

Trust Horizon (Trust Variation) Bill

Private Bill

Explanatory note

General policy statement

Trust Horizon (the **Trust**) is a charitable trust that was established as part of the reforms to the energy sector carried out by the Energy Companies Act 1992.

The Trust's objects are limited to energy related purposes within Whakatāne, Kawerau, Ōpōtiki, and Kaingaroa (the **district**). However, there is a natural limit to the number of energy related purposes that can be supported within the district. As a result, the annual total amount of grants approved by the Trust has remained largely static over the last 30 years, even during periods of population growth. This has resulted in the Trust accumulating equity that it is unable to distribute. The Trust now has more than \$200 million in assets.

At the same time, the district served by the Trust contains some of the most deprived areas of New Zealand, and there are many worthy charitable causes within the district that deserve assistance.

The trustees consider that it is desirable to amend the terms of trust to broaden the Trust's objects to include any charitable purposes within the district. Removing the restriction on energy related purposes will allow the Trust to make a greater contribution to its district.

The trustees also consider that it would be desirable to amend the terms of trust to allow for future amendments, with the approval of the High Court, without having to seek a further private Act. This strikes an appropriate balance between allowing the terms of trust to be amended over time and providing safeguards on the power to amend those terms. It also reflects the conventional approach in modern trust deeds to provide a mechanism to allow the Trust's terms to be updated.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill is to come into force on the day after Royal assent.

Clause 3 sets out the purpose of the Bill. The purpose is to amend the terms of trust by broadening the Trust's objects from energy related purposes to charitable purposes and allowing the terms of trust to be amended, providing that the approval of the High Court is obtained.

Clause 4 contains definitions of terms used in the Bill.

Clause 5 provides that, on and from the commencement date, the terms of trust are varied by making the amendments set out in that clause and the *Schedule*, which are—

- removing recitals B and D, which currently limit the Trust's purpose to energy related purposes; and
- amending the definitions and interpretation clause of the terms of trust by deleting the definition of Energy Related Purposes and inserting a new definition of Charitable Purposes; and
- replacing the term Energy Related Purposes with Charitable Purposes throughout the deed; and
- giving the trustees a new power to amend the terms of trust provided that first, the trustees consider the amendment is in the best interests of the Trust and furthers the Charitable Purposes and second, the amendment is subject to the approval of the High Court being obtained by the trustees on an application made under section 133 of the Trusts Act 2019; and
- retaining the trustees' existing power to vary the rules contained in Schedule 1 of the terms of trust, save that the prior approval of the settlor will no longer be required.

Clause 5 achieves this largely by substituting specific clauses in the trust deed with those set out in the *Schedule* of this Bill. The new clauses in the *Schedule* replicate the existing provisions in the trust deed, with the exception of the targeted amendments described above. *Clause 5* also requires the trustees of the Trust to provide the amended terms of trust to the chief executive of the department responsible for administering the Charities Act 2005, in accordance with section 40(1)(e) and (f) of that Act.

Dana Kirkpatrick

Trust Horizon (Trust Variation) Bill

Private Bill

Contents

	Page
Preamble	
1 Title	3
2 Commencement	3
3 Purpose	3
4 Interpretation	3
5 Terms of trust varied	4
Schedule	5
Replacement terms	

Preamble

- (1) Trust Horizon (the **Trust**) is a registered charity, registration number CC38748:
- (2) The Trust was established as part of the reforms to the energy sector carried out by the Energy Companies Act 1992:
- (3) Under the Energy Companies Act 1992, an establishment plan was approved for each electric power board. Those plans provided for the transfer of the undertaking of each electric power board to an energy company: 5
- (4) The Trust was established pursuant to the establishment plan for the Bay of Plenty Electric Power Board:
- (5) The Trust was established by deed of trust dated 1 August 1994, which has subsequently been amended from time to time: 10
- (6) The Trust was initially known as the Bay of Plenty Electricity Consumer Trust but renamed as the Eastern Bay Energy Trust in 2000 and then renamed as Trust Horizon in 2020:

- (7) The Trust’s objects are limited to energy related purposes within its district (Whakatāne, Kawerau, Ōpōtiki, and Kaingaroa). Energy related purposes are defined in clause 1.1 of the trust deed as follows:
- “**Energy Related Purposes**’ means Purposes which relate to some aspect of the beneficial use, application or enjoyment in the District of New Zealand’s energy resources including: 5
- (a) Improvements to the safety of the general public by removing road and overhead hazards caused by above ground electricity supply support systems in the District;
 - (b) Improvements to the supply of electricity to the general public in rural or remote areas in the District by replacing inadequate or unreliable supply systems. 10
 - (c) Avoiding, remedying or mitigating any adverse effects of energy related activities in the District on the Environment;
 - (d) Promoting research into more efficient ways of producing and distributing electrical energy for the benefit of the general public in the District including the awarding of research scholarships or prizes and the funding of research and development projects; 15
 - (e) The provision of financial assistance to persons in the District to enable them to make better use of energy resources available to them or to subsidise the cost to such persons of existing supplies of energy; 20
 - (f) Acquiring equity in the Company up to the maximum of 25% of the Issued Capital of the Company:”
- (8) There is a natural limit to the number of energy related purposes that can be supported within the district. As a result, the annual total amount of grants approved by the Trust has remained largely static over the last 30 years, even during periods of population growth. This has resulted in the Trust accumulating equity that it is unable to distribute. The Trust now has more than \$200 million in assets: 25
- (9) At the same time, the district served by the Trust contains some of the most deprived areas of New Zealand and there are many worthy charitable causes within the district that deserve assistance: 30
- (10) The trustees consider that it is desirable to amend the terms of trust to—
- (a) broaden the Trust’s objects to include any charitable purposes that directly or indirectly benefit the district. Removing the restriction on energy related purposes will allow the Trust to make a greater contribution to its district; and 35
 - (b) include within the terms of trust a power to make further variations to the trust deed with the approval of the High Court. At present, the terms of trust provide only a limited power to vary the rules governing the appointment, retirement, and proceedings of the trustees set out in 40

Schedule I of the trust deed. The trustees intend to use the new power in the future to apply to the High Court to make a range of technical variations to the deed, including to remove or clarify inconsistent or spent clauses, clarify the role of consumers, and update the trustees' duties to align with the Trusts Act 2019. This power will also allow for any further variations that may be required in the future without having to seek a further private Act and without requiring Parliament to consider the details of the more technical variations that the trustees consider are desirable:

- (11) The objects of this Act cannot be achieved without legislation. The Charitable Trusts Act 1957 provides a statutory regime that allows the High Court to approve a variation to a charitable trust deed. However, the courts have ruled that variations made under that Act must keep as closely as possible to the original terms of the trust (*Twigger, Re* [1989] 3 NZLR 329 (NZHC); *McElroy Trust, Re* [2003] 2 NZLR 289 (NZCA)). Therefore, the High Court cannot broaden the purposes of a charitable trust on the basis that broader purposes will allow the trust to make a better contribution to the community it serves. An amendment of that nature, as sought by the trustees, can only be made by an Act of Parliament:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Trust Horizon (Trust Variation) Act **2025**.

2 Commencement

This Act comes into force on the day after Royal assent.

3 Purpose

The purpose of this Act is to amend the terms of trust by—

- (a) broadening the Trust's objects from energy related purposes to charitable purposes; and
- (b) allowing the terms of trust to be varied, providing that the approval of the High Court is obtained.

4 Interpretation

In this Act, unless the context otherwise requires,—

commencement date means the date on which this Act comes into force

terms of trust means the trust deed for the Trust as at 1 April 2021, as uploaded to the register of charitable entities (within the meaning of the Charities Act 2005) on 21 June 2021

Trust means the charitable trust—

- (a) originally known as the Bay of Plenty Electricity Consumer Trust; and

- (b) established by deed of trust dated 1 August 1994, and subsequently amended from time to time; and
- (c) now known as Trust Horizon; and
- (d) registered as a charity with the registration number CC38748.

5 Terms of trust varied

5

- (1) On and from the commencement date, the terms of trust are varied so that the trust deed must be read as if—
 - (a) the recitals in the trust deed are replaced with the recitals set out in **Part 1 of the Schedule**; and
 - (b) clause 1.1 (definitions and interpretation) of the trust deed is amended 10
 - (i) deleting the definition of **Energy Related Purposes**; and
 - (ii) inserting the definition of **Charitable Purposes** set out in **Part 2 of the Schedule**; and
 - (c) clause 4 of the trust deed (purpose of the Trust) is replaced with the item 15
 - set out in **Part 3 of the Schedule**; and
 - (d) clause 5 of the trust deed (application of income and capital) is replaced with the item set out in **Part 4 of the Schedule**; and
 - (e) clause 11 of the trust deed (variation of the Trust) is replaced with the 20
 - item set out in **Part 5 of the Schedule**; and
 - (f) clause 13 of the trust deed (winding up) is replaced with the item set out in **Part 6 of the Schedule**.
- (2) The trustees of the Trust must, in accordance with section 40(1)(e) and (f) of the Charities Act 2005, send and deliver to the chief executive (within the meaning of that Act) notice of the changes made to vary the terms of trust 25
 - under **section 5(1)** and the **Schedule** of this Act.

Schedule Replacement terms

s 5

Part 1 Replacement recitals

5

- A. Pursuant to the Act the Minister of Energy has approved the establishment plan prepared and submitted in respect of the Company, and which provides for the allocation of shares in the Company to the Trustees upon the terms set out in this Deed.
- B. It is contemplated that further donations and grants may be made to the Trust.

10

Part 2 New definition of Charitable Purposes

‘**Charitable Purposes**’ means any object or purpose that is charitable in accordance with the laws of New Zealand (including, but not limited to, the relief of poverty, the advancement of religion or any other matter beneficial to the community) either in the District or elsewhere in New Zealand, provided that such application benefits (directly or indirectly) members of the community within the District.

15

Part 3 Replacement clause 4

4. **PURPOSE OF THE TRUST**
The Company has established the Trust to enable the Trustees to apply the Trust Fund for or towards Charitable Purposes.

20

Part 4 Replacement clause 5

5. **APPLICATION OF INCOME AND CAPITAL**
- 5.1 The Trustees shall stand possessed of the capital and income of the Trust Fund UPON TRUST to apply the same at such time or times as they may in their absolute discretion think fit for Charitable Purposes and without limitation to the generality of this Clause it is hereby declared that the trustees may;
- (a) Pay from and out of the income or capital of the Trust Fund all fees, costs and disbursements of and incidental to the administration of the Trust Fund.

25

30

- (b) In arriving at the net income of the Trust Fund or deciding what income is available for distribution to or among the Charitable Purposes to deduct or set aside or make such other provision as the Trustees may think necessary for the purposes or repaying or reducing any mortgage or other indebtedness liability or encumbrance incurred or owing or that may in future be incurred or become owing in respect of the Trust Fund or any part thereof or any property comprised therein or by the Trustees hereof and any such amount so set aside deducted or otherwise provided shall if the Trustees shall so decide cease to be regarded as income and shall be deemed to be added to the capital of the Trust Fund. In the like manner the Trustees may set aside and deduct such sum as they may think fit to allow for depreciation of any building other erections or any plant machinery or other assets comprised in the Trust Fund and further in the like manner the Trustees may set aside such sums or make such other provision as the Trustees may think fit for a reserve against losses and contingencies and may write off losses from time to time or resort to the reserve fund in mitigation of losses or for any Charitable Purpose. Any deduction setting aside or other provision made by the Trustees under this sub-clause may be made in such manner and on such terms and conditions in all respects as the Trustees may in their absolute discretion think fit and may be applied to the purposes aforesaid at such times and in such manner as they think fit or if not so applied may be treated as income available for distribution at such times as they may think fit.

Part 5

Replacement clause 11

11. **VARIATION OF TRUST**
- 11.1 The Trustees may by unanimous written resolution vary this deed, provided that:
- (a) the Trustees consider that the variation is in the best interests of the Trust and furthers the Charitable Purposes; and
- (b) the variation is subject to the approval of the High Court of New Zealand being obtained by the Trustees on an application made under section 133 of the Trusts Act 2019.
- 11.2 If the Trustees, in their discretion, consider it necessary or desirable for the proper management or administration of the Trust, the Trustees may, by Special Resolution, vary the rules in Schedule I, provided that such variation does not conflict with any of the operative provisions of this Deed or Schedule II. The approval of the High Court of New Zealand is not required to make variations under this sub-clause.

Part 6
Replacement clause 13

13. WINDING UP

- 13.1 The Trust may be wound up on a unanimous resolution of all the Trustees at a meeting of the Trustees called for that purpose on not less than thirty days prior written notice. 5
- 13.2 On the winding up of the Trust, all surplus assets after the payment of all costs, debts and liabilities shall be paid, applied or appropriated to or for or otherwise howsoever for Charitable Purposes.