

## Change to Definition of “Consumers” in the Trust Deed of the King Country Trust (Trust)

### Background

As Trustees of the Trust, we are consulting on proposed amendments to our Trust Deed, including a change to the definition of “Consumers”. Consumers are the people who are considered for discretionary income distributions from the Trust.

The Lines Company Limited (**TLC**) facilitates our income distributions to “Consumers”. Prior to October 2021, TLC billed users of its lines services directly, meaning we could rely on TLC to identify “Consumers” using its database and pass on any distributions through its billing system.

TLC’s recent move to “retailer billing” has meant that electricity retailers now bill users of TLC’s lines services on TLC’s behalf. For TLC to continue to pass on distributions to “Consumers” for us, it needs to be able to make these distributions through the electricity retailers (i.e. by issuing a credit to the account of the person paying the electricity retailer).

The person paying the electricity retailer is not always the owner of the property - they may be a tenant or similar. This has prompted us to propose an amendment to clarify the definition of “Consumers”, so that it is clear they do not need to be the owner of the property.

“Line services” refers to the service of transporting electricity to customers, provided by lines companies such as TLC. These services are separate from the provision of the electricity. Electricity retailers sell the electricity to consumers, but lines companies transport the electricity. Although the services are separate, it is common for electricity customers to pay for both services through their electricity bill. The electricity retailer passes on payment to the lines company.

### The amendment

It is proposed that the definition of “Consumers” would be amended as follows:

**“Consumers”** means persons, who at any appropriate date designated by the Trustees from time to time, are named in the records of the Lines Company as persons who own and/or use an electrical installation connected to the Lines Company’s lines network within the District; and who are liable for payment of any amounts for the supply of line function services to the person, unless any such person who qualifies as a Consumer in accordance with this definition advises the Lines Company or the Trustees irrevocably in writing that he, she or it does not wish to be a Consumer for the purposes of this Deed;

### Implications of the amendment

As noted above, in some cases, the person paying the retailer for energy (and now for lines charges, as a pass-through to TLC) is not the owner of the property connected to TLC’s network (i.e. they are a tenant, or similar). In the past, TLC’s direct customer was usually the property owner. If the

proposed amendment is adopted, property owners who no longer pay for lines services would also no longer be eligible to receive an income distribution from the Trust.

### **Submissions**

We received a submission on the proposed amendment to the definition of “Consumers” that expressed a concern that it would be invalid and that there could be problems with how we had made distributions to Consumers in the past.

The submission has been published at [Trust Deed Review - King Country Trust \(kcpowertrust.co.nz\)](https://www.kcpowertrust.co.nz/Trust-Deed-Review-King-Country-Trust).

### **Legal advice**

We sought legal advice from Simpson Grierson on this matter.

We have been advised that:

1. There has never been any indication that the scope of the definition of “Consumers” is limited to property owners. Throughout the history of the Trust, the definition of “Consumers” has always captured persons who pay for the lines services (or prior to structural reforms in the electricity industry, energy). The definition of “Consumers” has been tweaked over the years to reflect changes in legislation and the commercial realities of how customers are invoiced for energy and lines services. The references to “persons whose premises are connected” in the current definition of “Consumers” is not limited to persons who own the premises.
2. We have the power to vary the definition of “Consumers” in accordance with clause 14 of the Trust Deed, subject to the limitations set out below. The variation power is broadly expressed and case law specific to electricity customer trusts supports the use of this type of variation power to enable us to respond to changes in circumstances over the life of a long-lived trust.
3. Our powers to vary the Trust Deed, including the power to vary the definition of “Consumers”, are subject to the following limitations:
  - (a) we must be satisfied that the amendments are in the best interests of beneficiaries (as a matter of our own reasonable judgment). As part of the Public Consultative Procedure, we have explained how the variations benefit the beneficiaries. We have proposed that the definition of “Consumers” be amended to enable distributions and a reliable data base. This does not equate to the actual “Consumers” changing; only the formulation of the definition so as to avoid unnecessary cost and complexity for the Trust. Any method of distribution other than through TLC and the electricity retailers would involve an extensive and costly exercise that would be prone to error and erode the funds available for distribution; and
  - (b) we must follow procedural requirements (i.e. carrying out and having regard to the Public Consultative Procedure, and passing a unanimous written resolution in writing to make the changes).

A copy of the full legal advice is available on request to [kcept@xtra.co.nz](mailto:kcept@xtra.co.nz).

### **Next steps**

We have not made a final decision on the proposed amendment to the definition of “Consumers”. The decision is expected to be made at a public meeting on 25 March 2022. Details about this meeting and how you can attend will be available at [Trust Deed Review - King Country Trust \(kcpowertrust.co.nz\)](http://TrustDeedReview-KingCountryTrust.kcpowertrust.co.nz).

In the meantime, Consumers can still make submissions. Please see [Trust Deed Review - King Country Trust \(kcpowertrust.co.nz\)](http://TrustDeedReview-KingCountryTrust.kcpowertrust.co.nz) for details on how to make your submission.