

Notice of Annual Meeting  
**2014**



# NOTICE OF ANNUAL MEETING

Notice is hereby given that the twentieth Annual Meeting of Trustpower Limited ("Company") will be held at The Cruisedeck Room, Club Mount Maunganui, 45 Kawaka Street, Mount Maunganui on Friday, 25 July 2014 at 2.30pm.

## THE BUSINESS OF THE MEETING WILL BE:

Introduction of Directors and Management  
 Chairman's Address  
 Chief Executive's Review  
 Receive and consider Annual Report  
 Consider Proposed Resolutions 1 to 4  
 General Business

### Annual Report, including Audit Report and Financial Statements

To receive and consider the annual report, including the audit report and financial statements, for the year ended 31 March 2014.

## RESOLUTIONS 1 TO 4

### Auditors

To consider, and if thought fit, pass the following ordinary resolution in accordance with section 197 of the Companies Act 1993:

- That the Directors be authorised to fix the fees and expenses of PricewaterhouseCoopers as auditors of the Company for the ensuing year.  
 PricewaterhouseCoopers is automatically reappointed as auditors of the Company to hold office from the conclusion of the meeting until the conclusion of the next annual meeting pursuant to Section 200(1) of the Companies Act 1993.

### Re-election of Mr RH Aitken

To consider, and if thought fit, pass the following ordinary resolution in accordance with clause 12.5.5 of the Company's constitution:

- That Mr RH Aitken be re-elected as a Director of the Company.

### Re-election of Mr MJ Cooney

To consider, and if thought fit, pass the following ordinary resolution in accordance with clauses 12.5.5 and 12.8 of the Company's constitution:

- That Mr MJ Cooney be re-elected as a Director of the Company.

### Approval of Defined Share Buyback Programme

To consider and, if thought fit, to pass the following ordinary resolution in accordance with clause 6.1 of the Company's constitution, and clause 4 of the Takeovers Code (Class Exemptions) Notice (no.2) 2001, as amended by the Takeovers Code (Class Exemptions – Buybacks and Rule 16(b)) Amendment Notice 2010:

- That acquisitions by the Company of up to an aggregate of 5 million of the Company's shares, being less than 2% of the total number of its shares, by way of offers made through NZX's order matching market during the period of thirty-six months following the Annual Meeting ("the Defined Share Buyback Programme"), as more fully explained in Explanatory Note 2 contained in the Notice of Annual Meeting, be approved. It is noted that such acquisitions may result in the percentage of voting securities held or controlled by TECT Holdings Limited (TECT) in the Company, increasing in aggregate by a maximum of [0.54%] above the percentage held or controlled by TECT immediately before the first share buyback effected after the commencement of the Defined Share Buyback Programme.

## EXPLANATORY NOTES

An explanatory note to Resolutions 2 and 3 accompanies this Notice of Meeting (refer to Explanatory Note 1 on page 2).

An explanatory note to Resolution 4 accompanies this Notice of Meeting (refer to Explanatory Note 2 on pages 2 to 4).

By Order of the Board of Directors

RWH Farron

Company Secretary

Dated at Mt Maunganui this 28th day of May 2014

## PROCEDURAL MATTERS

### Proxy

A shareholder of the Company entitled to attend and vote is entitled to appoint a proxy to attend and vote in his or her place.

A proxy need not be a shareholder of the Company. A proxy form accompanies this notice and, if used, must be lodged with the Company's share registrar Computershare Investor Services Limited, 159 Hurstmere Road, Takapuna, Auckland (Private Bag 92119, Auckland 1142) not less than 48 hours before the time for holding the meeting.

The Chairman of the meeting, Dr Bruce James Harker of North Terrace, Kelburn, Wellington, is willing to act as proxy for any shareholder who may wish to appoint him for that purpose. Where a direction is not given to the Chairman as to how to cast the vote on any Resolution, then the Chairman intends to vote in favour of the Resolution.

**Ordinary Resolution**

Pursuant to Listing Rule 1.6.1 of the NZX Main Board Listing Rules, an ordinary resolution means a resolution passed by a simple majority of votes of holders of securities of the Company which carry votes entitled to vote and voting.

Shares in the Company are the only class of security issued by the Company that carry a right to vote at the annual meeting of shareholders.

**Disqualification from voting**

Pursuant to the Takeovers Code (Class Exemptions) Notice (No 2) 2001, TECT Holdings Limited and its associates are disqualified from voting on Resolution 4 (approval of Defined Share Buyback Programme).

A person appointed as a proxy who is disqualified from voting on a Resolution may vote in accordance with the directions of the shareholder giving the proxy, but may not exercise a discretionary vote where directions are not given.

**EXPLANATORY NOTES****Explanatory Note 1 to Resolutions 2, and 3 – Re-election of Messrs RH Aitken and MJ Cooney**

Clause 12.5.1 of the Company's constitution requires one third of the Directors of the Company to retire from office at each annual meeting. Clause 12.5.2 of the Company's constitution provides that the Directors to retire in each year shall be those who have been longest in office since they were last elected or deemed elected. A retiring Director is eligible for re-election.

Mr RH Aitken and Mr MJ Cooney are due to retire in accordance with clause 12.5.2. As Mr Cooney attained the age of 70 years in June 2014, he is also due to retire in accordance with clause 12.8 of the Constitution. This clause provides that if a Director attains the age of 70 years while he or she is holding office as a Director, he or she shall automatically retire from office at the next succeeding annual meeting of the Company but shall be eligible for re-election as a Director, provided that such appointment shall be limited in that he or she shall automatically retire as a Director at the following annual meeting, at which time he or she shall be eligible for re-election as a Director for a like period from the date of such re-election.

Mr Aitken and Mr Cooney offer themselves for re-election.

Mr Aitken brings extensive experience in engineering, project management and associated contractual matters, for major power and water infrastructure projects. He is also Executive Chair of the Beca Group, and has been with Beca for over 40 years. He holds a Master of Engineering, Science and a Bachelor of Engineering (Hons). The Board has determined that Mr Aitken is an independent Director of the Company.

Mr Cooney is the Chairperson of the Tauranga Energy Consumer Trust and a director of TECT Holdings Limited. He is a former partner and consultant in the Tauranga law firm of Cooney Lees Morgan. The Board of the Company has determined that Mr Cooney is a non-independent Director of the Company.

**Explanatory Note 2 to Resolution 4 – Approval of Defined Share Buyback Programme****Introduction**

In July 2008 the Company's annual meeting approved a programme to buy back by on-market transactions over a 3 year period up to 5 million of its shares being less than 2% of the total number of its shares (Defined Share Buyback Programme or Programme). The Programme was extended for a further 3 years at the Company's Annual Meeting 2011. It is now proposed to extend the Programme for a further 3 years. This raises compliance issues under the Takeovers Code, the NZX Main Board Listing Rules and the Companies Act. These are now set out, together with information on shares bought back since July 2011.

**Takeovers Code Issues**

The Takeovers Code Approval Order 2000 (Takeovers Code) is relevant to buybacks by code companies (which includes the Company) because of the "fundamental rule" of the Takeovers Code. The fundamental rule states that, subject to certain exceptions, a person who holds or controls 20% or more of the voting rights in a code company may not become the holder or controller of an increased percentage of the voting rights in the code company.

Shareholders who are (together with their associates) near to or over the 20% may have their control percentage increased as a result of a buyback and could therefore potentially breach the fundamental rule (rule 6 of the Takeovers Code).

Infratil Limited (Infratil) and TECT Holdings Limited (TECT) have previously advised the Company that, as committed shareholders, they would be unlikely to be sellers into a share buyback. A consequence of their non-participation in any buybacks is that their voting control would increase by a small margin.

One of the exceptions to the fundamental rule is that if a person holds or controls more than 50%, but less than 90% of the voting rights, then it may increase its voting rights by up to 5% of the total voting rights in the code company in any 12 month period. This is known as the "creep" provision. Infratil has the benefit of this provision, but TECT does not.

The position TECT finds itself in is dealt with under clauses 4 and 5 of the Takeovers Code (Class Exemptions) Notice (No. 2) 2001 ("Exemption Notice"). Under clause 4 of the Exemption Notice, a shareholder is permitted to retain its increased voting rights, if the buyback is approved by an ordinary resolution of shareholders (and subject to other conditions as set out in clause 4 and Schedule 1 of the Exemption Notice including the provision of a report from an independent adviser). In the absence of shareholder approval, clause 5 of the Exemption Notice provides that the shareholder must decrease its voting percentage within 6 months after the increase, to the percentage it had immediately before the increase.

**Current Buyback**

In July 2011, an ordinary resolution was passed at the Annual Meeting which authorised a buyback by the Company of up to 5 million of its shares, being less than 2% of the total number of its shares, by way of offers made through NZX's order matching market during the period of thirty six months following the Annual Meeting ("Current Buyback").

During the period from 31 July 2011 to the date of this Notice, the Company has purchased 1,802,351 Trustpower shares at an average price of \$6.91 (total cost \$12.45 million). Over the same period, 21,015,233 Trustpower shares were traded at a volume weighted average price of \$7.20. The volume of shares purchased by the Company during the period represented 8.6% of total Trustpower shares traded through NZX.

As stated above, Infratil and TECT advised the Company that they would be unlikely to be sellers into a share buyback. A consequence of their non-participation in the Current Buyback is that the voting control of Infratil and TECT increased by a small margin.

Infratil was permitted to retain its increased voting rights as it is able to rely on the "creep" provision of the Takeovers Code. TECT was permitted to retain its increased voting rights by relying on the Exemption Notice as the Current Buyback was approved by an ordinary resolution of shareholders in July 2011.

#### Further Extension of Defined Share Buyback Programme

Resolution 5 seeks the approval of the shareholders of the Company by ordinary resolution of those entitled to vote (being all shareholders other than TECT and its associates) to further extend the Defined Share Buyback Programme providing for acquisitions by the Company of up to a further 5 million of its own shares over a period not exceeding 3 years from the date of this Annual Meeting ("Extended Buyback"). Full particulars of the Extended Buyback are set out in this Explanatory Note including in Annexure A and as follows:

- The Company proposes to make offers through NZX's order matching market to acquire up to 5 million shares in the Company pursuant to Section 65 of the Companies Act 1993.
- Offers may be made in the period of thirty-six months following 25 July 2014, being the date of the Annual Meeting.
- The Company will pay the prevailing market price for the shares at the time of purchase.
- The Company is not obliged to make offers, and reserves the right to cease making offers at any time.
- Whether shares are bought back at all will depend on market conditions and other factors prevailing at the relevant time.
- The Company will regularly reassess the situation and seek to purchase shares at prices that in its view represent the best value for shareholders.
- The Company will disclose the number of shares, and the price at which it bought them, before 9.30am on the business day following the purchase being made.
- The Company will not purchase any shares while it possesses any information which is not generally available to the market, and which, if it were so available would have a material effect on the price of Trustpower's shares. If the Company acquires such sensitive information, it will cease acquiring shares until the information is publicly disclosed.
- The Company intends to hold the shares acquired as Treasury Stock. Treasury Stock comprises shares acquired and held by the Company in itself and which would otherwise be cancelled on acquisition. Subject to certain restrictions, Treasury Stock can be transferred, reissued or cancelled by the Company.

#### Increase in the voting rights of Infratil and TECT

The individual shareholder percentage of votes held or controlled by Infratil and TECT may increase as a consequence of the Extended Buyback, if those shareholders do not participate pro-rata in any or all of the buybacks contemplated by the Extended Buyback. If Infratil does not participate in any of the buybacks and 5 million shares in the Company are bought back, then, as set out below, Infratil's voting rights will increase from 51.06% to 51.88%. If TECT does not participate then its voting rights will increase from 33.20% to 33.74%.

Table A below describes the shareholding percentages of Infratil and TECT as at the date of this Notice and the maximum shareholding percentages that may result from the buyback of 5 million shares as contemplated by resolution 5, assuming neither Infratil nor TECT participate in any of the buybacks.

**Table A: Figures in relation to the Defined Share Buyback Programme are based on total voting shares of 312,882,395 (which excludes non-voting treasury stock of 2,869,477) on issue as at the date of this Notice.**

Shareholder	Number of shares	Pre-Buyback Percentage of Shares	Post-Buyback Maximum Percentage of Shares	Total Maximum Percentage of Increase of Shares
Infratil	159,742,389	51.06	51.88	0.82
TECT	103,878,838	33.20	33.74	0.54
Total	263,621,227	84.26	85.62	1.36

### Takeovers Code and Exemption Notice – Annexure A

Approval of the shareholders of the Company is required for the proposed acquisitions by the Company pursuant to the Extended Buyback so that TECT is exempted from the fundamental rule of the Takeovers Code in respect of its consequential increase in voting rights in the Company if it does not participate in any of the buybacks. Under the provisions of the Takeovers Code, TECT and its associates are not permitted to vote on the resolution.

As previously noted, Infratil is permitted under the "creep" provision in the Takeovers Code to increase its voting control in any 12 month period by up to 5% of the Company's total voting shares. Accordingly it is permitted to vote on the resolution.

As referred to above, clause 4 of the Exemption Notice provides the procedure that permits TECT to increase its voting rights as a result of a buyback if the shareholders (other than TECT and its associates) vote in favour of the acquisitions contemplated by the Extended Buyback in accordance with the requirements of the Exemption Notice. The requirements include the provision of certain information in the Notice of Meeting sent to shareholders seeking their approval of the acquisition. Annexure A provides this information.

As required by clause 4 and Schedule 1 of the Exemption Notice, it is stated that:

- TECT is the entity which holds voting securities and is relying on the buyback exemption granted under the Exemption Notice; and
- the increase in TECT's voting rights that would result from the buyback by the Company of its own voting securities pursuant to the Extended Buyback would, if approved at the Annual Meeting, be permitted as an exception to rule 6(1) of the Takeovers Code in reliance on the buyback exemption in clause 4 of the Exemption Notice.

### NZX Main Board Listing Rules and Companies Act requirements

The Extended Buyback also needs to comply with the NZX Main Board Listing Rules. The Defined Share Buyback Programme will be undertaken as permitted by Listing Rule 7.6.1(a), that is, by acquisitions effected by offers made by the Company through NZX's order matching market.

Any shares of the Company acquired by the Company pursuant to the buybacks will be shares bought on market, through a broker, from an undisclosed seller.

As less than 5% of the shares of the Company are involved, the Company can effect the buybacks pursuant to section 65 of the Companies Act 1993. That section does not require prior shareholder approval pursuant to the Companies Act 1993 or the NZX Main Board Listing Rules: approval is only being sought because of the requirements of the Takeovers Code in relation to TECT's increase in voting rights.

### Directors' recommendation

The Directors of the Company other than Mr MJ Cooney (the "Unaffected Directors") recommend that the shareholders vote in favour of Resolution 4 and approve the Extended Buyback, being the possible acquisition by the Company of up to 5 million of its own shares over a period not exceeding 3 years from the date of this Annual Meeting where such acquisitions might result in an increase in voting rights of TECT as set out in these Explanatory Notes. Mr Cooney is a director of TECT, and for that reason abstains from making a recommendation.

The reasons for the recommendation of the Unaffected Directors are:

- a. The Unaffected Directors consider that an increase in the aggregate holding or controlling of shares in the Company by TECT of up to 0.54% is not material to the control of the Company.
- b. The Company's willingness to buy back shares when it considers that they are undervalued by the market should be viewed positively by shareholders and share market analysts.
- c. Because Infratil has more than 50% of the Company's shares, it has the benefit of the "creep" provision and does not have any sell-down obligations in a buyback situation provided it does not increase its voting rights by more than 5%. Likewise, all other shareholders can elect not to participate in the buybacks without having any sell-down obligations. There appears to be no reason why TECT alone should be subject to sell-down requirements having regard to the very minor increase in voting control that will result from it not participating in the buybacks. The Unaffected Directors consider that a fair outcome from an on market buyback would be that all shareholders who do not participate in the buyback share proportionately in any potential financial benefit to the Company which may accrue from such buyback.
- d. The Board is proposing a three year share buyback programme to avoid the expense and time of obtaining, on an annual basis, an Independent Adviser's Report and the approvals of NZX and the Takeovers Panel.
- e. Before undertaking any buyback, the Directors must, as required by the Companies Act, determine that the buyback is "in the best interests of the Company and the shareholders". The Unaffected Directors consider that a forced sale may not be in the best interests of TECT if it elects not to participate in the buybacks, and TECT has also advised the Company of this. The Unaffected Directors have also concluded that it may not be in the best interests of the Company to undertake a buyback knowing that it will force a shareholder with director representation on the Board to sell.
- f. The Unaffected Directors believe that, under existing market conditions, and with the Company's current share price, the extension of the Defined Share Buyback Programme is a positive way of enabling shareholder value to be improved and is fair to the Company and all shareholders.

The reasons noted in paragraphs (c) and (e) above will be relevant, but not determinative of the Company's decision to undertake a non pro-rata share buyback under the Extended Buyback.

### Independent Adviser's Report

A report from Simmons Corporate Finance Limited the independent adviser approved by the Takeovers Panel, on the merits of the proposed acquisitions, the consequence of which is an increase in the voting rights of TECT, accompanies this Notice of

Meeting. Section 2 of the report provides an analysis of the merits of the proposed Defined Share Buyback Programme.

**ANNEXURE A: TAKEOVERS CODE (CLASS EXEMPTION NOTICE (NO. 2) 2001 (AS AMENDED BY THE TAKEOVERS CODE (CLASS EXEMPTIONS – BUYBACKS AND RULE 16(B)) AMENDMENT NOTICE 2010): DISCLOSURES IN RESPECT OF ACQUISITION OF OWN SHARES**

Disclosure Requirements	Comments
The buyback must be approved by an ordinary resolution of the shareholders of the code company.	Resolution 4 is seeking shareholder approval of the Extended Buyback being the acquisition of up to 5 million of the Company's own shares by way of ordinary resolution.
Neither the person increasing voting control nor any person who is an associate of that person may vote in favour of the resolution concerning the buyback.	TECT and any associates of TECT will not vote in favour of Resolution 4.
The notice of meeting containing the proposed resolution contained, or was accompanied by:	
<b>a.</b> Full particulars of the buyback.	Full particulars of the Extended Buyback are set out in Explanatory Note 2 and this Annexure A.
<b>b.</b> A statement of the name of the person who holds or controls voting securities and is relying on the Exemption Notice.	See under "Takeovers Code and Exemption Notice" on page 3 of this Notice of Meeting. TECT is the person who holds and controls voting securities and is relying on the Exemption Notice.
<b>c.</b> The following particulars of the voting securities that may, if the resolution is carried, be acquired by the Company under the Buyback (see (i) below for the assumptions on which the below particulars are based):	
<b>i.</b> the maximum number ( <b>approved maximum number</b> ) of its own voting securities that the Company could acquire under the buyback;	5,000,000
<b>ii.</b> the percentage of all voting securities of the Company that the approved maximum number represents (calculated at the date of this Notice);	1.60%
<b>iii.</b> the maximum percentage ( <b>approved maximum percentage</b> ) of all voting securities on issue that TECT and its associates, excluding its exempt associates, could hold or control, in aggregate, if the Company acquired the approved maximum number of voting securities;	33.74%
<b>iv.</b> the maximum percentage of all voting securities on issue that TECT and all TECT's associates could hold or control, in aggregate, if the Company acquired the approved maximum number of voting securities (calculated at the date of this Notice).	33.74%
<b>d.</b> The consideration for the buyback or the manner in which the consideration would be determined and when the consideration would be payable.	The Company will pay the prevailing on-market price.
<b>e.</b> The reasons for the buyback.	The Company wishes to extend the current buyback programme as it considers it has value for its shareholders. These reasons are more fully explained in the Explanatory Notes.
<b>f.</b> A statement to the effect that the increase in TECT's voting control that would result from the buyback would, if approved, be permitted as an exception to rule 6(1) of the Code in reliance on the buyback exemption in clause 4 of the Exemption Notice.	See under "Takeovers Code and Exemption Notice" on page 3 of this Notice of Meeting.
<b>g.</b> A report from an independent adviser in relation to the acquisition that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code were references to the buyback by the Company made in accordance with the Exemption Notice and the references to a notice of meeting were references to this notice);	An independent report prepared by Simmons Corporate Finance Limited accompanies this Notice of Meeting.

<p><b>h.</b> A statement by the directors of the code company in relation to the acquisition that complies with rule 19 of the Code (as if the reference in that rule to acquisition under rule 7(c) of the Code was a reference to the Extended Buyback).</p>	<p>See "Directors' Recommendation" on page 3 of this Notice of Meeting.</p>
<p><b>i.</b> The following assumptions have been applied for the purposes of providing the particulars of voting securities, as specified in (a)-(d) above:</p>	<p><b>a.</b> that the number of voting securities in the Company is the number of voting securities on issue on the calculation date</p> <p><b>b.</b> that there is no change in the total number of voting securities on issue between the calculation date and the end of the buyback period, other than as a result of the buyback</p> <p><b>c.</b> that TECT does not participate in the buyback</p> <p><b>d.</b> that the Company acquires the approved maximum number of its own voting securities</p>
<p><b>j.</b> The calculation date for determining the particulars of voting securities, as specified in (c)(i)-(iv) above.</p>	<p>The calculation date is the date of this Notice.</p>

