

King Country Trust

PROPOSED AMENDMENTS TO THE DEED

EXPLANTORY NOTE

30 August 2022

1. Introduction

- 1.1 The trustees of the King Country Trust (**Trust**) have applied to the High Court for an order that the trustees have the necessary powers to make certain amendments the Deed of Trust dated 3 May 2022 (**Deed**), and that it is otherwise lawful and proper to do so. When deciding the trustees' application, the High Court will consider the views expressed by parties who may be interested in or adversely affected by the application.
- 1.2 The purpose of this explanatory note is to provide some background about the Trust, summarise the trustees' application and to provide details about how you can be involved and make your views known, if you wish.

2. Why am I being consulted?

- 2.1 As part of their application to the Court, the trustees have identified those parties which may be interested in or adversely affected by the application. The trustees have obtained an order from the court that the identified parties be served with copies of the relevant documents (**Order**). The purpose of that Order is to give those parties an opportunity to consider the application, make comments and be heard in relation to it, if they wish.
- 2.2 The trustees considered that it would be impracticable, onerous, costly and unnecessary to personally serve the application on each Consumer and for each Consumer to then obtain separate legal advice. The Order provides that:
- (a) the Consumers are, by public notice, to be served with the relevant documents filed by the trustees in the High Court; and
 - (b) Tom Weston QC is appointed to represent the Consumers who oppose, or who may oppose, the Outstanding Amendments. Mr Weston QC's costs will be paid for by the Trust.
- 2.3 Details of how to view the relevant documents filed by the trustees in court and contact details for Mr Weston QC are in paragraphs 5 and 6 of this explanatory note.

3. The King Country Trust

- 3.1 The Trust was established by Deed of Trust dated 18 June 1993. Originally the Trust was set up to hold shares in King Country Energy Limited (**King Country Energy**) for the benefit of King Country Energy's consumers because, at that time, there was a strong public view that King Country Energy should remain in consumer ownership. Over the life of the Trust there have been a number of changes to the Deed which have been actioned by the trustees. The Deed consolidates all those previous amendments.
- 3.2 The Deed defines its beneficiaries as the "Consumers" and "Default Beneficiaries". The trustees have identified approximately 10,762 Consumers. In very general terms, Consumers are defined in the Deed as persons who are named in the records of the

Lines Company Limited (**Lines Company**) as persons whose premises are connected to the Lines Company's lines network within the southern part of the King Country region. The class of "Default Beneficiaries" will only arise 12 months prior to termination of the Deed, or by such other date designated by the trustees. As that class of beneficiaries has not yet arisen, the trustees do not consider the class of "Default Beneficiaries" are relevant to the Application.

3.3 There are five trustees of the Trust – all elected by the Consumers. The Trust now holds 24.98 percent of the ordinary shares of King Country Energy. Together with their rights as shareholders under the Companies Act 1993, the trustees' principal duties under the Deed include:

- (a) holding the shares of King Country Energy and other investments in trust for the benefit of the beneficiaries;
- (b) appointing Directors to the Board of King Country Energy;
- (c) monitoring the performance of King Country Energy; and
- (d) at least every five years, preparing a report that considers proposals and available options for the future ownership of the Trust fund and consulting with the public on it, before deciding whether or not to proceed with it.

3.4 On 25 March 2022 the Trustees approved and declined a number of amendments to the Deed. They also unanimously approved a number of other amendments subject to obtaining High Court directions under section 133 of the Trusts Act 2019 that the amendment is in order (**Outstanding Amendments**). The Outstanding Amendments are the focus of the Trustees' application to the High Court.

4. Proposed Amendments to the Deed

4.2 This explanatory note provides a summary of the Outstanding Amendments. Full details of the Proposed Amendments and the reasons for them are in the documents which have been filed in court and are available to beneficiaries.

4.3 The Outstanding Amendments can be summarised as:

- (a) relaxing the winding up rules so that the Trust can continue to benefit Consumers through the management of other investments it acquires;
- (b) a new power to alter the Deed without public consultation if the amendment is minor, of a corrective nature or necessary or desirable to comply with the law;
- (c) redefining "Consumers" to clarify that it includes persons who pay for Lines Company services but who do not necessarily own the connected premises;
- (d) clarifying the trustees' power to make a donation or grant to a charitable entity within the District; and
- (e) redefining key termination dates to extend the duration of the Trust to the maximum permitted under the Trusts Act 2019 so the trustees can continue benefitting the Trust's beneficiaries.

5. Details of how to see the documents filed by the trustees

5.1 The relevant documents are:

- (a) The statement of claim dated 30 August 2022.

- (b) The affidavit of Adrian Paul Doyle dated 26 August 2022. Mr Doyle is the Chair of the Trust.
- (c) This Explanatory Note.
- (d) The Order directing representation and service.

(collectively, the **Documents**).

5.2 The Documents are available for viewing on the Trust's website (www.kcpowertrust.co.nz) and the public libraries at Taumarunui, Ohakune and Tūrangi during normal business hours.

6. Contact details for Mr Weston QC

6.2 Any Consumer requiring further information, wishing to provide comments on the trustees' application or be heard in relation to it should contact Mr Weston QC at PO Box 33, Tai Tapu 7645, email: tomweston@xtra.co.nz.



Adrian Doyle
Chair
King Country Trust