

## HBPCT Background

- HBPCT was formed in 1993 following the approval by the then responsible Minister under the Electricity Act 1992;
- HBPCT was constituted by the execution of a Trust Deed dated 24 May 1993 (the Original Deed);
- The shares of Hawke's Bay Power Distribution Limited, now known as Unison Networks Limited (Unison), were vested in HBPCT;
- Background Clause D of the Original Deed recites that the object of HBPCT is to:

*"...hold the shares in the Company (Unison) on behalf of the consumers and to distribute to the Consumers, in their capacity as owners, the benefits of the ownership of the shares in the Company (Unison) ...";*

- The Consumers are essentially those end consumers in the licensed area of the former Hawke's Bay Electric Power Board who are liable for power or services supplied by the Company (Unison);
- Clause 3.5 of the Original Deed provides that the object of HBPCT in relation to dividends is to:

*"to receive Dividends and to distribute, pay or appropriate such Dividends to or for the benefit of the Consumers in the manner provided in Clause 5";*

- Clause 5.2 of the Original Deed provides that, insofar as income is concerned, that:

*"... to pay, apply or appropriate the whole or any part of the current net annual income derived by or credited to the Trust Fund in any Financial Year to or for or otherwise howsoever for the benefit of the Consumers or such one or more of them to the exclusion others or other of them in such manner and in such shares and proportions as the Trustees in their absolute and unfettered discretion shall consider proper."*

- The Original Deed expressly provides for unclaimed payments in clause 5.9 as follows:

*"All payments made to consumers unclaimed for one (1) year after having been sent to any Consumer may be invested or to otherwise made use of by the Trustees for the benefit of the Trust Fund until claimed and the Trustees shall be entitled to mingle the amounts of any unclaimed payments with other moneys forming part of the Trust Fund and to credit any income arising in any Financial Year from the investment of such unclaimed payments to the Trust Fund."*

- HBPCT are considering revoking the Original Deed and adopting in its place an Amended Version (July 2024) as posted on its website (Proposed Deed);
- Clause 2.5 of the Proposed Deed re-iterates that one of HBPCT's objects is to receive and pay out dividends to Consumers as follows:

*"To receive Dividends and to distribute, pay, apply or appropriate such Dividends to or for the benefit of Consumers in the manner provided in Clause 4."*

- Clause 4.6 of the Proposed Deed provides for unclaimed payments as follows:

*"If, after three (3) years from the date on which any income is applied or appropriated to a Consumer by the Trustees pursuant to the provisions of Clause 4.2, that income has not been received by that Consumer, that income shall be forfeited and shall permanently remain part of the Trust Fund."*

**HBPCT has sought submissions in respect to the Proposed Deed. Hawke's Bay Foundation wishes to make submissions as follows.**

The purpose of HBPCT is to act on behalf of Consumers in respect to its shareholding in Unison.

HBCT's website (also reflected in its annual reports) details its key tasks as being to:

- Act in the best interests of power consumers
- Exercise its rights as shareholder in Unison on behalf of power consumers
- Appoint Unison's Board of Directors
- Monitor the performance of Unison and its board
- Approve Unison's annual business and financial goals (Statement of Corporate intent)
- Determine annually the amount of Trust funds to be paid to power consumers (as a dividend or in other ways)
- Manage the financial affairs of the Trust
- Report to the public each year (via public meeting) on the operations and financial performance of the Trust
- Periodically review Unison's ownership structure.

It is to be noted that the focuses of HBPCT are to protect the interests of Consumers by monitoring the performance of Unison and to distribute income to Consumers.

**Hawke's Bay Foundation (HBF) Submission:**

In our submission, the forfeiture of the unclaimed payments was never permitted by the Original Deed and would have been ultra vires of its Trust Deed. The Original Deed permits the Trustees to have the use of unclaimed payments for such time as they remained unclaimed, but no more.

We further submit that the forfeiture of unclaimed payments over time will lead to HBPCT accumulating a large fund which the Trustees will need to invest and monitor on an ongoing basis.

This accumulation of an ever-increasing fund was never envisaged by the Minister in approving the original establishment plan and will serve as a distraction to the fundamental focus of HBPCT which is to monitor the performance of Unison.

As time goes on, the ever-increasing fund will demand more time and commitment from the Trustees and will ultimately need to be distributed to Consumers when the Trust is wound up as it reaches its maximum term.

HBF is a specialist investment trust which would be well placed to receive the unclaimed payments, invest them in perpetuity so that income generated from those funds could be allocated to Hawke's Bay charities that in all likelihood are Consumers.

By vesting the unclaimed payments in the HBF, HBPCT could then specifically focus on its key task of monitoring the performance of Unison without needing to address the distraction of investing the unclaimed payments.

It is to be noted that both clause 5.2 of the Original Deed and 4.2 of the Proposed Trust Deed permit the payment of income for the benefit of Consumers in such manner as the Trustees may in their absolute and unfettered discretion shall consider proper.

While the proposed amendment may appear to be a practical solution to the issue of dealing with unclaimed dividends, the proposal represents a fundamental change in the core business of HBPCT by adding to its core functions of monitoring Unison's performance and distributing income to Consumers, the entirely distinct role of administering in perpetuity an ever-increasing investment fund.

**It is our submission that it would be proper for the Trustees to pay the existing unclaimed payments accumulated to date, and all future unclaimed payments that will accumulate after 3 years to Hawke's Bay Foundation for it to hold for the benefit of Consumers in perpetuity.**

I note the new Clause 18 Definitions and Construction. The previous deed had this information at the beginning of the document, a practice common in legal documentation in New Zealand. To me, it is far easier to understand the deed if Clause 18 was positioned at the beginning of the deed itself.