **Special Consultative Procedure:** The Trustees shall in respect of the report and no later than 1 month after the date of the report, implement the Public Consultative Procedure.
- 4.4 **Decision:** Following completion of the Public Consultative Procedure and in any event not later than 6 months after the report required by Clause 4.1 is completed, the Trustees shall meet and, after taking due account of the views expressed by the public and the Directors, the Trustees shall decide whether to:
- (a) retain the shares and/or the other assets of the Trust; or



- (b) dispose of a portion of the shares and/or the other assets of the Trust and retain the remainder in the Trust; or
  - (c) dispose of all of the shares and/or the other assets of the Trust.
  
- 4.5 **Notification of Decision:** The Trustees shall notify the public in accordance with Clause 13 of the decision made under clause 4.4.
  
- 4.6 **Distribution Plan:** If the shares or any portion of them are to be distributed the Trustees shall prepare a 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.
  
- 4.7 **Notification of Distribution Plan:** The Distribution Plan shall be notified to the public in accordance with Clause 13 and following notification the Trustees shall be obliged to 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.
  
- 4.8 **Payment for Review:** 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.
  
- 4.9 **Sale of Shares:** Notwithstanding anything to the contrary in this Deed (but subject to Clause 4.10 and to Clause 1.1 (y) Termination Date) the Trustees will not:
  - (a) Sell any shares in the Company, or
  - (b) Vote affirmatively on any resolution to allot or issue any shares in the Company to any person other than the Trustees.

**Unless** a vote of Connected Consumers is held and sixty percent or more in number of those Connected Consumers who vote on the question approve the sale or allotment or issue of those shares.

4.10 **Result of Sale of Shares:** Clause 4.9 will not apply unless as a result of the sale of shares or the allotment or issue of shares:

- (a) The Trustees will no longer hold 60% or more in number of the shares in the Company, and
- (b) Those shares which the Trustees own cease to give or confer on the Trustees 60% or more of the voting power or rights of all shareholders in the Company.

4.11 **Vote:** The Trustees may in their discretion determine the method and procedures for carrying out the vote referred to in Clause 4.9, provided that:

- (a) Subject to Clause 4.11 (d), the Trustees shall give written notice to all the Connected Consumers of the vote, and of the method or procedures adopted by the Trustees for carrying out the vote.
- (b) A period of not less than 21 days shall be allowed between the date the Connected Consumers are notified of the vote and the date by which the votes of Connected Consumers will be disallowed if not received by the Trustees.
- (c) Each Connected Consumer shall be entitled to one vote for each metered Network Connection Point.
- (d) The Trustees shall give notice of the vote to the Connected Consumers through the post directed to the address of each Connected Consumer in the records of the Trust, or if there are no such records, in the records of the Company.
- (e) The notice referred to in Clause 4.11(d) shall be deemed to have been duly received two days after the date of posting of the notice by the Trustees.

## 5. TRUSTS OF INCOME UNTIL DISTRIBUTION DATE

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

- 5.1 **Remuneration and Expenses:** The Trustees shall from the net annual income first pay the cost of administering the Trust including remuneration and allowances payable to Trustees as provided by this Deed and expenses incurred in pursuance of their duties.
- 5.2 **Accumulation:** The Trustees shall have power in their absolute discretion to accumulate so much of the income of the Trust Fund as they think fit by investing the same so that all such accumulations shall be added to and form part of the capital of the Trust Fund and be held by the Trustees upon the same trusts and with the powers herein declared in respect of such capital but provided that the Trustees may at any time or times resort to such accumulations and pay, apply or appropriate the whole or any part thereof as if the same were income of the Trust Fund arising in the Financial Year in which the same are resorted to.
- 5.3 **Discretion as to Income:** The Trustees may, subject to Clause 5.4 and Clause 5.5 pay, apply or appropriate the whole or substantially all of the current net annual income derived by or credited to the Trust Fund in any Financial Year to or for or otherwise howsoever for the benefit of the Connected 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. However, this discretion shall not include any distribution for charitable or political purposes.
- 5.4 **Retention of Dividends:** The Trustees shall in respect of any Dividend received be entitled to pay, apply or appropriate that Dividend to Connected Consumers in accordance with Clause 5.3 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 Connected Consumer until the Trustees are satisfied that all liability for taxation in respect thereof has been discharged.
- 5.5 **Directors Report:** The Trustees may 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 Connected Consumers or classes of Connected Consumer based on the contribution made by each class of Connected Consumer to the earning of that Dividend and in such report the Directors may classify Connected Consumers in any manner they see fit and in exercising their discretion in accordance with clause 5.3 the Trustees may have regard to those recommendations but shall not be bound by such recommendations.
- 5.6 **Vesting:** Any of the Connected Consumers to whom any income is paid, applied or appropriated by the Trustees pursuant to the provisions of Clause 5.2, shall as from the date of

such payment, application or appropriation take an absolute and indefeasibly vested interest in such income and as from such date the Trustees shall have no further obligations with respect to the application of such income.

- 5.7 **Not to Affect Corpus:** The foregoing provisions as to vesting of income shall not operate to vest any part of the corpus of the Trust Fund in any of the Connected Consumers.
- 5.8 **Trustees not Disqualified:** Each Trustee in its capacity as a Connected Consumer shall, notwithstanding the provisions of this Deed or any applicable rule of law or equity, be entitled to receive any benefits as a Connected Consumer which may be distributed to Connected Consumers in accordance with Clause 5.3.
- 5.9 **Unclaimed Payments:** All payments made to Connected Consumers unclaimed for one year after having been sent to any Connected Consumer may be invested or otherwise made use of by the Trustees for the benefit of the Trust Fund 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. This Clause 5.9 will also apply to any payments of capital made to Connected Consumers under Clause 6 of this Deed.

## 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 Connected 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 Connected Consumers in such manner and in such shares (including if permitted by law, by establishing a further trust for the benefit of Connected Consumers to be on the same terms mutatis mutandis 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 so paid, applied or appropriated any or all of such Trust Fund and

income on the day before the first anniversary of the Termination Date the amount so remaining shall be paid in equal shares to Electors as at the first anniversary of the Termination Date.

6.3 **Report from Directors:** Before making a distribution to Connected Consumers under Clause 6.1 or Clause 6.2 the Trustees shall request the Directors to produce a report recommending an appropriate distribution but the Trustees shall not be bound by such recommendation.

6.4 **Vesting:** All Connected Consumers to whom any distribution is made pursuant to Clause 6.1 and/or Clause 6.2 shall as from the date of such distribution take an absolute and indefeasibly vested interest in the fund so distributed.

## 7. **APPOINTMENT, RETIREMENT AND PROCEEDINGS OF TRUSTEES**

7.1 **Rules:** 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.

7.2 **Trustee Ceasing Office:** A Trustee who ceases to hold office for any reason shall, at the direction of the remaining Trustees, transfer all Shares and other assets of the trust held in his or her name to such other Trustee, Trustees or person as the remaining Trustees shall nominate and shall execute all share transfers and other documents as shall be required for this purpose. Such a Trustee hereby irrevocably appoints the remaining Trustees or any one of them his or her attorney and on his or her behalf to execute all such share transfers and other documents.

## 8. **GENERAL POWERS**

8.1 **Exercise of Powers:** 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 **Obligation to Recognise:** 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 Connected Consumers or Electors (as the case may be) as defined in this Deed and in particular shall not be required to recognise any trust or other arrangement affecting any Connected Consumer or Elector

## 9. **SPECIFIC POWERS**

The Trustees shall have and may exercise the following powers, authorities and discretions:

- 9.1 **To Appoint Directors:** To appoint Directors in the manner provided by the Articles of Association of the Company provided however that prior to appointing any new Director 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. The Trustees may if they consider appropriate consult with the Directors in relation to the appointment of directors.
- 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 **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 to make arrangements with any Bank for one or more named in writing by all the Trustees, or one of the Trustees and any delegate or delegates named in writing by all the Trustees, or otherwise in accordance with section 81 of the Trustee Act of the Trustees to operate upon any account from time to time opened or subsisting at that Bank.

- 9.7 **Capital Income and Blended Funds:** To determine whether any money for the 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.
- 9.8 **Shareholders Powers:** Subject to the provisions of this Deed, to exercise as the Trustees in their absolute discretion think fit all the voting powers attaching to any shares in the Company forming part of the Trust Fund.
- 9.9 **Reorganisation, Reconstruction, Merger etc.:** To consider any recommendations made by the Directors on any proposal relating to any reconstruction or amalgamation or merger of the Company or any modification of the rights of shareholders or any reduction of capital or subject to Clause 9.10, 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 interests of the Trust Fund (it being acknowledged that the Trustees shall not be bound by the Directors recommendations) 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.
- 9.10 **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 make a decision in respect of any such proposal if the Company requires additional equity capital (it being acknowledged that the Trustees shall not be bound by the Directors recommendations) and except where another form of distribution of shares is required the Trustees and Directors shall endeavour to ensure that any new shares shall be offered to the following classes of persons in the following sequence:
- (a) first to Connected Consumers on the basis of an equal number of shares for each Connected Consumer;
  - (b) second to the extent that any shares are not taken up by the Connected Consumers to whom they are offered under (a) above they shall be made available to all Connected 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 the entitlement of Connected 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 Connected Consumers; and

- (c) finally, any shares not allocated to Connected Consumers, shall be offered to the public on terms no more favourable than those offered to Connected Consumers.

**PROVIDED HOWEVER** that if any increase in capital would have the effect of reducing the percentage of shares held by the Trust in the Company to 60 per cent or less it shall not be approved by the Trustees unless the Trustees have first implemented the poll required by Clause 4.9 in respect of such a proposal.

- 9.11 **Determining Questions:** To determine all questions and matters of doubt which may arise in the course of the Trusteeship of this Trust.
- 9.12 **To Borrow:** To borrow moneys on such terms and subject to such conditions and for such purposes as the Trustees think fit.
- 9.13 **To Lease:** To lease or take on lease or licence any property on such terms and subject to such conditions as they think fit and to accept or effect such surrenders of leases and licences as they think fit.
- 9.14 **General:** To do such other acts and things as the Trustees may in their absolute discretion consider incidental or conducive to the attainment of the general purpose of the Trust.

## 10. **POWERS OF INVESTMENT**

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



(d) no more than 25% of the Trust Fund in any real property in New Zealand.

10.3 **Power to hold Uninvested:** 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 **Trustees' to Act as Prudent Person of Business:** Notwithstanding the provisions of section 13C of the Trustee Act and the likelihood that the Trustees will from time to time include persons whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others, it is hereby declared that the care, diligence and skill to be exercised by the Trustees in exercising any power of investment shall not be that required of 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 **No Requirement to Diversify:** Notwithstanding anything in this Deed, no Trustee shall be liable for any breach of trust in respect of any duty to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others 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 **As Shareholders:** 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 **Records:** 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 **Accounts:** 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 classes of Consumer to which distributions of income have been made by the Trust in that Financial Year and the amounts distributed.
- 12.4 **Auditor:**
- (a) The Trustees must, in each financial year, hold an annual meeting of Connected Consumers at which the Connected Consumers appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual meeting of Connected Consumers.
  - (b) The Trustees may fill any casual vacancy in the office of auditor by appointing an auditor to hold office until the conclusion of the next annual meeting of Connected Consumers (but, while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor).
  - (c) The auditor must –
    - (i) 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 Connected Consumers may seek the advice of the Auditor-General;
    - (ii) Not be a trustee, director, employee, or agent of the Trust or of the Company or otherwise disqualified from being an auditor under section 199(2)(b) and (d) of the Companies Act 1993.

- (d) The Trustees must give no less than 14 days' notice of the annual meeting of Connected Consumers to appoint an auditor in the news section of two separate editions of each newspaper that is widely read by the Connected Consumers.
- (e) Every Connected Consumer has one vote. The quorum for the annual meeting is 20 Connected Consumers. No business may be transacted at the annual meeting if a quorum is not present.
- (f) If no auditor is appointed in accordance with clause 12.4(a) or a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring in accordance with clause 12.4(b), the Auditor-General must be the auditor of the Trust. The Trustees must within five working days of this clause becoming applicable, give written notice to the Auditor-General of this fact.

12.5 **Audit:** ensure that the financial statements are audited every year and at such other times as the Trustees may require.

12.6 **Publication of Financial Statements:** upon completion of the audit of the financial statements, give 14 days' notice prior to the Annual General Meeting that copies are so available (and where) by either or both of the following means:

- (a) by advertisement online on the official website of the Trust; or
- (b) by advertisement in the news section of two separate editions of each newspaper that is widely read by the Connected Consumers.

12.7 **Availability to Public:** upon completion of the audit of the financial statements, make available to the public copies of the audited financial statements and the auditor's report on those financial statements:

- (a) for inspection at the office of the Trust and at public libraries in the District (during ordinary office hours) free of charge;
- (b) for inspection on the official website of the Trust free of charge; and
- (c) for purchase and delivery in hard copy at a reasonable price.

12.8 **Public Meeting:** within five months after the end of each Financial Year of the Trust, hold an Annual General Meeting in the form of 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 Trust for that Financial Year. The Trustees shall give not less than 14 days' notice of the meeting (such notice to also refer to appointment of the auditor) by either or both of the following means:

- (a) by advertisement online on the official website of the Trust; or
- (b) by advertisement in the news section of two separate editions of each newspaper that is widely read by the Connected Consumers.

12.9 **Comments on Draft Statement of Corporate Intent:** 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 **Statement of Corporate Intent Available to Public:** make any completed statement of corporate intent available to the public in accordance with Clause 13.

12.11 **Comment on Company's Compliance with Statement of Corporate Intent at Public Meeting:** at the public meeting held in accordance with 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.

12.12 **Modification of Statement of Corporate Intent:** exercise where appropriate its right to require modifications to the statement of corporate intent in accordance with section 40(2) of the Act subject always to the requirements of section 40(3) of the Act;

12.13 **This Deed Available to Public:** make a copy of this Deed available to the public in accordance with Clause 13.

12.14 **Compliance:** comply with the Electricity Industry Reform Act 1998.

12.15 **Annual Plan:**

- (i) The Trustees shall prepare an Annual Plan to Beneficiaries concerning the intentions for distributions planned for the Financial Year to which the plan relates.

- (ii) The Trustees shall issue the Annual Plan at the time of the notice of the Annual General Meeting.

### 13. INFORMATION TO THE PUBLIC

- 13.1 **Inspection:** Subject to clause 12.6, 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 any office of the Company or at any other place in the District during normal business hours on any business day.
- 13.2 **Notice:** Subject to clause 12.7, the Trustees shall give not less than 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

- 14.1 Subject to clause 14.2, this Deed may be altered or amended only by the unanimous resolution of the Trustees in writing provided the proposed amendment does not amend or alter the Deed in a manner which has the effect of placing additional constraints on the abilities of the Trustees to sell, transfer or dispose of Company shares, or to vote in favour of any disposal of assets of the Company and provided the proposed amendment has been approved on a vote of Connected Consumers in which 60 per cent or more of those Connected Consumers who vote on the question approve the alteration or amendment.
- 14.2 This Deed may be altered or amended by the unanimous resolution of the Trustees in writing where such alteration or amendment is required as a result of a change in the law. For the avoidance of doubt, the Trustees shall not be obliged to seek approval from the Connected Consumers in such circumstances.

### 15. WINDING UP OF TRUST

- 15.1 **Resolution:** 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 the Trust in any company with which the Company has merged) and no longer holds any debt security issued by the Company and following the Public Consultative Procedure the Trustees decide to wind up the Trust, 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 5 per cent or more of equity securities of the Company, whichever is the earlier, the provisions of Clause 15.2 shall apply as if the resolution had been passed.

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

## 16. INTERESTED TRUSTEES

16.1 **Trustee Not an Employee or Director of the Company:** The Trustees shall not be employed in the service of or hold any office in or become a director of the Company.

16.2 **Disclosure:** A Trustee who in any way, whether directly or indirectly has a material interest in any contract or proposed contract or arrangement or dealing with the Trust (other than as a Connected Consumer or as a member, officer, or employee of any firm, company or organisation that is a Connected 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 **Voting:** 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 do so 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 **Questions as to Materiality of Interest:** If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such 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 **Limitation of Liability:** No trustee acting or purporting to act in the execution of the trusts of this Deed shall be liable for any loss not attributable to 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 **Moneys Received:** 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 such Trustee may sustain or incur by reason of the carrying out or omission of any function, duty or power of the Trustees under this Deed and in respect of any expenses incurred by the Trustee in the management and administration of the Trust Fund unless such loss or liability is attributable to such Trustee's dishonesty or to the wilful commission by such Trustee of an act known to the Trustee to be a breach of trust or to the wilful omission by such Trustee of any act when that omission is known by such Trustee to be a breach of trust.

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

The 30th Day of April 1993

<b>SIGNED</b> by	Ronald James COOPER	'R J Cooper'
	Christopher Pickering FIRTH J.P.	'C P Firth'
	Kenneth Elliott JONES	'K E Jones'
	James Ross MITCHELL	'J R Mitchell'
	Rex Woodroffe PILKINGTON J.P.	'R W Pilkington'
	Arnold James WILKINSON J.P.	'A J Wilkinson'

as Trustees of the Waipa Networks Trust (formerly Waipa Power Trust)

**WITNESS** to the above signatures

Name:	Roger Ngaio JOHNSTON	'R N Johnston'
Address:	1992 Alexandra Street	
	TE AWAMUTU	

<b>THE COMMON SEAL</b> of	)
<b>WAIPA POWER LIMITED</b>	)
was hereunto affixed	)
in the presence of:	)

_____		
Director	Brian Matthew Laird	'B M Laird'

_____		
Secretary	Bruce Desmond Galbraith	'B D Galbraith'



**WAIPA NETWORKS TRUST  
(FORMERLY WAIPA POWER TRUST)**

**SCHEDULE 1**

**RULES GOVERNING THE APPOINTMENT, 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. APPOINTMENT AND ELECTION OF TRUSTEES**

**2.1 Number:**

- (a) The number of the Trustees shall not be more than six (6);
- (b) In the event that the number of Trustees falls from six (6) to five (5) the Trustees may, at their discretion, call a special election earlier than the next scheduled Election Date ("Special Election"), to fill the vacancy (provided that the date on which the vacancy occurs is not less than six (6) months before the next Election Date);
- (c) In the event that the number of Trustees falls below five (5) the Trustees must call a Special Election, earlier than the next scheduled Election Date, to increase the number of Trustees to at least five (5) (provided that the date on which any vacancy occurs is

not less than six (6) months before the next Election Date). Pending any such Special Election the remaining Trustees shall be entitled to act;

- (d) For the purposes of holding a Special Election under this Rule 2.1:
  - (i) the provisions of Part 1 of Schedule 1 relating to elections shall, in the case of a Special Election, apply in the same way as for the scheduled three (3) year election, but shall be read in each case to apply to the election of one or more Trustees as required to fill any vacancy; and
  - (ii) any person who is elected at a Special Election shall hold office until the next scheduled three (3) year election under Rule 2.6 and shall be eligible for re-election in accordance with Rule 3.

2.2 **Eligibility:** The following persons shall not be eligible for election or appointment as a Trustee and may not hold office as a Trustee:

- (a) **Bankrupt:** a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 111 of the Insolvency Act 1967;
- (b) **Conviction:** a person who has been convicted of any offence punishable by a term of imprisonment of 2 or more years unless that person has obtained a pardon or has served the sentence or otherwise suffered the sentence imposed upon that person;
- (c) **Imprisonment:** a person who has been sentenced to imprisonment for any offence unless that person has obtained a pardon or has served the sentence;
- (d) **Restraining Order:** a person to whom an order made under section 189 of the Companies Act 1955 applies;
- (e) **Mentally Disordered:** a person who is mentally disordered within the meaning of the Mental Health Act 1969;
- (f) **Property Order:** a person who is subject to a property order made under section 30 or section 31 of the Protection of Personal Property Rights Act 1989;

- (g) **Parliamentary elector:** a person who is not a parliamentary elector for the purposes of the Electoral Act 1956;
- (h) **Director or Employee of Company:** a person who is currently holds office as a director of or is employed by the Company.

2.3 **The Disqualification from Trusteeship shall not Take Effect Until:**

- (a) In any case to which Rule 2.2(b) applies the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal has been determined;
- (b) In any case to which Rule 2.2(c) applies the expiration of the time for appealing against the sentence of imprisonment and, in the event of an appeal, until the appeal has been determined.

2.4 **First Trustees:** The first Trustees of the Trust shall be the persons signing the Deed as Trustees.

2.5 **Election of Trustees:** Subject to Rule 2.1 and Rule 2.4 all Trustees shall be elected by the Connected Consumers pursuant to the rules set out herein.

2.6 **Election Date:** The election date for the first election of Trustees shall be 1 October 1994 and thereafter triennially on 1 October. Reference in these Rules to "Election Date" shall mean 1 October in the relevant year.

2.7 **Returning Officer:** There shall be a Returning Officer for each election. The Returning Officer shall be appointed by the Trustees not less than five (5) months, or as soon as practicable in the case of a Special Election under Rule 2.1, before the Election Date or the Special Election date as the case may be. A Trustee or the secretary of the Trust or Director of the Company or any subsidiary may not be a Returning Officer. In the event of the Trustees failing to appoint a Returning Officer as required by this Rule the Directors of the Company may appoint the Returning Officer.

2.8 **Substitute Returning Officer:** In the event of the death or incapacity of the Returning Officer may be appointed in the manner provided in Rule 2.7.

- 2.9 **Functions of Returning Officer:** The Returning Officer shall conduct the election of Trustees. Where no procedure is prescribed by these Rules the Returning Officer shall be entitled to specify the procedure and act accordingly. The Returning Officer shall be entitled to utilise the services of such persons and companies as the Returning Officer deems appropriate, and to arrange payment for such services from the Trust Fund. In the event of doubt or dispute as to any matter affecting the election, the Returning Officer shall be entitled to resolve such doubt or dispute, and the decision of the Returning Officer shall be final and conclusive.
- 2.10 **Payment of Returning Officer:** The Returning Officer shall be entitled to receive such reasonable remuneration and payment of expenses as the Trustees shall determine after consultation with the Returning Officer. In the event that it is necessary for the Directors of the Company to appoint a Returning Officer pursuant to Rule 2.7, the Directors of the Company shall be entitled to fix and pay the remuneration and expenses of the Returning Officer, and to forthwith recover the same, together with any additional expenses incurred by the Company or the Directors, from the Trust Fund.
- 2.11 **Preparation of Roll of Connected Consumers:** Not later than two (2) months, or as soon as practicable in the case of a Special Election under Rule 2.1, before the Election Date or the Special Election date, as the case may be, the Returning Officer shall establish a Roll of Connected Consumers by obtaining from the Company (and if necessary any subsidiary) a list or lists of the names and addresses of all Connected Consumers as at a date (to be decided by the Company) as close as practicable to the date on which the request is made. Such date shall be deemed to be designated by the Trustees. The Returning Officer shall accept the lists provided as accurate and correct, but shall be entitled to add or delete names and addresses from the Roll if satisfied that the name or address has been incorrectly included on the Roll or if the name and address of any Connected Consumer has been left off the Roll. The decision of the Returning Officer as to the addition or deletion of a name or address from the Roll shall be final and conclusive. The list of Connected Consumers provided (subject to any addition or deletion that the Returning Officer may make) shall be deemed, for all purposes relating to the election, to be the roll of Connected Consumers ("the Roll").
- 2.12 **Advertising of Elections and Calling for Nominations:** Not later than three (3) months, or as soon as practicable in the case of a Special Election under Rule 2.1, before the Election Date or the Special Election date, as the case may be, the Returning Officer shall insert appropriate notice in at least one principal newspaper circulating within the district giving:
- (a) a general indication of the nature of the election;

- (b) the place or places at which nomination forms may be obtained;
- (c) the day and time nominations close;
- (d) the day and time the poll closes;

2.13 **Nominations:** Every nomination of a candidate shall be in writing. All candidates shall be nominated by a Connected Consumer. Nomination forms shall be in such form as the Returning Officer may decide, but shall include:

- (a) the full name and address of the candidate;
- (b) a statement by the candidate that the candidate is not, and to the best of the candidate's knowledge and belief will not be, on the Election Date or the Special Election date, as the case may be, disqualified from holding office as a Trustee by reason of any of the matters set out in Rule 2.2;
- (c) the signature of the nominator and candidate.

The Returning Officer shall be entitled to declare any nomination invalid where on reasonable grounds he has good cause to believe that the candidate is ineligible for election in terms of Rule 2.2.

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

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

- 2.15 **Closure of Nominations:** Nominations shall close at 5pm on the day 40 days before the Election Date, or at 5pm on the day 20 days before the Special Election date in the case of a Special Election under Rule 2.1 ("Closure of Nominations").
- 2.16 **Circumstances where Trustees Deemed Elected:** If by Closure of Nominations six (6) or five (5) valid nominations have been received the Returning Officer shall forthwith declare the six (6), or five (5) as the case may be, candidates duly elected. A Special Election in accordance with Rule 2.1(b) may be held to increase the number of Trustees to six (6). If by Closure of Nominations less than five (5) nominations have been received, the Returning Officer shall forthwith declare those nominated to be duly elected. A Special Election in accordance with Rule 2.1(c) must be held to increase the number of Trustees to at least five (5). A declaration of the Returning Officer pursuant to this clause shall be deemed to be a Declaration of Result.
- 2.17 **Eligibility to Vote:** The following provision shall apply:
- (a) Subject to Rule 2.17(b) below, each Connected Consumer on the Roll shall be entitled to one (1) vote for each metered Network Connection Point.
  - (b) Joint holders shall only be entitled to one (1) vote. ,
  - (c) Subject to Rule 2.17(a), Companies, other incorporated or unincorporated bodies (other than joint holders), and Local Authorities shall be entitled to one (1) vote in accordance with 2.17(a) through a representative (who may be a Connected Consumer on the Roll exercising a personal vote);
  - (d) Eligible voters shall vote for not more than six (6) candidates.
- 2.18 **Election:** Not later than ten (10) days before the Election Date or the Special Election date, as the case may be, the Returning Officer shall (if voting is to be by post) complete distribution, in whatever manner the Returning Officer deems appropriate (including progressively over a period), to every Connected Consumer on the Roll:
- (a) A printing voting paper containing:
    - (i) names of all candidates validly nominated in alphabetical order of their surnames;

- (ii) appropriate provision for voting;
  - (b) Notification (which may be on the voting paper) as to the date and time the Poll closes.
  - (c) A postage paid return addressed envelope.
- 2.19 **Closure of Poll:** A vote is invalid, and shall not be counted, unless the Returning Officer receives the voting paper not later than 5pm on the Election Date or the Special Election date as the case may be ("Closure of the Poll").
- 2.20 **Invalid Votes:** A vote is invalid and shall not be counted if:
- (a) It is received after closure of the Poll;
  - (b) The voter votes more than once unless authorised to do so by Rule 2.17;
  - (c) The voter votes for more candidates than there are Trustees to be elected;
  - (d) In the opinion of the Returning Officer, the voting paper does not indicate clearly enough the candidate or candidates for whom the voter intended to vote;
  - (e) The Returning Officer believes, on reasonable grounds, that the voting paper was not issued to the voter by the Returning Officer.
- 2.21 **Counting of Votes:** The Returning Officer shall, not later than fourteen (14) days after the Election Date or the Special Election date, as the case may be, count the valid votes cast for each candidate and ascertain the candidates elected.
- 2.22 **Tied Poll:** Where, because two (2) or more candidates have received the same number of valid votes, the Returning Officer cannot determine which of them has been elected, the Returning Officer shall decide which of them is elected by lot drawn by *those* candidates in the presence of the Returning Officer and such other person or persons (if any) as the Returning Officer may decide.
- 2.23 **Declaration of Result:** Forthwith after ascertaining which candidates have been elected, the Returning Officer shall forthwith declare the names of the Trustees so elected ("Declaration of

Result"), and shall publish those names in one or more principal newspapers circulating in the District.

- 2.24 **Destruction of Voting Papers:** After the Declaration of Result the Returning Officer shall decide when to destroy the voting papers.
- 2.25 **General Duties of Returning Officer:** The Returning Officer and every person assisting the Returning Officer shall faithfully and impartially perform the duties of that office, and shall not, directly or indirectly:
- (a) before the declaration of result make known the state of the poll, or give or pretend to give any information by which the state of the poll might be known;
  - (b) make known for which candidate or candidates any person has voted;
  - (c) give any person any information likely to defeat the secrecy of the election.
- 2.26 **Change of Trustees:** Notwithstanding any other provision in the Deed or these Rules, retiring Trustees shall remain in office until the Returning Officer shall have made a Declaration of Result pursuant to Rule 2.16 or Rule 2.23. Forthwith upon the Declaration of Result the candidates declared elected shall assume office in place of the retiring Trustees.
- 2.27 **Calculation of Time:** If any day or days specified in Rule 2.1 to 2.26 upon or by which any step is to be taken shall fall on a day that is not a working day then the date of performance shall be deemed to be the working day immediately following.

### 3. **TERM OF OFFICE**

Trustees (including the first Trustees) shall (subject to the provisions of Rule 2.26 and Rule 8) hold office for a term from the date of their election until the Declaration of Result of the next election. A Trustee may seek re-election for a further term of three (3) years and may at the expiration of that term seek further re-election for further terms of three (3) years.



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 and it shall be subject to approval at each Annual General Meeting.

4.2 **Expenses:** The Trustee 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, provided however that pending receipt of any income to the Trust, the Company shall pay any reasonable expenses of the Trustees which payments shall be reimbursed by the Trustees as soon as practicable.

5. **CHAIRPERSON**

The Trustees may elect a chairperson and a deputy chairperson at their meetings and determine the period for which the chairperson and deputy chairperson are to hold office. The chairperson (or in the absence of the chairperson, the deputy chairperson) 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 (4) of the number of Trustees holding office. In the event that the number of Trustees for the time being is less than four, the number of Trustees at that time shall constitute a quorum.

7. **CESSATION OF TRUSTEESHIP**

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

- (a) **Expiry of Term:** 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 not exceeding three years and may at the expiration of that term seek further re-election for further terms of three (3) years;

- (b) **Resignation:** by notice in writing to the secretary of the Trustee or if there is no secretary to the then chairman, resigns his or her office;
- (c) **Refuses to Act:** refuses to act as a Trustee;
- (d) **If Unsound Mind:** becomes of unsound mind or becomes a protected person under any statute for the time being in force;
- (e) **Bankrupt or Arrangement with Creditors:** becomes bankrupt or enters into a composition or assignment for the benefit of his or her creditors;
- (f) **Absence:** is absent without leave from three consecutive ordinary meetings of the Trustees.
- (g) **Conviction:** is convicted of any indictable offence.

#### 8. **RECORDING OF CHANGE OF TRUSTEES**

Upon every appointment, reappointment, retirement or cessation of office of any Trustee the Trustees shall cause an entry thereof to be 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 shall (notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Trustee 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 **Minute Book:** A Minute Book shall be provided and kept by the Trustees and all proceedings of the Trustees shall be entered in the Minute Book.

17.2 **Evidence of Proceedings:** 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 **Meetings Deemed to be Regular:** 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.

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 BY TELEPHONE**

19.1 **Deemed to be a Meeting:** 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 secretarially shall be deemed to constitute a meeting and all the provisions in these Rules as to meetings shall apply to such meetings by telephone so long as the following conditions are met:

- (a) **Notice:** All the participants for the time being entitled to receive notice of a meeting shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting. Notice of such meeting may be given by telephone;
- (b) **Hear Each Other:** Each of the participants taking part in the meeting by telephone, and the secretary or person acting secretorially, must be able to hear each of the others taking part at the commencement of the meeting;
- (c) **Acknowledge Presence:** At the commencement of the meeting each participant must acknowledge his or her presence for the purpose of such meeting to all the others taking part;
- (d) **Not to Leave:** A participant may not leave the meeting by disconnecting his or her telephone without having previously obtained the express consent of the chairperson of the meeting and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless having obtained the express consent of the chairperson to leave the meeting as aforesaid;

19.2 **Evidence:** 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 in accordance with Clause 9.6 of the Trust Deed.

## 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 II of the Schedule being administrative provisions may be rescinded, amended or added to by the unanimous resolution of the Trustees provided that the proposed amendment(s) have been approved on a postal vote of Connected Consumers in which 60 percent or more of those Connected Consumers who voted on the question approve the alteration or amendment.

23.2 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.

**WAIPA NETWORKS TRUST  
(FORMERLY WAIPA POWER TRUST)**

**SCHEDULE 2**

**PUBLIC CONSULTATIVE PROCEDURE**

In respect of any provision of this Deed which requires the Trustees to implement a Public Consultative Procedure, the Trustees shall:

- (a) Place notice of the proposal before a meeting of the Trustees;
- (b) Give notice of the proposal to the public in accordance with Clause 13 of this 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 the public;
- (f) Make all written submissions on the proposal available to the public; and
- (g) Ensure that the final decision in relation to the proposal is made at a meeting of the Trustees which is open to the public.

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