

Effective Date: [xxxxxx] 2009

Proposed amendments and deletions marked up (March 2009)

Dated [xxxxxxxx]

**CONSTITUTION FOR THE ELECTRICITY AND GAS
COMPLAINTS COMMISSIONER SCHEME**

CONTENTS

| | | |
|---|--|----|
| 1 | INTERPRETATION..... | 1 |
| | Definitions | 1 |
| | References to statutes, etc | 10 |
| | Exclusions from the definition of Land Complaint | 10 |
| 2 | FUNCTIONS AND POWERS..... | 11 |
| | Establishment of a Council and Commission | 11 |
| | Powers | 12 |
| | Powers of the Council to be exercised by the Board..... | 12 |
| | Inconsistencies with other agreements | 12 |
| 3 | MEMBERSHIP OF THE COUNCIL..... | 13 |
| | Council Members | 13 |
| | Classification of Council Members | 13 |
| | Council Members joining after the initial adoption of this Constitution | 13 |
| | Acceptance of applications | 14 |
| | Voluntary withdrawal from the Council | 14 |
| | Cessation of membership due to default..... | 15 |
| | Compliance | 15 |
| | Subsidiaries and related companies | 16 |
| | Remuneration | 16 |
| 4 | FUNDING FOR THE COUNCIL..... | 16 |
| | Proportionate Basis for funding..... | 16 |
| | Costs of expert witnesses | 20 |
| | Working capital | 20 |
| | Annual levies..... | 21 |
| | Entry fee for Electricity Company Council Members..... | 21 |
| | Entry fee for Gas Company Council Members..... | 22 |
| | Fee for administrative costs related to expansion of the Scheme to cover Land Complaints | 22 |
| | Increase to working capital during a Financial Year | 23 |
| | Administration of levies | 23 |
| 5 | THE BOARD | 24 |
| | Role of the Board generally..... | 24 |
| | Powers of the Board | 24 |
| | Duties of the Board | 24 |
| | Board may facilitate resolution of disputes between Council Members arising under the Protocols..... | 25 |
| | Minutes of Board meetings | 25 |
| | Composition of the Board..... | 25 |
| | Election of Boards..... | 26 |
| | Term of office for Members on the Board | 26 |
| | The Council chairperson | 27 |
| | Vacancy of office..... | 27 |
| | Board meetings..... | 27 |
| | Voting at Board meetings..... | 28 |
| | Resolutions in Writing | 28 |
| | Decisions and recommendations affecting Transpower..... | 28 |
| 6 | AMENDMENTS TO THE SCHEME | 28 |
| | Scheme Amendment Committee | 28 |
| | Approval of amendments | 29 |
| | Scheme Amendment Committee approval..... | 29 |
| | Referral to Council | 30 |
| | Council approval | 30 |
| | Approved amendments..... | 31 |
| 7 | GENERAL MEETINGS | 31 |
| | Requirements for general meetings | 31 |

| | | |
|----|---|----|
| | Requirement to arrange general meetings | 31 |
| | Quorum for general meetings | 31 |
| | Number of votes allocated to each Council Member | 32 |
| | Voting in general meetings | 33 |
| | Alterations to the Deed or Protocol | 33 |
| | Approved amendments..... | 35 |
| | Winding-up of Council and functions | 36 |
| | Defaulting Council Member's voting rights suspended | 36 |
| | Proxies..... | 36 |
| 8 | INDEMNITY | 36 |
| 9 | ENFORCEMENT | 37 |
| 10 | GENERAL | 37 |
| | Contributions on winding-up | 37 |
| | Distribution of assets on winding-up | 37 |
| | Governing law..... | 37 |
| | Counterparties | 37 |
| 11 | COMMENCEMENT | 37 |

CONSTITUTION FOR THE ELECTRICITY AND GAS COMPLAINTS COMMISSIONER SCHEME

DATED 7 AUGUST 2001

THIS CONSTITUTION IS MADE BY DEED IN THE FOLLOWING CIRCUMSTANCES:

The parties to this Constitution are Retailers and Lines Companies who wish to establish an Electricity and Gas Complaints Commissioner Scheme for the electricity and gas sectors. This Scheme is supported by an Electricity Code of Practice and a Gas Code of Practice for Consumer Contracts, a Land Code of Practice, an Electricity Consumer Dispute Resolution Protocol, a Gas Consumer Dispute Resolution Protocol and a Land Complaints Dispute Resolution Protocol.

This Scheme is founded on the principles of:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness
- Community awareness

and includes investigating and facilitating resolution of complaints.

THE PARTIES TO THIS DEED AGREE AS FOLLOWS:

1 INTERPRETATION

Definitions

1.1 The following terms have the meanings set out below:

| <i>Term</i> | <i>Meaning</i> |
|--------------------|---|
| "Board" | The Board of the Council. |
| "Chief Ombudsman" | The Chief Ombudsman appointed under the Ombudsmen Act 1975. |
| "Class" | A class referred to in Clause 3.2. |
| "Clause(s)" | A clause in the main body of this Constitution and in the Schedules to this Constitution. References to a clause prefixed by the letters A, B, C, CA, CB, D, DA, or DB relate to clauses of Schedules A, B, C, CA, CB, D, DA, or DB respectively. |

| Term | Meaning |
|------------------------------|---|
| "Codes of Practice" | The Electricity Consumer Code of Practice, the Gas Consumer Code of Practice, and the Land Code of Practice. |
| "Commencement Date" | 7 August 2001, which is the date on which this Constitution comes into force. |
| "Commission" | The Electricity and Gas Complaints Commission. |
| "Commission Member" | A person appointed to the Commission. |
| "Complaint Managing Company" | The Council Member designated under the Electricity Consumer Dispute Resolution Protocol, Gas Consumer Dispute Resolution Protocol or Land Complaints Dispute Resolution Protocol as the Council Member responsible for managing and resolving a Complaint. |
| "Complainant" | A Person (including a potential consumer, or Land Owner or Land Occupier) making a Complaint or anyone making the Complaint with the Person's authority on the Person's behalf. |
| "Complaint" | An expression of dissatisfaction with Services by any person where a response is implicitly or explicitly expected and includes a Consumer Complaint or a Land Complaint, as the case may be. |
| "Constitution" | This constitutional deed, including the Schedules, agreed and adopted by all Council Members listed in the Register or as amended or substituted from time to time in accordance with this Deed. |
| "Consumer" | In the case of an electricity Consumer includes: <ul style="list-style-type: none">(a) a Person who is supplied, or who applies to be supplied, with electricity by an Electricity Retailer in accordance with a Consumer Contract for consumption of electricity;(b) a Person who is supplied, or who applies to be supplied, with Line Function Services for electricity in accordance with a Consumer Contract;(c) a Person using the Services supplied under that Consumer Contract or paying part or all of the fees for the Services provided under the Consumer Contract; and(d) a Person in relation to a Consumer Complaint under |

Term

Meaning

paragraph (b) or (c) of the definition of "Consumer Complaint" who:

- (i) has been disconnected in error by an Electricity Company Council Member (whether or not that Council Member has a Consumer Contract with the Consumer); or
- (ii) has been transferred (switched) without consenting to the transfer from his or her Electricity Retailer Council Member to another Electricity Retailer Council Member.

In the case of a Gas Consumer, means a small consumer as defined in the Gas Act, including potential small consumers. includes:

- ~~(a) a Person who is supplied, or who applies to be supplied, with Gas by a Gas Retailer in accordance with a Consumer Contract for consumption of Gas;~~
- ~~(b) a Person who is supplied, or who applies to be supplied, Line Function Services for Gas in accordance with a Consumer Contract;~~
- ~~(c) a Person using the Services supplied under that Consumer Contract or paying part or all of the fees for the Services provided under the Consumer Contract; and,~~
- ~~(d) a Person in relation to a Consumer Complaint under paragraph (b) or (c) of the definition of "Consumer Complaint" who:~~
 - ~~(i) has been disconnected in error by a Gas Company Council Member (whether or not that Council Member has a Consumer Contract with a Consumer); or~~
 - ~~(ii) has been transferred (switched) without consenting to the transfer from his or her Gas Retailer Council Member to another Gas Retailer Council Member.~~

"Consumer Complaint"

Any Complaint made by a Complainant but excludes a Land Complaint.

| Term | Meaning |
|---|--|
| “Consumer Contract” | A Conveyance Only Consumer Contract, an Interposed Consumer Contract, or a Supply Only Consumer Contract and includes any other publications which contain information about the Services supplied to Consumers. |
| “Contracting Company” | A Retailer or a Lines Company who is a party to a Consumer Contract. |
| “Conveyance Only Consumer Contract” | A contract between a Consumer and a Lines Company for the supply of Line Function Services to the Consumer. |
| “Council” | The Electricity and Gas Complaints Council. |
| “Council Member(s)” | A Retailer or Lines Company that is a Member of the Council. |
| “Deed” | This constitutional Deed, excluding the Schedules, agreed and adopted by all Council Members listed in the Register or as amended or substituted from time to time in accordance with this Deed. |
| “Deed of Adoption: | The deed in Schedule E or any document with similar intent that is approved by the Board. |
| “Defaulting Council Member” | Any Council Member who neglects or wilfully refuses to: (a) comply with this Constitution; or (b) pay any fee or levy required by the Board or the Commission within three months of a demand for the amount owing and being paid, or who fails to comply with any binding decision, award or recommendation made by the Electricity and Gas Complaints Commissioner in accordance with the Terms of Reference. |
| “Distribution System” | “Distribution system” as that term is defined in section 2 of the Gas Act 1992. |
| “Electricity and Gas Complaints Commissioner” | The Electricity and Gas Complaints Commissioner appointed by the Commission. |
| “Electricity Company” | A Person that is an Electricity Retailer and/or an Electricity Lines Company. |

| Term | Meaning |
|--|--|
| "Electricity Consumer Code of Practice" | The Electricity Consumer Code of Practice set out in Schedule C as amended or substituted from time to time by the Council. |
| "Electricity Consumer Dispute Resolution Protocol" | The Electricity Consumer Dispute Resolution Protocol set out in Schedule D as amended or substituted from time to time by the Council. |
| "Electricity Lines Company" | An electricity distributor as defined in the Electricity Act 1992, and in relation to Land Complaints, includes Transpower New Zealand Limited. |
| "Electricity Registry" | The Electricity Registry is the national database established by the Electricity Commission containing information on every point of connection on a network from which electricity is supplied to a site. It includes any registry or recording system that may replace this arrangement and that is recognised by Electricity Companies for electricity reconciliation purposes. |
| "Electricity Retailer" | An electricity retailer as defined in the Electricity Act 1992. |
| "Electricity Works" | <p>(a) Any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but</p> <p>(b) Does not include:</p> <ul style="list-style-type: none">(i) any fittings that are used, or designed or intended for use, by any person, in or in connection with the generation of electricity for that person's use and not for supply to any other person; or(ii) any part of any electrical installation <p>and for the purposes of this definition, any terms defined in the Electricity Act 1992 have the same meaning in this definition.</p> |
| "Financial Year" | The period from Commencement Date to 31 March 2002 and for every subsequent period commencing on 1 April and ending on 31 March of the following year. |

| Term | Meaning |
|--|--|
| "Gas" | Natural gas, which meets the New Zealand Specification for Reticulated Natural Gas NZS5442:1990 (as amended or replaced from time to time), that is supplied to a Consumer through a Distribution System but excludes, to avoid doubt: (a) LPG; and (b) CNG for transportation purposes. |
| "Gas Company" | A Person that is a Gas Retailer and/or a Gas Lines Company. |
| "Gas Consumer Code of Practice" | The Gas Consumer Code of Practice set out in Schedule CA as amended or substituted from time to time by the Council. |
| "Gas Consumer Dispute Resolution Protocol" | The Gas Consumer Dispute Resolution Protocol set out in Schedule DA as amended or substituted from time to time by the Council. |
| "Gas Lines Company" | A gas distributor as defined in the Gas Act 1992. |
| "Gas Pipeline" | Any equipment that is used in, or in connection with, the conveyance of Gas. |
| "Gas Registry" | The databases of gas ICPs maintained by Gas Lines Companies relating to their energised Consumer ICPs and those energised Consumer ICPs of Gas Retailers to which a Gas Lines Company provides Line Function Services, which as a whole provide a complete register of gas ICPs. It includes any registry or recording system that may replace this arrangement and that is recognised by Gas Companies for Gas reconciliation purposes. |
| "Gas Retailer" | A gas retailer as defined in the Gas Act 1992. |
| "Gas Transmission Pipelines" | Pipelines used in the conveyance of Gas that are operated at a gauge pressure exceeding 2,000 kilopascals. |
| "General Enquiry" | An enquiry made to the Electricity and Gas Complaints Commissioner regarding the Scheme about how a Person, Consumer, Land Owner or Land Occupier can resolve a Complaint but does not include a Consumer or Land Complaint. |

| Term | Meaning |
|------------------------------------|---|
| "Installation Control Point (ICP)" | <p>In the case of electricity, the point at which a Consumer's property is supplied with electricity and at which the supply of electricity may flow between the Lines Company's network and that Consumer's property only, subject to any amendment to the term "point of supply" under the Electricity Act 1992. Each ICP has a unique identifier.</p> <p>In the case of Gas, the point on a Gas Lines Company's Distribution System at which Gas may flow between the Distribution System and the Consumer's premises, which the Gas Lines Company nominates as the point at which a Gas Retailer is deemed to supply Gas to a Consumer. Each ICP has a unique identifier.</p> |
| "Interposed Consumer Contract" | <p>A contract between a Consumer and a Retailer that includes the provision of Line Function Services to the Consumer.</p> |
| "Joint Class" | <p>In the case of Lines Companies, all Electricity Lines Companies together with all Gas Lines Companies.</p> <p>In the case of Retailers, all Electricity Retailers together with all Gas Retailers.</p> |
| "Land" | <p>Includes any estate or interest in land.</p> |
| "Land Agreement" | <p>Any agreement, including any easement or licence, under which a Lines Company is granted rights by a Land Owner or Land Occupier to access or use any Land, other than a Consumer Contract.</p> |
| "Land Code of Practice" | <p>The Land Code of Practice set out in Schedule CB as amended or substituted from time to time by the Council.</p> |
| "Land Occupier" | <p>In relation to Land, either:</p> <ul style="list-style-type: none">(a) an inhabitant occupier of the Land; or(b) any person who has a right to occupy the land by virtue of a lease, sub-lease, or licence granted by the Land Owner or another Land Occupier entitled to so grant. |
| "Land Owner" | <p>In relation to the Land that is held under:</p> <ul style="list-style-type: none">(a) the Land Transfer Act 1952, for the person(s) that own(s) the Land in fee simple;(b) the Land Act 1948, the Crown; and |

| Term | Meaning |
|---|--|
| | (c) any other statute, the legal and beneficial owner of the Land (as appropriate) as specified in that statute. |
| “Land Complaint” | <p>A Complaint that a Lines Company has unlawfully affected a Land Owner's or Land Occupier's rights, in respect of the Land Owner's or Land Occupier's Land, in the course of the Lines Company's exercise, purported exercise, or failure to exercise rights, powers or obligations under:</p> <ul style="list-style-type: none">(a) the Gas Act 1992 and the Gas Regulations 1993; or(b) the Electricity Act 1992, the Electricity Regulations 1997 and the Electricity (Hazards from Trees) Regulations 2003; or(c) a Land Agreement; <p>but does not include a complaint in respect of any of the matters listed in Clause 1.3.</p> |
| “Land Complaints Dispute Resolution Protocol” | The Land Complaints Dispute Resolution Protocol set out in Schedule DB as amended or substituted from time to time by the Council. |
| “Lines Company” | An Electricity Lines Company or a Gas Lines Company. |
| “Lines Complaint” | Any Consumer Complaint about Line Function Services and, in relation to Conveyance Only Consumer Contracts, includes Consumer Complaints about billing. |
| “Lines Equipment” | Electricity Works or Gas Pipelines, as the case may be. |
| “Line Function Services” | <p>In the case of electricity, has the meaning set out in section 2 of the Electricity Act 1992 and as further provided for in a Consumer Contract and includes metering services where an Electricity Lines Company provides these services.</p> <p>In the case of Gas, has the meaning set out in section 2 of the Gas Act 1992 (but excludes Gas transmission, as that term is defined in the Gas Act 1992, unless the Gas transmission is provided to a Consumer as Line Function Services under an Interposed Consumer Contract) and as further provided for in a Consumer Contract and includes metering services where a Gas Lines Company provides these services.</p> |
| “Month” | A calendar month. |

| Term | Meaning |
|---------------------------------|--|
| "Person(s)" | A partnership, body corporate, trust, unincorporated association, authority, or natural person and includes a group of persons. |
| "Proportionate Basis" | The formula for determining the amount of funding each Council Member must contribute and the way funding must be distributed as set out in Clause 4.1A or Clause 4.1B. |
| "Protocols" | The Electricity Consumer Dispute Resolution Protocol, the Gas Consumer Dispute Resolution Protocol, and the Land Complaints Dispute Resolution Protocol. |
| "Register" | The public register provided for in the Rules which records the membership of the Council, and the names of Commission Members and the Electricity and Gas Complaints Commissioner. |
| "Retail Complaint" | Any Complaint about retail services. |
| "Retailer" | An Electricity Retailer or a Gas Retailer. |
| "Rule(s)" | The Rules of the Commission, as set out in Schedule A and as amended or substituted from time to time. |
| "Schedule(s)" | A Schedule to this Constitution. |
| "Scheme" | The Electricity and Gas Complaints Commissioner Scheme established under this Constitution (insofar as it relates to the Rules, Terms of Reference and Codes of Practice) to provide a mechanism for resolving Complaints. |
| "Secretary" | The Secretary appointed under the Rules. |
| "Services" | Retail services and Line Function Services provided by a Retailer or Lines Company. References to the provision of Services include, where the context requires, references to their non-provision. |
| "Supply Only Consumer Contract" | A contract between a Consumer and a Retailer that does not include the provision of Line Function Services to the Consumer. |
| "Terms of Reference" | The Terms of Reference governing the powers and duties of the Electricity and Gas Complaints Commissioner, which are set out in Schedule B or as amended or substituted from time to time by the Council. |

| Term | Meaning |
|---------------------------|---|
| “Use of System Agreement” | An agreement between a Lines Company and a Retailer relating to the supply of Line Function Services to the Retailer. |
| “Working Day” | Every Monday to Friday, but does not include a public holiday. |
| “Writing” or “Written” | Any mode of representing or reproducing words or figures in a visible form, including words or figures displayed on an electronic screen. |

References to statutes, etc

- 1.2 A reference to a statute, regulation or other statutory instrument includes consolidations, amendments, re-enactments or replacements of the provision(s) referred to.

Exclusions from the definition of Land Complaint

- 1.3 The following matters are not included in the definition of Land Complaint under Clause 1.1:
- (a) any dispute as to whether Lines Equipment was lawfully fixed or lawfully installed in terms of section 22 of the Electricity Act 1992 in respect of Electricity Works and section 23 of the Gas Act 1992 in respect of Gas Pipelines;
 - (b) any dispute as to whether, in respect of Lines Equipment that was constructed or for which construction commenced before 1 October 2006 but to which neither section 22 of the Electricity Act 1992 nor section 23 of the Gas Act 1992 (as the case may be) apply, a Lines Company holds the legal right for that Lines Equipment to be fixed in, over, under or across Land;
 - (c) any dispute as to whether or not Lines Equipment constructed or for which construction commenced before 1 October 2006 is owned by a Lines Company;
 - (d) any dispute involving a local authority or other body or person having jurisdiction over a road or level crossing that relates to or arises from the construction or maintenance of Lines Equipment in, on, along, over or across roads and level crossings under sections 24-33 of the Electricity Act 1992 and sections 25-35 of the Gas Act 1992;
 - (e) any dispute relating to or arising from the negotiation for, or other process of, obtaining any interest in Land in relation to Lines Equipment, including under the Resource Management Act 1991 or the Public Works Act 1981;
 - (f) any dispute relating to or arising from a refusal to grant a dispensation under regulation 20 of the Electricity (Hazards from Trees) Regulations 2003 or the terms of a dispensation granted under regulation 20;
 - (g) any dispute as to whether the maintenance programme carried out by a Lines Company on Lines Equipment is adequate or reasonable;

- (h) any dispute as to whether or not a replacement or upgrade of an Electricity Work causes Land to be injuriously affected in terms of section 23(3)(b) of the Electricity Act 1992;
- (i) any dispute as to whether any changes to Lines Equipment carried out in the exercise of powers under the Electricity Act 1992 or the Gas Act 1992 have injuriously affected Land in terms of section 57(1) of the Electricity Act 1992 or section 51(1) of the Gas Act 1992, including disputes about the amount of compensation that may be payable in relation to such injurious affection. For the avoidance of doubt, this Clause does not exclude disputes about whether or not a Lines Company has complied with any obligation it may have to mitigate or repair damage to Land or property in or under any of the Acts or regulations referred to in the definition of "Land Complaint" in Clause 1.1, a Land Agreement, or Clause CB6 or Appendix A or B of the Land Code of Practice; and
- (j) any dispute relating to the quality of electricity or Gas supplied by a Lines Company to a Consumer, or any interruption in the supply of electricity or Gas or the provision of Line Function Services.

1.4 For the avoidance of doubt:

- (a) only a Land Complaint may be made under the Scheme in relation to the Services provided by Transpower New Zealand Limited;
- (b) only a Land Complaint may be made under the Scheme in relation to the Services provided by any Gas Lines Company Council Member that relate to the conveyance of Gas by means of Gas Transmission Pipelines;
- (c) a Land Complaint cannot be made under the Scheme in relation to a Retailer Council Member;
- (d) Transpower New Zealand and any Gas Lines Company Council Member, to the extent that the Council Member conveys Gas by means of Gas Transmission Pipelines, are not subject to the provisions of this Deed or the Scheme relating to Consumer Complaints, but are otherwise subject to the provisions of this Deed and the Scheme in full; and
- (e) Retailer Council Members are not subject to the provisions of this Deed or the Scheme relating to Land Complaints except as provided in the Land Complaints Dispute Resolution Protocol, but are otherwise subject to the provisions of this Deed and the Scheme in full.

2 FUNCTIONS AND POWERS

Establishment of a Council and Commission

2.1 There is hereby established:

- (a) a Council to be known as the Electricity and Gas Complaints Council; and
- (b) a Commission to be known as the Electricity and Gas Complaints Commission.

2.2 The Council has the function of providing industry support for the Scheme.

Powers

2.3 The Council has all the powers of a natural person when implementing and administering the Constitution including (without limitation) the power to do all or any of the following things:

- (a) **Invest:** To invest the income and capital of the Council in any property in New Zealand and to vary those investments;
- (b) **Purchase:** To purchase goods and services or acquire any property in New Zealand from any Person;
- (c) **Sell:** To sell any property to any Person in such manner and on such terms as the Board thinks fit;
- (d) **Lease:** To lease any property in New Zealand to any Person on such terms as the Board thinks fit and to accept renewals or surrenders of leases;
- (e) **Take on lease:** To lease, licence or take on bailment of any property in New Zealand from any Person on such terms as the Board thinks fit, and to renew or surrender such leases, licences and bailments and generally to deal with these as the Board thinks fit;
- (f) **Lend:** To lend or advance moneys to or leave moneys with any Person either with or without security and at such rate of interest or without any interest and generally upon such terms as the Board thinks fit;
- (g) **Borrow:** To borrow moneys with or without security from any Person;
- (h) **Levy:** To levy, charge, collect and receive levies and fees from Council Members and expend the funds on administering the functions of the Council;
- (i) **Employ:** To employ and pay fees, salary, wages or other remuneration;
- (j) **Guarantee:** To guarantee the actions of the Commission, the Electricity and Gas Complaints Commissioner, the Secretary or any employee of the Commission where necessary to enable those Persons to implement the Rules or Terms of Reference; and
- (k) **General:** To do all things and make such arrangements and enter into such agreements as are incidental or conducive to the functions of the Council and which in the opinion of the Council can advantageously be carried out, performed, done or executed for the benefit of the Council or for the furtherance of its functions.

Powers of the Council to be exercised by the Board

2.4 The powers of the Council may be exercised by the Board, in accordance with the provisions in Clause 5 of this Constitution, as trustees for all Council Members.

Inconsistencies with other agreements

2.5 If there is any inconsistency between a Council Member's obligations under this Constitution and the Council Member's rights or obligations under any other agreement or arrangement between Council Members or under a Consumer Contract or under a Land Agreement, the Council Member's obligations under this Constitution prevail.

- 2.6 Clause 2.5 is subject to Clause 9.1 (enforcement), Clauses D4.1 to D4.3, Clauses DA4.1 to DA4.3, and Clause DB2.3.

3 MEMBERSHIP OF THE COUNCIL

Council Members

3.1 Council Members of the Council are:

- (a) Electricity Retailers and Electricity Lines Companies that agree to be bound by this Constitution by signing this Deed; and
- (b) Retailers and Lines Companies that agree to be bound by this Constitution by signing a Deed of Adoption.

3.1A To avoid doubt, any Council Member that is bound by this Constitution prior to 1 April 2005 is deemed to be either an Electricity Retailer or an Electricity Lines Company depending on within which definition that Council Member falls.

Classification of Council Members

3.2 Council Members are classified as Electricity Retailers, Electricity Lines Companies, Gas Retailers, or Gas Lines Companies. Unless otherwise specified, the obligations, rights and responsibilities arising under this Constitution apply equally to Electricity Retailer, Electricity Lines Company, Gas Retailer, and Gas Lines Company Council Members.

3.3 The Council chairperson is a nominal Council Member. Obligations of Council Members only apply to the Council chairperson where expressly stated.

[3.4 **DELETED**]

[3.5 **DELETED**]

[3.6 **DELETED**]

Council Members joining after the initial adoption of this Constitution

3.7 Any Retailer or Lines Company may apply to the Board to become a Council Member in its Class or Classes if the Retailer or Lines Company:

- (a) undertakes, by signing a Deed of Adoption, that it agrees to be bound by this Constitution and will participate fully in the functions of the Council;
- (b) supplies the Board with information requested (if any) at the time the application is made;
- (c) pays the entry fee determined necessary by the Board under Clause 4.9 or Clause 4.10 for new Electricity Company Council Members, Clause 4.10B or Clause 4.10C for new Gas Company Council Members, or Clause 4.10G or Clause 4.101 for new Lines Company Council Members; and
- (d) pays the annual levy on a Proportionate Basis for that part of the Financial Year remaining if considered necessary by the Board.

- 3.8 In relation to Clause 3.7(b), the Board must only request information that is relevant to determining any amount payable under Clause 3.7(c) or (d).
- 3.8A Despite Clause 3.1, an Electricity Retailer or Electricity Lines Company that is a Council Member prior to 22 November 2004 and who wishes to be a Gas Retailer and/or Gas Lines Company Council Member may, by notice in writing to the Board, become a Council Member in that other Class(es) if the Council Member pays the fee and levy referred to in Clause 3.7(c) and (d) if determined or considered necessary by the Board (as the case may be). The calculation of:
- (a) the entry fee is subject to Clauses 4.10B and 4.10D; and
 - (b) the annual levy is subject to Clause 4.7A.

Acceptance of applications

- 3.9 The Board must accept any application of a Retailer or Lines Company to be a Council Member unless the applicant:
- (a) qualifies the undertaking required under Clause 3.7;
 - [(b) **DELETED**]
 - [(c) **DELETED**]
 - (d) does not qualify for the membership Class(es) to which the application relates because it is not an Electricity Retailer, Electricity Lines Company, Gas Retailer, or Gas Lines Company (as the case may be). This Clause 3.9(d) does not apply to the extent that the applicant will qualify for that Class as at the date of acceptance of the application.

[3.10 **DELETED**]

- 3.11 The Board must inform the Retailer or Lines Company whose application is declined of its reasons for declining the application.
- 3.12 Once the Board accepts an application, the Retailer or Lines Company is deemed to be a Council Member from the date of acceptance.

Voluntary withdrawal from the Council

- 3.13 Council Members may withdraw from being a Council Member on any date after 12 months written notice has been given to the Board. Membership ceases on expiry of such notice.
- 3.14 The Board may agree, on terms and conditions it considers appropriate, to reduce the required notice period, for example, to coincide with the end of a Financial Year.
- 3.15 Cessation of Membership:
- (a) does not entitle the Council Member to repayment of the whole or any part of any fee or levy paid to the Council or Commission by that Council Member;
 - (b) is without prejudice to the Council Member's liability for any debts, levies or other fiscal obligations arising from membership up to the date of expiry of the notice; and

- (c) is without prejudice to the Council Member's obligations in respect of any Complaint already referred to the Electricity and Gas Complaints Commissioner and which remains unresolved or outstanding on the date on which the notice expires.

Cessation of membership due to default

- 3.16 If any Council Member becomes a Defaulting Council Member, the Board may pass a resolution, which must be unanimous (and if the Defaulting Council Member is on the Board, the unanimous resolution of all other Board Members) recommending the expulsion of the Defaulting Council Member from the Council.
- 3.17 The Board must, within 21 working days of passing a unanimous resolution recommending the expulsion of a Defaulting Council Member, convene a general meeting to consider the Board's recommendation to expel the Defaulting Council Member. Any resolution to adopt the Board's recommendation to expel the Defaulting Council Member must be put to a vote at the general meeting. If the resolution is passed, the expulsion takes effect from the date on which the vote is taken. This date is known as the date of cessation of membership. The Board must give public notice of the cessation of membership of any Council Member.
- 3.18 Any Defaulting Council Member expelled:
 - (a) forfeits all rights of membership as at the date of cessation of membership and has no further right against, or claim upon, the Council or the Commission or the property or funds of the Council or the Commission;
 - (b) is liable for any debts, levies or other fiscal obligations arising from membership up to the date of cessation of membership;
 - (c) in the case of any levy that is levied annually by the Board or the Commission, regardless of any arrangements to pay by instalments, is liable for the amount of the levy not yet paid;
 - (d) is without prejudice to the Defaulting Council Member's obligations in respect of any Complaint already referred to the Electricity and Gas Complaints Commissioner and unresolved or outstanding at the date of cessation of membership; and
 - (e) in the case of a Defaulting Council Member that belongs to more than one Class of membership, is expelled in relation to all of its Classes of Council membership.

Compliance

- 3.19 The Board may take such measures as it thinks fit to encourage a Council Member to comply with this Constitution. Measures may include (but are not limited to):
 - (a) publication of the name of any Council Member or any action which does not comply with this Constitution; or
 - (b) discounting levies of Council Members that comply with the Constitution.
- 3.20 The Board must explain, at the request of any Council Member affected by the measure or by any Council Member if raised at a general meeting of the Council, why a compliance measure has been taken.

Subsidiaries and related companies

3.21 If a Council Member's subsidiary within the meaning in the definition in section 5 of the Companies Act 1993 or any company related to the Council Member in the manner described in section 2(3)(a), (d) or (e) of the Companies Act 1993 fails to comply with this Constitution, the Council Member is responsible for remedying that failure and ensuring compliance.

Remuneration

3.22 Council Members and their representatives may not be paid any remuneration from Council funds for ordinary services to the Council or Board. Any proposal to pay Council Members or their representatives for services to the Council or Board must be put to a vote of Council Members at a general meeting.

3.23 The Council chairperson (excluding, for the avoidance of doubt, the interim Council chairperson) may be remunerated on any basis the Board considers appropriate for services provided to the Board or the Council generally in his or her position as Council chairperson.

3.24 A Board Member may be remunerated for costs arising from attending Board meetings and other identifiable and reasonable costs arising from serving on the Board but such remuneration does not include remuneration for a Council Member's representative's time.

3.25 Clause 3.24 applies to consumer representative members of the Scheme Amendment Committee as if they were Board Members.

4 FUNDING FOR THE COUNCIL

Proportionate Basis for funding

[4.1 DELETED]

4.1A Where any Clause in this Constitution (except Clause A3.4) requires amounts to be raised or distributed on a Proportionate Basis between Council Members, and subject to Clause 4.1 B(a), the allocation (whether there is an amount of money to be raised or an amount of money to be distributed) is as follows:

(a) Retailer Joint Class:

- (i) 60%, or such other percentage determined by the Board, of the total amount to be raised is from Retailer Joint Class Council Members; and
- (ii) of that amount, each Retailer Council Member's proportion is determined by the percentage of its market share of the retail sector based on all energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Council Members; and
- (iii) the total number of energised Consumer ICPs mapped to all Retailer Council Members is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Retailer Council Members; plus

- (2) the total number of energised Consumer ICPs mapped to all Gas Retailer Council Members.
- (b) Lines Company Joint Class:
- (i) 40%, or such other percentage determined by the Board, of the total amount to be raised is from Lines Company Joint Class Council Members, including Transpower New Zealand Limited; and
 - (ii) of that amount, \$65,000 is to be raised from Transpower New Zealand Limited;
 - (iii) of the remaining amount referred to in subparagraph (b)(i) and less the amount raised under subparagraph (b)(ii), each Lines Company Council Member's (excluding Transpower New Zealand Limited) proportion is to be determined by the percentage of its market share based on the number of energised Consumer ICPs on its network or Distribution System, compared with the total number of energised Consumer ICPs mapped to all Lines Company Council Members other than Transpower New Zealand Limited; and
 - (iv) the total number of energised Consumer ICPs mapped to all Lines Company Council Members other than Transpower New Zealand Limited is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Lines Company Council Members other than Transpower New Zealand Limited; plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Company Council Members.

4.1B For the purpose of raising the fixed levy for funding the Commission in accordance with Clause A3.4, the Proportionate Basis allocation is as follows:

- (a) 63%, or such other percentage determined by the Board, of the total amount is raised in accordance with the allocation method in Clause 4.1A, except that the minimum amount payable by a Council Member in any year shall be \$1,000;
- (bA) 37%, or such other percentage determined by the Board, of the total amount is raised as follows:
 - (i) for the period from 1 January 2009 to 31 March 2009, less the amount raised under paragraph (c) below, is raised from all Council Members other than Transpower New Zealand Limited. Each of those Council Member's proportion is determined by the percentage share of all Complaints reaching the stages set out in Clause 4.1D, excluding Complaints concerning Transpower New Zealand Limited, in the 3 month period from 1 October 2008 to 31 December 2008; or
 - (ii) from 1 April 2009, for Complaints concerning all Council Members other than Transpower New Zealand Limited, by means of Complaints levies, facilitation levies, investigation levies, and ruling levies raised in accordance with Clause 4.1D; and
- (c) for Complaints concerning Transpower New Zealand Limited received on or after 1 October 2006, a portion of that percentage is raised from Transpower New Zealand Limited by means of the Transpower charges, as set out in Clause 4.1C. For the avoidance of doubt, Transpower New

Zealand Limited must also pay levies under paragraph (a) above, but does not pay any levies under paragraph (bA) above.

4.1C Transpower charges:

- (a) The Transpower charges are payable by Transpower New Zealand Limited on the basis of an hourly rate or rates set in accordance with paragraph (b) below for the amount of time spent by the Electricity and Gas Complaints Commissioner and his or her staff in dealing with Complaints concerning Transpower New Zealand Limited; and
- (b) For the period from 1 October 2006 to 31 March 2007, the hourly rate or rates under paragraph (a) above shall be set in advance by the Board, in consultation with the Commission, on the basis that Complaints relating to Transpower New Zealand Limited will involve approximately \$75,000 worth of the Electricity and Gas Complaints Commissioner's and his or her staff's time, and thereafter the hourly rate or rates will be set in advance annually by the Commission in consultation with the Board. The Commission will notify Transpower New Zealand Limited of the hourly rate or rates under paragraph (a) above as soon as reasonably practicable after they are set.

4.1D The levies specified in Clause 4.1B(bA)(ii) are to be raised as follows:

- (a) Complaint stage levies:
 - (i) A Complaint stage levy is payable by a Council Member for each Complaint that the Electricity and Gas Complaints Commissioner receives about that Council Member; and
 - (ii) The amount of the Complaint stage levy shall be determined in accordance with Clause 4.1F.
- (b) Facilitation stage levies:
 - (i) A facilitation stage levy is payable by a Council Member for each Complaint in respect of which the Electricity and Gas Complaints Commissioner is satisfied of those matters set out in Clause B1.9 and receives a waiver of the relevant Council Member's duty of confidentiality referred to in Clause B1.10(e) (for the purposes of this Clause 4.1 D, a "privacy waiver") from a Complainant (or any Consumer he or she represents); and
 - (ii) The amount of the facilitation stage levy shall be determined in accordance with Clause 4.1 F.
- (c) Investigation stage levies:
 - (i) An investigation stage levy is payable by a Council Member if:
 - (1) the Complaint is not resolved (including situations where there is no final agreement on a settlement) within 20 Working Days of the Electricity and Gas Complaints Commissioner receiving a privacy waiver from a Complainant;
 - (2) the Complaint is not resolved (including situations where there is no final agreement on a settlement) after eight hours of work by the Electricity and Gas Complaints Commissioner or his or her staff in attempting to mediate or facilitate a settlement; or

- (3) the Complainant and the Council Member to whom the Complaint relates agree that the Electricity and Gas Complaints Commissioner should begin to investigate the Complaint without attempting to mediate or facilitate a settlement first; and
- (ii) The amount of the investigation stage levy shall be determined in accordance with Clause 4.1 F.
- (d) Rulings stage levies:
 - (i) A rulings stage levy is payable by a Council Member in respect of each Complaint for which the Electricity and Gas Complaints Commissioner issues a notice of intention to make a recommendation in accordance with Clause B3.2; and
 - (ii) The amount of the rulings stage levy shall be determined in accordance with Clause 4.1F.

[4.1E DELETED]

4.1F Subject to Clause 4.1 H, the amounts of the levies payable under Clause 4.1 D shall be determined, and invoiced, each year by the Commission in consultation with the Board as follows:

- (a) before the beginning of each Financial Year, the Commission will estimate the number of Complaints that are likely to be made and to reach each stage set out in Clause 4.1 D in that Financial Year, and calculate how much of the amount to be raised under Clause 4.1 B(b)(iii) is to be raised by means of the levies charged for each stage;
- (b) the Commission will divide the amount to be raised for the Financial Year by means of the levies charged for each stage, as calculated under Clause 4.1 F(a), by four to determine the amount of levies to be raised in each quarter under Clause 4.1 B(b)(iii); and
- (c) the Commission will invoice Council Members at the start of each quarter in a Financial Year for the amounts calculated under Clause 4.1 F(b), on the basis of each Council Member's proportionate share of Complaints reaching each stage set out in Clause 4.1D in the previous quarter.

4.1G At the end of each Financial Year, the Commission, in consultation with the Board will:

- (a) divide the total amount raised by means of the levies charged for Complaints reaching each stage set out in Clause 4.1D by the total number of Complaints reaching that stage in the Financial Year (for the purposes of this Clause 4.1G, this amount is the "average levy" for each stage);
- (b) divide the total amount paid by each Council Member by means of the levies charged for Complaints reaching each stage set out in Clause 4.1D by the total number of Complaints concerning that Council Member reaching that stage in the Financial Year (for the purposes of this Clause 4.1G, this amount is the "levy paid" by a Council Member at each stage);
- (c) if a Council Member's levy paid for Complaints reaching each stage is lower than the average levy for that stage, add an additional amount to the next invoice to the Council Member so that the total amount paid for Complaints reaching that stage by that Council Member in that Financial Year is the same as if the Council Member had paid the average levy for each Complaint reaching that stage in that Financial Year; and

- (d) if a Council Member's levy paid for Complaints reaching each stage is higher than the average levy for that stage, credit an amount to the next invoice to the Council Member so that the total amount paid for Complaints reaching that stage by that Council Member in that Financial Year is the same as if the Council Member had paid the average levy for each Complaint reaching that stage in that Financial Year.

4.1H Despite Clause 4.1F, the amount payable by each Council Member for the period between 1 April 2007 and 30 June 2007 shall be determined by apportioning the amount to be raised for that period between all Council Members other than Transpower New Zealand Limited on the basis of each Council Member's percentage share of all "deadlocked" Complaints, excluding Complaints concerning Transpower New Zealand Limited, in the 12 month period from 1 April 2006 to 31 March 2007.

4.2 For the purpose of Clauses 4.1A and 4.1B:

- (a) Electricity Company Council Members agree that numbers of energised Consumer ICPs are to be taken from the MARIA Registry on 1 March of each year and accordingly authorise the Board or any person authorised by the Board to access the MARIA Registry for this purpose. Those numbers of energised Consumer ICPs apply until the following 1 March; and
- (b) Gas Company Council Members agree that numbers of energised Consumer ICPs are to be taken from the Gas Registry on 1 March of each year and accordingly authorise the Board or any person authorised by the Board to request the relevant information from those Persons maintaining the Gas Registry.

4.2A If a Council Member is a Council Member for more than one Class of membership, that Council Member's proportion of the total allocation between all Council Members is the sum total of each amount allocated to it in the Classes to which that Council Member belongs.

[4.2B DELETED]

4.3 The Board must supply the Commission with details of each Council Member's market share.

Costs of expert witnesses

4.3A In addition to any levies payable under any other provision of this Deed or Schedule A, if the Electricity and Gas Complaints Commissioner requires expert witnesses to assist with his or her investigation or resolution of a Complaint, the costs of any such expert witnesses shall be charged by the Electricity and Gas Complaints Commissioner to the Council Member(s) that is or are the subject of the Complaint.

[4.3B DELETED]

Working capital

4.4 The working capital requirements of the Council for the next Financial Year must be determined by the Board and put to a vote of the Council Members at the annual general meeting. The Board must state how the working capital is to be raised (for example, from existing funds or an annual levy).

Annual levies

- 4.5 Each Council Member agrees to pay an annual levy. The annual levy and the manner of payment is:
- (a) determined annually by the Board and based on the amount of working capital required as set out in a budget for the relevant Financial Year;
 - (b) raised from Council Members on a Proportionate Basis; and
 - (c) advised to Council Members, along with each Council Member's specific contribution to the levy, no later than three months after the budget for the relevant Financial Year is finalised.
- 4.6 The Board may agree to a Council Member(s) paying the annual levy by instalments. Any such agreement does not affect the Council Member's liability to the Council for the full amount of any annual levy.
- 4.7 In relation to a Person applying to become a new Council Member, the Board must estimate the amount of the annual levy required to cover the period from the date of acceptance until the next 31 March and discuss that estimate with that new Council Member. The Board and the new Council Member must endeavour to agree on the amount of the levy. If agreement is not reached, the new Council Member may withdraw its application. The Board has the discretion to waive all or part of the annual levy payable by a new Council Member. To avoid doubt, any Person who joins the Scheme as a Gas Retailer or Gas Lines Company prior to 1 April 2005 is not required to pay an annual levy for the Financial Year ending 31 March 2005.
- 4.7A Where a Council Member is joining the Scheme in respect of a particular Class and that Council Member is already a Council Member in another Class, the Board's estimate of the Council Member's annual levy must be based on the Board's determination of the Council Member's market share in the Class to which the current application relates only.
- 4.8 Any annual levy amount collected by the Board from a new Council Member is to be distributed at the end of the Financial Year to Council Members existing at the time such new Council Member joined on a Proportionate Basis as a refund on annual levies paid or off-set against annual levies payable by those existing Council Members in the next Financial Year.

Entry fee for Electricity Company Council Members

- 4.9 All Electricity Company Council Members on joining must pay an entry fee to the Board. Subject to Clause 4.10D, the fee payable by each Electricity Company Council Member is based on the Board's determination of the Electricity Company Council Member's electricity market share as at the date the Electricity Company Council Member joins the Scheme, using the Proportionate Basis as a guide. For the purpose of Clause 4.9, each joining Electricity Company Council Member authorises the Board or any person authorised by the Board to access the MARIA Registry to determine the joining Electricity Company Council Member's electricity market share as set out in Clause 4.1. The entry fee must be used for the purposes of repaying the establishment loan.
- 4.10 After the establishment loan is repaid, the Board may charge an entry fee to new Electricity Company Council Members (as it sees fit) and distribute the fee paid on a Proportionate Basis to all existing

Electricity Company Council Members at the end of the Financial Year or off-set that amount against levies payable by existing Electricity Company Council Members in the next Financial Year.

Entry fee for Gas Company Council Members

- 4.10A Gas Company Council Members acknowledge that the Gas Industry Steering Group (GISG) has paid the Electricity and Gas Complaints Commissioner's administrative costs of incorporating Gas into the Scheme. These costs are known as the incorporation grant.
- 4.10B All Gas Company Council Members must pay an entry fee to the Board within 20 Working Days of receipt of an invoice from the Board for this purpose. Subject to Clause 4.10D, the fee payable by each Gas Company Council Member is based on the Board's determination of the Gas Company Council Member's Gas market share as at 1 April 2005 or such later date that the Gas Company Council Member joins the Scheme, using the Proportionate Basis as a guide. For the purpose of clause 4.10B, each joining Gas Company Council Member authorises the Board or any person authorised by the Board to request the relevant information from those Persons maintaining the Gas Registry to determine the joining Gas Company Council Member's Gas market share as set out in Clause 4.1. The entry fee must be used for the purposes of repaying the incorporation grant.
- 4.10C After the incorporation grant is repaid, the Board may charge an entry fee to new Gas Company Council Members (as it sees fit) and distribute the fee paid on a Proportionate Basis to all existing Gas Company Council Members at the end of the Financial Year or off-set that amount against levies payable by existing Gas Company Council Members in the next Financial Year.
- 4.10D Where a Council Member is joining the Scheme in respect of a particular Class and that Council Member is already a Council Member in another Class, the Council Member's entry fee is based on the Board's determination of the Council Member's market share in the Class to which the current application relates only.

Fee for administrative costs related to expansion of the Scheme to cover Land Complaints

- 4.10E Lines Company Council Members acknowledge that Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company have paid:
- (a) the Electricity and Gas Complaints Commissioner's administrative costs of incorporating Land Complaints into the Scheme; and
 - (b) legal costs, the Council chairperson's costs, and other development costs involved in incorporating Land Complaints into the Scheme.

Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company shall provide information to the Board identifying these costs. These costs are known as the "Land Complaints Incorporation Grant". The amounts of the Land Complaints Incorporation Grant paid by Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company are known as the "Transpower Grant", "ENA Grant" and "GIC Grant" respectively.

- 4.10F Lines Company Council Members acknowledge that the Land Complaints Incorporation Grant is to be shared between Lines Company Council Members in the following proportions:
- (a) Transpower New Zealand Limited: one third (the "Transpower Share"); and

(b) all other Lines Company Council Members: two thirds (the "Lines Company Share")

4.10G After determining the amount of the Land Complaints Incorporation Grant, the Board will issue invoices to each Lines Company Council Member other than Transpower New Zealand Limited for each Lines Company Council Member's share of the Lines Company Share in the same proportion as each Lines Company Council Member's proportionate share of the levies most recently determined in accordance with Clause 4.1A(b)(ii) (the "Land Complaints Incorporation Fees"). Each Lines Company Council Member must pay its Land Complaints Incorporation Fee to the Board within 20 Working Days of receipt of the invoice from the Board.

4.10H The Land Complaints Incorporation Fees will be used for the purpose of repaying the Land Complaints Incorporation Grant to Transpower New Zealand Limited, the Electricity Networks Association and the Gas Industry Company in proportion to the costs referred to in Clause 4.10E that were met by those persons, and for adjusting the Transpower Share. For the avoidance of doubt, the amounts to be repaid are as follows:

- (a) to Transpower New Zealand Limited; the Transpower Grant less the Transpower Share;
- (b) to the Electricity Networks Association; the ENA Grant; and
- (c) to the Gas Industry Company, the GIC Grant.

4.10I After the Land Complaints Incorporation Grant is repaid, the Board may charge a Land Complaints Incorporation Fee to new Lines Company Council Members (as it sees fit) and either:

- (a) distribute the fee paid to existing Lines Company Council Members in proportion to the number of votes that the Lines Company Council Member would be entitled to exercise under Clause 7.5(b) at a general meeting in comparison to the votes exercisable by all Lines Company Council Members if a general meeting were to be held on the date the distribution is made; or
- (b) off-set that amount against levies by existing Lines Company Council Members in the next Financial Year.

Increase to working capital during a Financial Year

4.11 The Board may obtain an increase to the amount of working capital from Council Members where necessary for a specific purpose. However, if the increase exceeds 2% of the amount agreed at the annual general meeting, the Board must obtain written approval for the increase in funding from the majority of Council Members of each Class or put the matter to a vote at a general meeting. The Board must, before seeking agreement from Council Members, inform Council Members of:

- (a) the purpose for which funds are to be raised; and
- (b) the amount to be raised.

[4.12 DELETED]

Administration of levies

4.13 The entry fee and levies must:

- (a) be plus GST payable (if any); and
- (b) be due and payable within 30 days of the Board notifying a Council Member of the amount to be paid (unless otherwise agreed).

4.14 For the avoidance of doubt, the Board's determination of levies and fees payable for a Financial Year is final.

5 THE BOARD

Role of the Board generally

5.1 The Board is to provide the executive management of the Council, including:

- (a) fulfilling its responsibilities under this Constitution;
- (b) managing general meetings, the funds of the Council, and the election of Council Members to the Board;
- (c) facilitating the resolution of Council Members' disputes with each other arising under the Deed and the Protocols (which are not within the jurisdiction of the Electricity and Gas Complaints Commissioner); and
- (d) carrying out all legal actions necessary to carry out and implement this Constitution.

Powers of the Board

5.2 Subject to the terms of this Constitution, the Board has all the powers necessary to provide effective executive management of the Council.

5.3 The Board may determine the most appropriate manner in which the following will be signed, drawn, accepted, endorsed or otherwise executed on behalf of Council Members:

- (a) all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by the Council;
- (b) all receipts for money paid to the Council;
- (c) guarantees given to third parties for the actions of the Commission; and
- (d) the Deed of Adoption.

5.4 The Board may amend the Electricity and Gas Complaints Commissioner's title if the Board considers it to be in the interests of the Scheme after consultation with the Commission and the Electricity and Gas Complaints Commissioner.

Duties of the Board

5.5 The Board is required, in a manner consistent with the Rules and Terms of Reference:

- (a) to appoint representatives of Council Members, being representatives of one Retailer Council Member and one Lines Company Council Member (who may or may not also be Council Members on the Board), as Commission Members;

[(b) DELETED]

[(c) DELETED]

[(d) DELETED]

(e) to engage in consultation with the Commission over the Commission's proposed budget;

[(f) DELETED]

(g) to propose to the Commission amendments to the Constitution at any time.

5.6 In carrying out its requirements in relation to Clause 5.5(e), the Board must not take into consideration the business decisions of the Electricity and Gas Complaints Commissioner or the Commission in determining how funds should be allocated within any particular budget or any decisions made in relation to any Complaints referred to the Electricity and Gas Complaints Commissioner. However, the Board may request information about the budget and expenditures, both past and projected, to assist the Board in its discussions with the Commission.

5.6A In carrying out the functions and duties, and performing the powers, of the Board (including acting on the Scheme Amendment Committee under Clause 6), the Council chairperson and each Council Member on the Board must have regard to the interests of all Council Members.

Board may facilitate resolution of disputes between Council Members arising under the Protocols

5.7 The Board may, at the cost of the Council Members concerned, facilitate or arrange for a mediator or expert to facilitate the resolution of disputes between Council Members over the application of the relevant Protocol and the allocation of responsibilities and obligations between them under that Protocol providing that nothing in this Clause may be construed as limiting the independent and exclusive jurisdiction of the Electricity and Gas Complaints Commissioner under the Terms of Reference in respect of a matter arising under that Protocol.

Minutes of Board meetings

5.8 The Board must keep minutes of:

(a) the names of the Council Members on the Board present at general meetings of the Council and Council Members on the Board present at Board meetings; and

(b) all resolutions and proceedings at general meetings of the Council and meetings of the Board.

Upon confirmation by the Council chairperson of any minutes made, he or she must sign the minutes. The minutes must be made available to Council Members on request.

Composition of the Board

5.9 A Board consisting of the representatives of six Council Members and the Council chairperson must manage the Council in accordance with this Constitution.

[5.10 DELETED]

[5.11 DELETED]

[5.12 DELETED]

Election of Boards

5.13 The Board must comprise:

- (a) the representatives of three Electricity Retailer Council Members, nominated and elected by the Electricity Retailer and Gas Retailer Council Members;
- (b) the representatives of three Electricity Lines Company Council Members, nominated and elected by the Electricity Lines Company and Gas Lines Company Council Members; and
- (c) the Council chairperson.

5.14 Board Council Members may be elected at any general meeting of the Council.

5.15 A chief executive officer of a Board Member may nominate a representative from time to time and appoint a person to attend in the place of the representative at Board meetings in the event that the representative is unavailable.

Term of office for Members on the Board

5.16 Subject to Clause 5.17, the longest-serving Council Member on the Board in each Joint Class must retire at each annual general meeting, unless another Council Member in the relevant Joint Class has since the previous annual general meeting:

- (a) given notice of resignation from the Board under Clause 5.24(a)(i); or
- (b) ceased to be a Member on the Board.

5.17 If two or more Council Members in a Joint Class were elected to the Board at the same time, the Council Member that must retire shall be decided by agreement between those Council Members or, failing agreement, by lot drawn by the Council chairperson.

5.17A Subject to Clause 5.17B, a Council Member retiring from the Board at an annual general meeting is immediately eligible for re-election at that annual general meeting.

5.17B A Council Member retiring from the Board under Clauses 5.16 and 5.17 is not eligible for re-election at the annual general meeting at which the Council Member retires if a Council Member that is not already serving on the Board has been nominated to serve on the Board in the same Joint Class as the retiring Council Member. In any such case, the retiring Council Member's nomination shall be deemed to have been withdrawn.

5.17C The Council Members who are to retire from the Board under Clauses 5.16 and 5.17 shall be determined by the Council chairperson in sufficient time before the annual general meeting to allow the Board to call for nominations of Council Members in each Joint Class. After nominations are received, the Council chairperson shall determine whether a Council Member retiring from the Board under Clauses 5.16 and 5.17 and who has been nominated for re-election is eligible under Clauses 5.17A and 5.17B to stand for re-election at the annual general meeting at which the Council Member retires. The Council chairperson shall determine this matter in sufficient time to allow the Board to give notice of the nominations of Council Members to serve on the Board.

The Council chairperson

- 5.18 The Board must appoint a Council chairperson who is independent from the electricity and Gas industry. The Council chairperson may be appointed for any period up to three years that the Board considers appropriate. In setting the term for the Council chairperson, the Board must ensure as far as possible that the expiry of the term will not coincide with the election of Board Members.
- 5.19 The Council chairperson's role is to:
- (a) attend, chair and facilitate all meetings of the Board and general meetings of the Council to ensure efficient consideration of the business of the meeting;
 - (b) monitor and record votes at meetings; and
 - (c) attempt to mediate with Council Members any issue which becomes deadlocked.
- 5.20 The Council chairperson can vote at Board meetings but cannot vote at general meetings of the Council or form part of the quorum for any meeting.
- 5.21 If, for any reason, the Council chairperson is not present at a meeting within 30 minutes and there is a quorum, Council Members present may elect, by a "show of hands" of those present, one of their number to chair that meeting or may adjourn the meeting.
- 5.22 The Board may revoke the Council chairperson's appointment by unanimous decision (excluding the vote of the Council chairperson) if there is a compelling reason to do so.
- 5.23 The Council chairperson may resign at any time by giving one Month's notice to the Board. The Board may continue to act, after appointing one of the Council Members on the Board as chair until a new person is appointed Council chairperson. Such appointment must be made as soon as is reasonably practicable after such resignation.

Vacancy of office

- 5.24 A Council Member must cease to be on the Board if:
- (a) the Council Member's representative:
 - (i) resigns on behalf of the Council Member he or she represents by giving one Month's notice in writing to the Board; or
 - (ii) is not present or the Council Member is not represented at meetings of the Board for more than three consecutive meetings without the permission of the Board; or
 - (b) the Council Member ceases to be a Council Member.

Board meetings

- 5.25 The Board must meet as and when necessary for the purposes of the Board. The Council chairperson must, on receipt of a request from four or more Board Members, call a meeting of the Board.

- 5.26 There must be at least four Board Members present (excluding the Council chairperson) to form a quorum for a meeting. If, due to vacancies on the Board, the number of Board Members falls below four, the Board may only act to call a general meeting of the Council to elect new Board Members.
- 5.27 Any form of communication where the Board Members can hear each other simultaneously is sufficient for the Board Members to consider that each is present and attending the meeting.

Voting at Board meetings

- 5.28 Subject to Clause 5.29, each Board Member, including the Council chairperson, has one vote on matters put to a vote at Board meetings. Unless otherwise specified in this Constitution, Board Members must decide matters by a majority vote. If, for any reason, a Board Member is acting as the chair of a meeting, that Board Member may only exercise one vote. An even number of votes for and against a matter means that the status quo prevails.

Resolutions in Writing

- 5.29 A resolution in Writing authorised and signed by all Board Members is valid and effectual as if it were a decision made at a meeting of the Board. Any such resolution may consist of several identical documents each signed by one or more Board Members.

Decisions and recommendations affecting Transpower

- 5.30 The Board must consult with Transpower before making any decision or recommendation that may materially affect Transpower's interests as a Council Member, unless:
- (a) a representative of Transpower is a Board Member at the relevant time; or
 - (b) in the Board's reasonable opinion the decision or recommendation does not affect Transpower's interests as a Council Member to any greater extent than it affects the interests of all other Electricity Lines Companies as Council Members.

6 — AMENDMENTS TO THE SCHEME

Scheme Amendment Committee

~~6.1 Where the Commission reports to the Board the findings of an independent review of the Scheme and proposed amendments in accordance with Clause A6.1 or amendments proposed to the Scheme in accordance with Clause A6.2, the Council chairperson must establish within 10 Working Days of receiving the proposed amendments to the Scheme a Scheme Amendment Committee to determine whether to adopt the proposed amendments or amendments in respect of the subject matter.~~

~~6.2 The Scheme Amendment Committee must comprise:~~

- ~~(a) The six Board Members;~~
- ~~(b) The six consumer representatives nominated by the Consumers' Institute Inc. as representing affected consumer interests and notified to the Board no later than 3 Working Days of the Board receiving the proposed amendments; and~~
- ~~(c) The Council chairperson, who will be the chairperson of the Scheme Amendment Committee.~~

- ~~6.2A~~—In nominating consumer representatives under Clause 6.2(b), the Consumers' Institute Inc. will consider the extent to which any of the representatives are able to represent affected Land Owner and Land Occupier interests.
- ~~6.3~~—If a consumer representative is indisposed or otherwise prevented from carrying out his or her duties, the Consumers' Institute Inc. must appoint a person as representing the affected consumer representative's interest in an acting capacity for as long as the Consumers' Institute Inc. considers necessary and notify the Board. The acting consumer representative may exercise all the powers that the consumer representative would have been able to exercise if he or she was not indisposed or otherwise prevented from carrying out his or her duties.
- ~~6.4~~—There must be at least 5 consumer representative members on the Scheme Amendment Committee to form a quorum for a meeting.

Approval of amendments

- ~~6.5~~—An amendment to the Scheme is approved:
- ~~(a)~~—by vote of the Scheme Amendment Committee in accordance with Clause 6.9 or Clause 6.10 unless the amendment has been referred to the Council under Clause 6.11; or
 - ~~(b)~~—where the amendment has been referred to the Council under Clause 6.11 after 5 of the 6 consumer representatives on the Scheme Amendment Committee have approved the amendment and the Council has approved the amendment in accordance with Clause 6.12.
- ~~6.6~~—Where an amendment to the Scheme is approved in one of the two ways specified in Clause 6.5, the Scheme must be so amended.

Scheme Amendment Committee approval

- ~~6.7~~—The chairperson of the Scheme Amendment Committee must convene the Scheme Amendment Committee and manage its business so as to ensure that amendments proposed by the Commission and any amendments in a form approved under Clause 6.10 are put to the vote of the Scheme Amendment Committee within the maximum period for approval set out in Clauses 6.9 and 6.10.
- ~~6.8~~—The Scheme Amendment Committee must first consider and if possible determine whether it will approve one or more of the amendments proposed by the Commission.
- ~~6.9~~—All Scheme Amendment Committee members, excluding, for the avoidance of doubt, the chairperson of the Scheme Amendment Committee, have one vote on an amendment put to a vote at a Scheme Amendment Committee meeting. An amendment put to the vote must be approved by a resolution of at least 10 out of the 12 Scheme Amendment Committee members within 40 Working Days of the Board receiving the amendment.
- ~~6.10~~—If the Scheme Amendment Committee members do not approve an amendment proposed by the Commission, under Clause 6.9 it may approve another form of amendment so long as the other form of amendment relates directly to the subject matter of the original amendment and is approved by a resolution of at least 10 out of 12 Scheme Amendment Committee members within 40 Working Days of the Board receiving the amendment proposed by the Commission.

Referral to Council

6.11 — If, within 20 Working Days of the Board receiving an amendment proposed by the Commission and a particular amendment has not been approved by the Scheme Amendment Committee under Clause 6.9, or Clause 6.10, 3 Board Members (excluding, for the avoidance of doubt, the chairperson of the Scheme Amendment Committee) may:

- (a) — in the case of a particular amendment proposed by the Commission where that amendment has been approved by a separate vote of at least five out of six consumer representative members of the Scheme Amendment Committee, require the chairperson of the Scheme Amendment Committee to refer that amendment to the Council for consideration under Clause 6.12; or
- (b) — in the case of a particular amendment which relates directly to the subject matter of the amendment proposed by the Commission and has been approved by a separate vote of at least five out of six consumer representative members of the Scheme Amendment Committee, refer that amendment to the Council for consideration under clause 6.12.

Council approval

6.12 — Unless either Clauses 6.13A and 6.13B or Clause 6.13C apply, any amendment to the Scheme referred to the Council by the Scheme Amendment Committee in accordance with Clause 6.11 must be approved within 40 Working Days of the Board receiving the proposed amendments by:

- (a) — a resolution at a general meeting of more than 50% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not); or
- (b) — more than 50% of each Joint Class of Council Member agreeing in writing to the proposed amendment.

6.13 — The chairperson of the Scheme Amendment Committee's reference to the Council must give Council Members notice of the precise details of the proposed amendment to the Scheme and the date of the general meeting or, as the case may be, the date on which written agreement is sought from the Council Members. The chairperson of the Scheme Amendment Committee must allow a notice period of no less than 10 working days before the date of a general meeting or the date on which written agreement is sought from Council Members of the Council.

6.13A — Any amendment to:

- (a) — the Electricity Consumer Code of Practice that does not apply to the Gas Consumer Code of Practice may only be voted on by Electricity Company Council Members; and
- (b) — the Gas Consumer Code of Practice that does not apply to the Electricity Consumer Code of Practice may only be voted on by Gas Company Council Members,

— provided that when voting on such amendment, Electricity Company Council Members or Gas Company Council Members (as the case may be) must be mindful of the desirability of consistency between the Codes of Practice, but only in circumstances where it is appropriate.

6.13B — If Clause 6.13A applies, Clauses 16.12 and 16.13, and Clauses 7.5 to 7.7 must be read, with all necessary modifications, as if the other Class of Council Member in the Joint Class did not exist.

~~6.13C Any amendments to the Land Code of Practice may only be voted on by Lines Company Council Members, provided that:~~

- ~~(a) when voting on such amendments, Lines Company Council Members must be mindful of the desirability for consistency between the Codes of Practice, but only in circumstances where it is appropriate;~~
- ~~(b) amendments to Clause CB6.2, Appendix A, and those parts of Clauses CB6.1 and CB6.3 that apply to Transpower New Zealand Limited must be approved by Transpower New Zealand Limited;~~
- ~~(c) amendments to Appendix B and those parts of Clauses CB6.1 and CB6.3 that apply to Gas Lines Companies that operate Gas Transmission Pipelines must be approved by all Gas Lines Companies that operate Gas Transmission Pipelines; and~~
- ~~(d) amendments to Clauses CB6.4 to CB6.14 must be approved by a majority of Lines Companies other than Transpower and Gas Lines Companies that operate only Gas Transmission Pipelines.~~

~~— If this Clause 6.13C applies, Clauses 6.12 and 6.13, and Clauses 7.5 to 7.7 must be read, with all necessary modifications, as if the Retailer Joint Class of Council Member did not exist.~~

~~Approved amendments~~

~~6.14 The Board must advise Council Members and the Commission of any amendment to the Scheme and provide a copy of the Constitution incorporating the approved amendment at least 20 Working Days before the amendment takes effect.~~

7 GENERAL MEETINGS

Requirements for general meetings

7.1 Unless specifically stated, all requirements for general meetings apply to annual general meetings.

Requirement to arrange general meetings

7.2 The Board must arrange and hold an annual general meeting of the Council each Financial Year except for the Financial Year to 31 March 2002.

7.3 Other general meetings of the Council may be held at any time, either at the request of the Board or two or more Council Members.

Quorum for general meetings

7.4 A quorum for a general meeting of the Council is four Council Members present (by proxy, attorney or representative), being two Retailer Council Members and two Lines Company Council Members, that represent a majority of the votes of both Retailers and Lines Companies. If, for any reason, a quorum is not present within 30 minutes of the time appointed for the general meeting, the meeting is adjourned until another time that the Council chairperson determines (which must not be more than 30 days after the original scheduled date).

Number of votes allocated to each Council Member

7.5 The number of votes that each Council Member may exercise is determined as follows:

- (a) Retailer Joint Class:
 - (i) Retailers exercise 50% of the voting rights.
 - (ii) Each Retailer Council Member has one vote for each 0.01% of its market share of all energised Consumer ICPs mapped to each Retailer, compared with the total number of energised Consumer ICPs mapped to all Retailer Council Members.
 - (iii) The total number of energised Consumer ICPs mapped to all Retailer Council Members is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Retailer ICPs;
plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Retailer ICPs.
 - (b) Lines Company Joint Class:
 - (i) Lines Companies other than Transpower New Zealand Limited exercise 40% of the voting rights.
 - (ii) Each Lines Company other than Transpower New Zealand Limited has one vote for each 0.01% of its market share of energised Consumer ICPs on its network or Distribution System, comparative to the total number of energised Consumer ICPs mapped to all Lines Company Council Members, and the calculation of each Lines Company Council Member's market share shall take into account Transpower New Zealand Limited's deemed market share calculated under Clause 7.5(b)(iv)(2).
 - (iii) The total number of energised Consumer ICPs mapped to all Lines Company Council Members is:
 - (1) the total number of energised Consumer ICPs mapped to all Electricity Lines Company Council Members; plus
 - (2) the total number of energised Consumer ICPs mapped to all Gas Lines Company Council Members.
 - (iv) Transpower New Zealand Limited:
 - (1) exercises 10% of the voting rights, or such other percentage determined by the Board; and
 - (2) for the purposes of calculating each Lines Company Council Member's (other than Transpower New Zealand Limited's) market share under Clause 7.5(b)(ii), is deemed to have a market share of 20%, or such other percentage determined by the Board,
- the determination of such percentages taking into account the total value of Transpower New Zealand Limited's system fixed assets as compared to the total value of other Lines Company Council Members' system fixed assets. The values of Lines Company Council

Members' system fixed assets for the purposes of this Clause shall be those which were most recently disclosed under the Electricity Information Disclosure Requirements 2004 (made by the Commerce Commission under the Commerce Act 1986).

- (v) For each Gas Transmission Lines Company that operates Gas Transmission Pipelines, the energised Consumer ICPs on those pipelines for the purposes of Clause 7.5(b)(ii) shall be determined by the Board from time to time, based on the Board's estimate of the value of those pipelines, taking into account the number of energised Consumer ICPs on the networks of other Gas Lines Company Council Members.

- 7.6 A Council Member must not be entitled to exercise more than 49% of the votes in its Joint Class. Any votes that a Council Member would otherwise be entitled to exercise above the 49% threshold must be distributed to the other Council Members in its Joint Class on the basis of the remaining respective market shares and the 49% threshold cap.
- 7.7 Council Members agree that the number of energised Consumer ICPs must, for the purposes of this Clause be taken from the Electricity Registry and Gas Registry two weeks before the annual general meeting of the Council each year and accordingly, authorise the Board or any person authorised by the Board to access the Electricity Registry and to request the relevant information from those Persons maintaining the Gas Registry for this purpose. Those numbers of energised Consumer ICPs apply until the following Financial Year.

Voting in general meetings

- 7.8 Except for matters arising under Clause 6, issues put to the vote at any general meeting of the Council, unless provisions of this Constitution require otherwise, are passed when there is a 75% vote in favour by each Joint Class of Council Member taken among the number of votes also to be cast by those Council Members present at the meeting.
- 7.9 A Council Member is deemed to be "present" for the purposes of a general meeting and voting if the Council Member's chief executive officer, a representative of the Council Member's chief executive officer or the Council Member's proxy is attending the meeting and any form of communication where the Council Members can hear each other simultaneously is sufficient for the Council Members to consider that each is present and attending the meeting.

Alterations to the Deed or Protocol

7.10A Any person can propose to the Commission that the Constitution be amended provided the proposed amendment is consistent with the objectives and outcomes of the Government Policy Statements for Electricity Governance and Gas Governance. If the Commission determines that the proposed amendments –

- (a) may allow the scheme to develop in response to changes in the environment;
- (b) may improve the performance of the scheme in meeting its purpose in a timely manner; or
- (c) reasonable

the Commission must consult with all relevant stakeholders, including the Council Members, gas Industry Co and the Electricity Commission on the proposed amendment.

7.10B Any proposal for amendments to or substitution for the Constitution can be approved by:

- (a) a resolution at the next meeting of the Commission by a vote in favour of at least four Commission members.
- (b) all Commission members agreeing in writing to the proposed amendment or substitution.

7.10C If the amendments or substitutions are approved under Clause 7.10B, the Commission must notify:

- (a) the Electricity Commission;
- (b) The Gas Industry Co.;
- (c) The Board; and
- (d) Council Members

of the approved amendments or substitutions to the Constitution and provide a copy of the Constitution incorporating the approved amendments or substitution, at least 30 working days before the approved amendment or substitution takes effect.

7.10D If the Electricity Commission and Gas Industry Co consider that the approved amendments would have a material impact on the nature of the Scheme or a substantial impact upon the Council Members' obligations they may notify the Commission within 20 working days (from the date of notice provided under Clause 7.10C);

7.10E If the Commission receives a notice from the Electricity Commission and the Gas Industry Co under Clause 7.10D,

- (a) the Commission must notify Council Members within 2 working days; and
- (b) the approved amendments will not take effect unless the Electricity Commission and Gas Industry Co notify the Commission in writing that they agree to the approved amendments.

7.10F If the Commission receives notice in writing from the Electricity Commission and the Gas Industry Co approving those amendments under Clause 7.10E, the Commission must:

- (a) determine, by resolution, the date those amendments come into force; and
- (b) notify Council Members of the approved amendments and provide a copy of the Constitution incorporating the approved amendments at least 20 working days before the amendments take effect.

~~7.10 Unless Clauses 7.11A and 7.11B apply, any proposals for amendments to or substitution for this Deed or Protocol or any part of them must be approved by:~~

- ~~(a) a resolution at a general meeting of 75% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not); or~~
- ~~(b) all Council Members agreeing in Writing to the proposed amendment or substitution.~~

~~7.11—The Board must give Council Members notice of the precise details of the proposal for amendment or substitution, including details of any consultation on the proposal, and at least 14 Working Days to consider the proposal.~~

~~7.11A Any proposals for amendments to or substitution of:~~

~~(a) — the Electricity Consumer Dispute Resolution Protocol that do not apply to the Gas Consumer Dispute Resolution Protocol may only be voted on by Electricity Company Council Members; and~~

~~(b) — the Gas Consumer Dispute Resolution Protocol that do not apply to the Electricity Consumer Dispute Resolution Protocol may only be voted on by Gas Company Council Members,~~

~~— provided that when voting on such amendments or substitutions, Electricity Company Council Members and Gas Company Council Members (as the case may be) must be mindful of the desirability of consistency between the Protocols, but only in circumstances where it is appropriate.~~

~~7.11B If Clause 7.11A applies, Clauses 7.5 to 7.7, 0 and 7.11 must be read, with all necessary modifications, as if the other Class of Council Member in the Joint Class did not exist.~~

~~7.11C Any proposals for amendments to or substitution of:~~

~~(a) — Clauses DB1.1 to DB1.3, DB1.5 and DB1.8 of the Land Complaints Dispute Resolution Protocol may be voted on by all Council Members; and~~

~~(b) — The rest of the Land Complaints Dispute Resolution Protocol may only be voted on by Lines Company Council Members, provided that, when voting on such amendments or substitutions, Lines Company Council Members must be mindful of the desirability of consistency between the Protocols, but only in circumstances where it is appropriate.~~

~~[7.11D NOT USED]~~

Approved amendments

~~7.11E The Commission must advise Council Members and the Board of any amendments to the Scheme and provide a copy of the Constitution incorporating the approved amendments at least 20 Working Days before the amendment takes effect.~~

~~7.12—Notwithstanding Clauses 0 and 7.11, the Board must not give Council Members notice of an amendment under Clause 7.11 and no amendment may be approved under Clause 0 in respect of Clause 6 of the Deed unless:~~

~~(a) — the Council chairperson has convened a meeting of the Scheme Amendment Committee for the specific purpose of considering the proposal; and~~

~~(b) — the proposed amendment has been approved by a resolution of at least 10 out of 12 Scheme Amendment Committee members.~~

~~7.13—The provisions of Clauses 6.1, 6.2, 6.3, 6.4 and 6.7 apply to a proposal under Clause 7.12 as if it were a proposal by the Commission for amendment to the Scheme.~~

Winding-up of Council and functions

7.14 Council Members may wind up the Council and its functions and rescind this Constitution or any part of it by a resolution at a general meeting of 75% of the total number of votes able to be cast for each Joint Class of Council Member (whether all Council Members are present or not) provided:

- (a) Council Members give the Electricity Commission and Gas Industry Co 12 months notice in writing of their intention to wind up the Council and its functions; and
- (b) Upon giving notice under paragraph (a), Council Members cooperate with the Electricity Commission and Gas Industry Co in relation to the transition to a new set of arrangements for complaints resolution.

Defaulting Council Member's voting rights suspended

7.15 A Defaulting Council Member's right to vote is suspended until any outstanding amounts have been paid or the issue on which that Council Member is in default is otherwise resolved, as the case may be.

Proxies

7.16 The chief executive officer of any Council Member may appoint another Council Member to act as the Council Member's proxy, in such event the proxy's representative may act as the Council Member's proxy. A proxy must vote as directed. If a proxy receives no directions, the proxy may vote as it thinks fit. The instrument appointing a proxy may be in any common or usual form acceptable to the Board.

7.17 Unless the Council chairperson receives an indication in Writing before the commencement of the general meeting at which the instrument is to be used, a vote given in accordance with the terms of an instrument of proxy or attorney or representative is valid notwithstanding:

- (a) revocation of the instrument; or
- (b) revocation of the authority under which the instrument was executed.

8 INDEMNITY

8.1 The Council Members jointly indemnify:

- (a) the Commission Members, the Electricity and Gas Complaints Commissioner, any staff employed by the Commission, persons engaged in contract by the Commission and the Council chairperson;
- (b) Board Members while acting in their capacity as Board Members; and
- (c) consumer representative members on the Scheme Amendment Committee while acting in their capacity as Scheme Amendment Committee Members,

for any liabilities incurred as a result of an act or omission performed in good faith in complying with and administering this Constitution except that this indemnity will not extend to protect any of those parties from any damage or loss arising out of deliberate neglect or default on their part.

8.2 For the purposes of the Contracts (Privity) Act 1982, the indemnity given in this Clause 8 is for the benefit of the Commission, the Electricity and Gas Complaints Commissioner, any staff employed by the Commission, persons engaged in contract by the Commission, the Council chairperson, Board Members

while acting in their capacity as Board Members, and consumer representative members of the Scheme Amendment Committee while acting in their capacity as Scheme Amendment Committee members, and is enforceable by any of them.

9 ENFORCEMENT

9.1 Subject to Clause 8.2, this Deed is enforceable by a Council Member, the Council, the Board or the Council chairperson only and is not intended to create rights enforceable by any other Person under the Contracts (Privity) Act 1982.

10 GENERAL

Contributions on winding-up

10.1 Council Members are jointly liable for outstanding liabilities, and for the costs, charges and expenses of the winding up, of the Council and the Commission and must continue to be jointly liable for the costs, charges and expenses of a winding up 12 Months after the Council and the Commission are wound up. Council Members must contribute on a Proportionate Basis to winding up the Scheme in the event of the Scheme being wound up while they are Council Members or within 12 Months of ceasing to be a Council Member.

Distribution of assets on winding-up

10.2 If on the winding up of the Council and its functions there is property or other assets remaining after the satisfaction of all the Council's and the Commission's debts and liabilities, that property and those assets must be distributed on a Proportionate Basis to Council Members and former Council Members (excluding Defaulting Council Members to the extent that they are in default) whose membership ceased within the 12 months prior to the date of winding up.

Governing law

10.3 This Constitution is governed by New Zealand law.

Counterparties

10.4 This Agreement may be signed in counterparts which together shall constitute one agreement binding on Council Members, notwithstanding that all Council Members are not signatories to the original or same counterpart.

11 COMMENCEMENT

[11.1 DELETED]

11.2 This Constitution comes into effect on 7 August 2001.