

Explanatory Document - Proposed Substantive Changes to Trust Deed (Deed) of the King Country Electric Power Trust (Trust)

Clause numbering and clause headings in the table below reflects clause numbers and headings as they show in the Tracked KCEPT Deed Amendment, and may not be consistent with clause numbering and headings in the current form of the Deed, due to the document functionality in the amendment process.

The changes are categorised as follows:

1. Significant amendments – amendments that the Trustees consider are in the best interests of the Trust but which represent a significant change to current settings;
2. Other substantive amendments – other amendments the Trustees propose that vary a setting in the Trust Deed, but which the Trustees do not consider to be significant; and
3. Modernisation and technical amendments – amendments that are made to make the Trust Deed easier to read, or more in line with modern practices and technologies, or consistent with current law, or otherwise of a purely technical nature.

In this Explanatory Document, unless the context indicates otherwise, capitalised expressions have the meaning ascribed to them in the Deed.

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
SIGNIFICANT AMENDMENTS		
1. A range of changes made relating to Review Shares	<p>1.1(w) (definition of Shares)</p> <p>1.1(t) (definition of Ownership Review), 1.1(x) (definition of Special Ownership Review), 4 (Review of Trust Fund)</p>	<p>The Deed would make a range of changes in relation to (Review) Shares (name to be changed, as described below).</p> <p>(Review) Shares are shares in King Country Energy Limited.</p> <p>The Trustees are proposing that:</p> <ul style="list-style-type: none"> the requirement for the Trust to be wound up if the (Review) Shares are sold be removed, so that the Trust can continue to benefit Consumers through management of investments acquired in place of (Review) Shares, if sold; and accordingly, the review processes in the Deed be broadened to reflect that the key assets of the Trust may not always be the (Review) Shares. <p>The Trustees are proposing these changes to provide greater flexibility for the Trust which may exist over a long period of time for the benefit of Consumers over time.</p> <p>The changes are described in more detail as follows:</p> <p>The name Review Shares (being the shares in King Country Energy Limited) would be simplified to call these Shares for clarity, given that the review process in the Deed would no longer apply only to the Shares.</p> <p>The review provision of the Deed would be amended so that the Trustees will be required to undertake a five yearly review of all assets of the Trust, not just the (Review) Shares.</p> <p>This allows the Trustees to continue to complete Ownership Reviews in the situation where Shares are no longer owned by the Trust, and ensures that the Trustees remain accountable to Consumers to carry out a regular review process in terms of the assets at the time.</p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
SIGNIFICANT AMENDMENTS		
	14.1 (Winding Up)	<p>This means that every five years, the Trustees would be required to consider the whole Trust Fund, and decide whether it should be retained in the Trust for the ongoing benefit of Consumers, or distributed in whole or in part (including by selling investments and distributing cash proceeds).</p> <p>As noted above, the Trustees would not be required to wind up the Trust if it no longer held any (Review) Shares. Instead, the Trustees would be required to wind up the Trust if the Trust Fund, ie the Trust's assets in whatever form, had been fully distributed.</p> <p>The current requirement for the Trustees to wind up the Trust upon reaching a date near its expiry (the Determination Date) is retained.</p>
2. Minor Variations to Deed without Public Consultative Procedure	13.1 (Variations to Deed)	<p>There would be a new ability for the Trustees to alter the Deed without requiring the Public Consultative Procedure where the amendment is:</p> <ul style="list-style-type: none"> • of a minor, formal, administrative or technical nature (including changes to Schedules); • to correct a manifest error, to cure any ambiguity or to correct or supplement any defective or inconsistent provision; or • necessary or desirable to comply with the provisions of any law or the requirements of any statutory authority. <p>This would provide the Trustees with the ability to implement non-substantive changes without the delay and cost of the Public Consultative Procedure, where there is in effect no need for a consultative process.</p> <p>The minor amendments power will however be subject to the existing limit in the Deed that prevents any change that would limit or restrict review of the ownership of (Review) Shares or the sale of them when required.</p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
SIGNIFICANT AMENDMENTS		
3. Additional Trustee Appointments provided for	Schedule 1, 1.1 (Number of Trustees), 1.3 (Additional Trustee Appointments), 1.4 (Skills Based Approach to Additional Trustee Selection), 1.8(g) (Eligibility of Trustees)	<p>The Deed would be amended to allow the Trustees to appoint up to two additional Trustees, for a term of up to four years. This is to allow the Trustees to co-opt additional expertise if required to complement the skills and experience of elected Trustees.</p> <p>The Additional Trustees would be appointed through a best practice recruitment process.</p> <p>The number of Trustees would accordingly increase to a maximum of seven. There would still be a requirement for a minimum of five elected Trustees.</p> <p>Additional Trustees would not be required to be Electors.</p>
4. <u>Definition of Consumer clarified for alignment with changes in lines company contractual structure</u>	<u>1.1(e) (definition of Consumers)</u>	<p><u>The Deed would be amended to clarify that Consumers include persons who pay for line function services from The Lines Company Limited (TLC), but who do not necessarily own the connected premises.</u></p> <p><u>At the moment, Consumers who might receive a distribution from the Trust are persons in the District whose premises are connected to the TLC network. The owner of the premises is not necessarily the person who pays for line function services from TLC.</u></p> <p><u>The change to the definition of “Consumers” is being proposed because TLC is changing its billing processes and it will no longer be able to make payments on the Trust’s behalf to persons who are not responsible for paying for line function services.</u></p> <p><u>It is not feasible for the Trust to pay distributions to Consumers who cannot be paid through TLC. Rather, if the change to the definition of “Consumers” is not made, the Trustees can still exclude premises owners who are not the bill payer, given that they could not feasibly make a payment to them. In that case no-one at the connected premises would benefit from a distribution.</u></p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
SIGNIFICANT AMENDMENTS		
		<p><u>In this context, the Trustees consider that the most practical and fair way forward is to amend the definition of “Consumers” so that all connected premises in the District will be able to be considered for a distribution.</u></p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
OTHER SUBSTANTIVE AMENDMENTS		
5. Definition of Default Beneficiaries added and Elector definition clarified widened	1.1(g) (definition of Default Beneficiaries), 1.1(m) (definition of Electors)	<p>The name used for one of the classes of beneficiary would be changed from Electors to Default Beneficiaries so that it is easier to understand. The persons included in that class of beneficiary remain the same, ie Electors. Default Beneficiaries are the persons who will receive a share of the capital assets of the Trust, if those capital assets have not been distributed in full to Consumers by the time the Trust terminates. They only become entitled to anything from the Trust in those specific circumstances.</p> <p>The definition of “Elector” would also be clarified, so that it is clear to a reader (without needing to do background research) that an Elector is a person with an electoral address in the District either by being a residential elector or by being enrolled or nominated as a ratepayer elector (who does not necessarily live in the District, but owns property there).</p>
6. Clarifying the ability to distribute to local charitable organisations as well as consumer beneficiaries	1.1 (r) (definition of Local Charitable Entity), 5 (Income)	<p>The power of the Trustees in the Deed to pay or apply income for the benefit of Consumers indirectly by making a donation or grant to a charity would be clarified, by:</p> <ul style="list-style-type: none"> • including an express power in clause 5 for Trustees to make a donation or grant (with or without conditions) to a Local Charitable Entity selected by the Trustees from time to time; and • defining Local Charitable Entity as a company, society, trust or other entity established and maintained exclusively for purposes that are charitable in accordance with New Zealand law, and not for private profit, and whose activities may provide a benefit in the District. <p>Consumers are persons connected to the electricity distribution lines in the District (this has not changed).</p>
7. Decisions requiring unanimous resolution now require special majority, to protect against “rogue” trustee	1.1(y) (definition of Special Resolution), 2.1 (Name), 13 (Variation to Deed)	<p>The proposed amendment would change the requirement for a unanimous resolution of Trustees in writing to a requirement for a Special Resolution in the following circumstances (Reserved Matters):</p> <ul style="list-style-type: none"> • the power to change the name of the Trust; and • the power to amend the Deed.

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
OTHER SUBSTANTIVE AMENDMENTS		
		<p>The requirement for a unanimous resolution in writing for the Reserved Matters puts the Trust at risk of deadlock if one Trustee is refusing to act.</p> <p>The new requirement for a Special Resolution means that:</p> <ul style="list-style-type: none"> • at a meeting, the resolution in respect of a Reserved Matter can be passed if all but one Trustee entitled to vote on the matter votes in favour; and • for a resolution in writing on a Reserved Matter, approval by all Trustees will still be required (all must sign the written resolution).
8. Improvements made to review process	<p>4.2(f) (Summary of Professional Advice)</p> <p>4.9 (Update the Investment Policy)</p> <p>4.11 (Special Ownership Review)</p>	<p>The Trustees are proposing some improvements to the Ownership Review process, as follows:</p> <p>The Trustees would be required to obtain professional advice as part of the review process (previously it was optional).</p> <p>There would be a new requirement for the Trustees to review the Trust’s investment policy statement in conjunction with the Trust’s Ownership Review and more frequently, if necessary.</p> <p>An investment policy statement is an important tool for Trustees in the management of trust investments, and it is best practice to have such a document and to regularly review it.</p> <p>The Trustees would be able to requisition a Special Ownership Review of the ownership of all or part of the Trust Fund at any time that they consider that such a review is warranted. Any special Ownership Review would be in accordance with the existing Ownership Review processes.</p> <p>This gives the Trustees flexibility to review the ownership structure outside of the five yearly formal review process, if the circumstances warranted it.</p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
OTHER SUBSTANTIVE AMENDMENTS		
9. Combination of Annual Meeting of Consumers and Public Meeting	11.3 (Annual Meeting of Consumers) 11.4 (Procedures for Annual Meeting of Consumers)	<p>The provisions relating to the Annual Meeting of Consumers and the public meeting would be combined to make it clear that these two meetings are held as one combined meeting, and to streamline procedural requirements accordingly.</p> <p>The main focus of the Annual Meeting of Consumers would continue to be the dealing with matters that legislation requires the Trust to put to Consumers (ie appointment of the auditor). The procedures for the Annual Meeting of Consumers, as required under section 102 of the Electricity Industry Act 2010, have also been included for ease of reference.</p> <p>Members of the public (who are not already Consumers) would still be able to be included as guests. Non-Consumer attendees would not have voting rights (this is not a change).</p>
10. Early Termination of Office – additional scenarios added	Schedule 1, 2.2 (Early Termination of Office)	<p>The Deed would be amended so that, in addition to existing grounds, a Trustee will cease to hold office if the Trustee:</p> <ul style="list-style-type: none"> • dies while holding office as a Trustee; or • is removed from holding office as Trustee by special resolution of the Trustees that the Trustee is for any reason unable to effectively carry out his or her duties as a Trustee, or the other Trustees determine there is a risk that the reputation of the Trust will be adversely affected should the Trustee continue as a Trustee. <p>These amendments deal with two scenarios that can face a Trust and which it is useful to have a mechanism for.</p>
11. Quorum updated given that maximum number of Trustees would be increased	Schedule 3, 1.1, 1.2	<p>The quorum of Trustees would be amended to be a majority of the Trustees then in office (including Additional Trustees).</p> <p>This reflects the practicalities of the addition of Additional Trustees.</p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
OTHER SUBSTANTIVE AMENDMENTS		
12 Execution of Documents made more practical	Schedule 3, 11	<p>The requirements for the Trust's method of signing documents would be updated to reflect best practice, by allowing documents other than deeds to be executed by one Trustee and the secretary or other authorised persons.</p> <p>Deeds will still be required to be executed by two Trustees plus the secretary/another Trustee/another authorised person. Documents will also still require authorisation of the Trustees before being signed (ie a resolution or general delegated authority).</p>

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
MODERNISATION AND TECHNICAL AMENDMENTS		
13 Shorten the name	2.1 (Name)	The name of the Trust has been shortened from “King Country Electric Power Trust” to “King Country Trust”. The Trustees have the power to make this change by special resolution, without public consultation but wanted to include an explanation here for completeness.
14 General Trusts Act 2019 Updates	1.1(z) (definition of Termination Date), 1.1(bb) (definition of Trust Expiry Date), 1.3 (Trust Expiry Date), 9.3 (Power to Employ), 9.4 (Power to Appoint Custodian Trustee), 9.5 (Power to Invest), 10.3 (Exception), 12.4 (Disclosure to Beneficiaries), 12.5 (Request by Consumer), 16 (Liability of Trustees), 17 (Indemnity), Schedule 1, 1.8 (Eligibility of Trustees)	<p>There would be a number of amendments made on the basis that they are required or desirable as a result of the Trusts Act 2019, including:</p> <ul style="list-style-type: none"> • Trust Expiry Date: extending the maximum duration of the Trust applicable to this Deed to 125 years from the date of execution of the 1993 Deed, being 17 June 2118; • Specific Powers: amending some of the specific powers of the Trustees (the power to employ, to appoint a custodian trustee and to appoint a delegate or attorney) to be subject to the relevant Trusts Act clauses; • Investment Powers: updating the powers of investment to reflect the relevant Trusts Act clauses; • Disclosure to Beneficiaries: referring to new obligations in relation to disclosures to beneficiaries; • Liability of Trustees and Indemnity: amending the limitation of liability clause and the trustee indemnity to include the gross negligence exclusion; and • Eligibility of Trustees: not allowing a person who is disqualified from being appointed as a trustee under section 96 of the Trusts Act to be a Trustee (replaces previous eligibility criteria that were in Schedule 1, clause 20.4).
15 Definition of Dates updated to reflect Trusts Act changes	1.1(h) (definition of Determination Date) and (z) (definition of	Under the current Deed, the final termination of the Trust is linked to maximum period of 80 years for a trust as provided for in the Perpetuities Act 1964. Under the new Trusts Act 2019, the rule against perpetuities is abolished and the Perpetuities Act 1964 is repealed. The maximum duration of a trust (including resettlements) can now be up to 125 years after the creation of the trust.

PROPOSED CHANGE

AFFECTED CLAUSES

SUMMARY OF CHANGE

MODERNISATION AND TECHNICAL AMENDMENTS

Termination Date), 1.3 (Trust Expiry Date)

Accordingly, amendments would be made to extend the maximum duration of the Trust and simplify the use of definitions in the Deed as follows:

NEW DEFINITION	NEW DATE	PREVIOUS DEFINITION	PREVIOUS DATE	CONTEXT
Trust Expiry Date	17 June 2118	n/a	1 January 2073	125 years from the date of execution of the Deed (section 16, Trusts Act 2019)
Determination Date	1 January 2117*	Termination Date	1 January 2072*	Approx. 18 months before the Trust Expiry Date
Termination Date	1 January 2118*	The anniversary of Termination Date	1 January 2073*	Approx. 6 months before the Trust Expiry Date

*or such other earlier date designated by the Trustees

The **Trust Expiry Date** is that date that is 125 years from the date of execution of the 1993 Deed. This reflects the new requirements under section 16 of the Trusts Act 2019. This date effectively acts as a backstop, allowing the Trustees the flexibility required to complete the final distribution of the Trust Fund.

The **Determination Date** is the date that the Trustees will begin the process to wind up the Trust. This date is approximately 18 months prior to the Trust Expiry Date, and has been chosen to allow sufficient time to address the complexities involved in identifying all of the beneficiaries entitled to distributions.

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
MODERNISATION AND TECHNICAL AMENDMENTS		
		The Termination Date is the date that sets default entitlements on a winding up. If the capital has not already been distributed prior to the Termination Date, the capital goes to the Default Beneficiaries. For a wind-up at the end of the life of the Trust, this date is approximately 6 months prior to the Trust Expiry Date. For a wind-up earlier in the life of the Trust, it is the actual date of winding up.
16 Rules of Elections updated	Schedule 1, 3.5 (Rules of Election)	The rules of elections would be updated to reflect best practice, including by: <ul style="list-style-type: none"> • updating clause 3.5(b) (Roll Compilation) to avoid contravening the Privacy Act 2020; and allowing electronic voting processes.
17 Introductory provisions updated	Background	The Background information in the Deed (previously, “Whereas...”) would be updated to reflect the history of the Trust and the Deed and the purpose of the Deed amendment.
18 King Country Energy Limited removed as a party	Parties and execution panel	King Country Energy Limited would be removed as a party to the Deed and from the execution (signing) provisions for the Deed. King Country Energy Limited was originally named as a party because it established the Trust. As it no longer has a specific role and it is already the case that it has no rights or powers under the Deed, there is no need to name it as a party anymore.
19 General Modernisation	All	There are a significant number of changes in the Deed that would be made to modernise the Deed and in particular to: <ul style="list-style-type: none"> • reflect the current situation of the Trust, for example: <ul style="list-style-type: none"> ○ the fact that the Trust disposed of its “Lines Shares” in January 2014 and so references to those shares were now redundant; ○ to reflect that the composition of the trust fund has changed and will change over time;

PROPOSED CHANGE	AFFECTED CLAUSES	SUMMARY OF CHANGE
MODERNISATION AND TECHNICAL AMENDMENTS		
		<ul style="list-style-type: none"> ○ to update the Objects (clause 3) to reflect the evolution of the Trust and simplify the language; • reflect changes in legislation, eg the coming into force of the Trusts Act 2019 (Trusts Act changes are summarised at the end of this explanatory document); • reflect relevant technology developments such as virtual meetings; and • make it easier to read and understand the Deed. <p>This explanatory document does not comment specifically on each change that fits within the descriptions above. Accordingly, if a change you are reviewing does not have a specific description below, it should be seen as falling into the category of “general modernisation”.</p>