

UNDER

Part 15 of the Companies Act 1993

AND IN THE MATTER OF

TRUSTPOWER LIMITED a duly incorporated company with its registered address at 108 Durham Street, Tauranga, Tauranga 3110, New Zealand and carrying on business as an electricity generator and retailer of electricity, gas and telecommunications services

First applicant

BAY ENERGY LIMITED a duly incorporated company with its registered address at 108 Durham Street, Tauranga, Tauranga 3110, New Zealand and carrying on business as a non-trading subsidiary

Second applicant

AUSTRALASIAN RENEWABLES LIMITED a duly incorporated company with its registered address at 108 Durham Street, Tauranga, Tauranga 3110, New Zealand and carrying on business as a holding company

Third applicant

ORIGINATING APPLICATION FOR ORDERS APPROVING A SCHEME OF
ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993
29 JULY 2016

RUSSELL McVEAGH

S A Armstrong/ A J Nelder
Phone 64 9 367 8000
Fax 64 9 367 8163
PO Box 8
DX CX10085
Auckland

TARARUA WIND POWER LIMITED a duly incorporated company with its registered address at 108 Durham Street, Tauranga, Tauranga 3110, New Zealand and carrying on business as an electricity generator

Fourth applicant

To: The Registrar of the High Court at Auckland

And to: Persons directed to be served in the initial orders obtained following a hearing on 8 August 2016

THIS DOCUMENT NOTIFIES YOU THAT:

1. The applicants will at 10:00 am on 6 October 2016 apply to the Court for the following orders:
 - (a) The scheme of arrangement to effect the demerger of Trustpower Limited ("Trustpower") described in the Implementation Plan (a draft of which is located at Schedule 1 of this application and the final version of which will be submitted to the Court prior to the hearing of this application) ("Demerger") is approved.
 - (b) The Demerger is binding with immediate effect from the Implementation Time, upon:
 - (i) the first applicant, Trustpower;
 - (ii) the second to fourth applicants, being Bay Energy Limited ("BEL"), Australasian Renewables Limited (known as Trustpower Australia (New Zealand) Limited prior to 8 July 2016) ("TANZL"), and Tararua Wind Power Limited ("Tararua Wind");
 - (iii) every person who is a shareholder of Trustpower as at 5:00 pm on the Record Date, being five Trading Days (as defined in the Implementation Plan) after the date these orders are sealed;
 - (iv) every person who is a counterparty to a Transferring Contract with Trustpower; and
 - (v) such other persons as are necessary to give effect to the Demerger.
 - (c) For the purpose of giving effect to the Demerger:
 - (i) all real and personal property, rights, powers, and interests (including choses in action) of every description vested in Trustpower as at the Implementation Time and whether present or future, actual or contingent in nature (together "Assets") shall transfer to, and vest in, BEL, TANZL, or Tararua Wind, in accordance with the Implementation Plan (with the exception of shares issued to Trustpower by TANZL or BEL, which will not be transferred pursuant to this order);
 - (ii) all liabilities, duties and obligations owed to any person as at the Implementation Time by Trustpower, whether:
 - (aa) present or future, actual or contingent, secured, preferential or unsecured, joint or

several, as principal, surety by way of guarantee or otherwise;

- (bb) for the payment of money or otherwise;
- (cc) ascertained or a liability for damages; and
- (dd) payable or to be performed in New Zealand or elsewhere,

(together "Liabilities"),

shall transfer to, and become the Liabilities of, BEL, TANZL, or Tararua Wind in accordance with the Implementation Plan;

- (iii) all Transferring Contracts of Trustpower (as further defined and described in the Implementation Plan) shall transfer to, and vest in, BEL, TANZL, or Tararua Wind, in accordance with the Implementation Plan and on the terms set out below:

- (aa) each Transferring Contract shall, to the extent that it was previously binding on and enforceable by, against, or in favour of Trustpower, be binding and enforceable by, against, or in favour of whichever of BEL, TANZL, or Tararua Wind the contract is transferred to in accordance with the Implementation Plan, as fully and effectually in every respect as if that company had been named as a party to the relevant Transferring Contract instead of Trustpower;

- (bb) a reference (express or implied) to Trustpower in any Transferring Contract shall, unless the context otherwise requires, be read and construed as a reference to whichever of BEL, TANZL, or Tararua Wind the contract is transferred to in accordance with the Implementation Plan; and

- (cc) a reference (express or implied) to Trustpower in any notice or other communication served, given or sent on or after the Implementation Date in relation to any Transferring Contract shall, unless the context otherwise requires, be read as a reference to whichever of BEL, TANZL, or Tararua Wind the contract is transferred to in accordance with the Implementation Plan;

- (iv) the relationship between Trustpower and a customer shall become the same relationship between BEL and that customer, and the same rights and liabilities, including rights of set-off, shall exist between BEL and a customer as existed immediately before the

Implementation Time between Trustpower and that customer; and

- (v) any instruction, order, direction, mandate, waiver or consent ("**Authorisation**") given to Trustpower and subsisting immediately before the Implementation Date, shall be deemed to have been given to whichever of BEL, TANZL, or Tararua Wind acquired the Asset, Liability or TPW Contract (as further defined and described in the Implementation Plan) which gave rise to the Authorisation.
- (d) On or about the Implementation Date, following the transfer of Assets, Liabilities and Transferring Contracts set out at orders (c)(i), (c)(ii), and (c)(iii), Trustpower will provide a notification with details of the new contracting entity to creditors of Trustpower who, after the implementation of the Demerger, have registrations on the Personal Property Securities Register over the Assets of Trustpower.

Directions in respect of the proposed liquidation and distribution of BEL shares and TANZL shares to shareholders

- (e) An order, which is to lie in Court until the liquidators to be appointed in accordance with clause 2.3(b) of the Implementation Plan ("**Liquidators**") have been so appointed, that:
 - (i) the Liquidators are not required to call for creditors to file a proof of claim form;
 - (ii) the Liquidators are exempt from compliance with the provisions of paragraph (c) or (d) of section 255(2) and section 257(1) of the Act on the conditions that:
 - (aa) the Liquidators prepare and publish copies of the documents listed in sections 255(2)(c)(ii)(A) and (B) and section 255(2)(d) of the Act on their website and send copies of those documents to the Registrar;
 - (bb) the Liquidators prepare and publish the documents listed at section 257(1)(a) of the Act on their website and comply with section 257(1)(b) of the Act in respect of those documents; and
 - (iii) the Liquidators are directed to comply with clause 2.3(d) of the Implementation Plan.
- (f) Trustpower is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Demerger.

GROUNDS

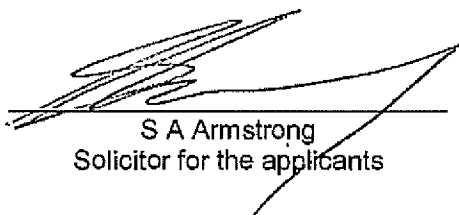
- 2. The grounds on which each of the above orders is sought are:

- (a) Section 236(1) of the Companies Act 1993 ("Act") provides jurisdiction for the Court to make orders that the Demerger is binding on the Applicants and such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit;
- (a) Section 237(1) of the Act provides jurisdiction for the Court to make additional orders to give effect to the Demerger;
- (b) By the date on which this application is determined, the applicants will have:
 - (i) complied with the initial orders made by this Court under s 236(2) of the Act;
 - (ii) complied with Part 15 of the Act;
 - (iii) held a meeting of Trustpower's shareholders at which shareholders have voted to approve the Demerger in accordance with s 236A(2)(a) and s 236A(4) of the Act; and
 - (iv) filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to the orders being made, in accordance with s 236A(2)(b)(ii) of the Act;
- (c) The Demerger is such that an intelligent and honest person of business acting in respect of his or her own interest would reasonably approve it;
- (d) The terms and conditions of the Demerger are fair and reasonable to the shareholders of Trustpower;
- (e) The Demerger will not materially adversely impact any party to a Transferring Contract or the creditors of any applicant;
- (f) As there are approximately 2210 Transferring Contracts, separately negotiating a transfer or novation with the counterparties of each Transferring Contract would be impractical and lead to undue delays in the implementation of the Demerger (which would undermine the applicants' commercial rationale for the Demerger);
- (g) The orders in relation to the Liquidators will take effect at the time when Trustpower will have no creditors by reason of the Implementation Plan and these orders;
- (h) As set out in the affidavits of and the memorandum of counsel filed in support of the without notice interlocutory application for initial orders, filed herewith; and
- (i) As set out in updating affidavits which will be filed following the special meeting of shareholders called to consider the proposed Demerger.

3. This application is made in reliance on:

- (a) Part 15 of the Act, and in particular section 237(1)(f) in relation to order 1(e) above;
- (b) Parts 7 and 19 of the High Court Rules;
- (c) The submissions of counsel filed in support of the without notice interlocutory application for initial orders;
- (d) The evidence filed in support of this application as set out in the affidavits of:
 - (i) Paul Morton Ridley-Smith sworn 28 July 2016;
 - (ii) Greg Antony Anderson sworn 28 July 2016;
 - (iii) Kevin John Palmer sworn 14 July 2016; and
 - (iv) Andrew John Grenfell sworn 18 July 2016;
- (e) Any further affidavit filed by the applicants prior to the hearing of this application; and
- (f) Further memoranda of counsel to be filed prior to the hearing of this application.

Dated 29 July 2016



S A Armstrong
Solicitor for the applicants

This document is filed by **SARAH ANNE ARMSTRONG**, solicitor for the applicants, of Russell McVeagh. The address for service of the applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland.

Documents for service on the Applicant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 8, Auckland; or
- (b) left for the solicitor at a document exchange for direction to DX CX10085.

SCHEDULE 1
IMPLEMENTATION PLAN

1. GSP AND FINANCING TRANSACTIONS

- 1.1 On or prior to the Implementation Date and prior to the transfers referred to in paragraph 3, TANZL will procure that GSP will transfer the GSP Wind Assets to an Australian member of the TANZL Group (being Blayney and Crookwell Windfarm Pty Limited (ACN 612 416 029)).
- 1.2 On or prior to the Implementation Date:
- (a) TANZL will procure that:
 - (i) GSP will redeem the 70,000,000 non-cumulative redeemable preference shares issued to the Trustpower Australia Financing Partnership (held by Trustpower Australia Holdings Pty Ltd as the general partner of that partnership); and
 - (ii) the Trustpower Australia Financing Partnership will repay any debt that it owes to TPW (or to BEL by virtue of the debt being a BEL Transferring Asset).
 - (b) Tararua Wind Power will repay any debt that it owes to TPW (or to BEL by virtue of the debt being a BEL Transferring Asset).

2. DEMERGER SEQUENCE

Subject to any amendments or variations as may be required by the Court, the following will occur on the dates specified and in the sequential order specified below.

- 2.1 Following the sealing of the Final Court Orders:
- (a) TPW will advise NZX of the grant of the Final Court Orders and of the Record Date.
 - (b) On the date four Trading Days prior to the Record Date, TPW will transfer 378 shares held as treasury stock to Shares For Good for the benefit of the Graeme Dingle Foundation, and then cancel any remaining shares held by TPW as treasury stock.
 - (c) At 5.00pm on the date three Trading Days after the Final Court Orders are sealed, trading in TPW's Shares on the Main Board will cease.
 - (d) Those Shareholders to participate in the Demerger will be determined as those Shareholders on the Register as at 5.00pm on the Record Date.
- 2.2 On the Implementation Date the following steps will occur sequentially:
- (a) Tararua Wind Power will assume by way of novation TPW's liability for the EKF Debt in consideration for TPW paying to

Tararua Wind Power an amount equal to TPW's liability for the EKF Debt as at the Implementation Date ("**Consideration**");

- (b) Tararua Wind Power will use the payment from TPW referred to in paragraph (a) above to advance to TANZL an amount equal to the Consideration;
- (c) TANZL will use the amount advanced by Tararua Wind Power referred to in paragraph (b) above to pay a dividend to TPW of an amount equal to the Consideration;
- (d) the Tararua Transferring Assets, the Tararua Transferring Liabilities and the Tararua Transferring Contracts transfer contemporaneously from TPW to Tararua Wind Power in accordance with paragraph 3;
- (e) the TANZL Transferring Assets, the TANZL Transferring Liabilities, TANZL Vested Litigation Matters and the TANZL Transferring Contracts will transfer contemporaneously from TPW to TANZL and vest in TANZL in accordance with paragraph 3;
- (f) the BEL Transferring Assets, the BEL Transferring Liabilities, the BEL Vested Litigation Matters, Joint Litigation Matters and the BEL Transferring Contracts, will transfer contemporaneously from TPW and TANZL (in the case of the shares in GSP) to BEL in accordance with paragraph 3;
- (g) BEL will be renamed 'Trustpower Limited' and TPW will be renamed 'Scarlett Limited';
- (h) the amendments to TPW's constitution come into effect;
- (i) the BEL Constitution will take effect;
- (j) the TANZL Constitution will take effect; and
- (k) upon completion of the steps in (a) to (k) above, the "event" which, under TPW's constitution, requires the Board to pass a resolution placing TPW in liquidation will have occurred.

2.3 On the Distribution Date the following steps will occur sequentially:

- (a) the Resolution will be passed, the Certificate will be effective and the NoA will be executed (and the NoA will be dated and the time recorded on it);
- (b) the Liquidator(s) of TPW will be appointed;
- (c) the shares in BEL and TANZL will be subdivided by the directors of BEL and TANZL respectively, to be equal to the number of Shares on Issue meaning that:

each BEL share will be subdivided into 156,486,500 shares;

each TANZL share will be subdivided into 3,129,730 shares;
and

- (d) the Liquidators will make an in specie distribution of the BEL Shares and TANZL Shares to Shareholders, such that each Shareholder receives one BEL Share and one TANZL Share for each Share the Shareholder holds at 5.00 pm on the Record Date, and the Shareholders will be recorded in the share register of BEL and TANZL respectively as the holders of such shares.

3. TRANSFER OF ASSETS AND LIABILITIES

3.1 **Assets:** On and with effect from the Implementation Time and as referred to in paragraph 2.2 and in the following sequence:

- (a) the Tararua Transferring Assets will transfer from TPW to and vest in Tararua Wind Power;
- (b) the TANZL Transferring Assets will transfer from TPW to and vest in TANZL; and
- (c) the BEL Transferring Assets will transfer from TPW and TANZL (in the case of the shares in GSP) to and vest in BEL.

3.2 **Liabilities:** On and with effect from the Implementation Time and in the following sequence:

- (a) the Tararua Transferring Liabilities will (upon being so ordered by Final Court Orders) transfer from TPW to Tararua Wind Power and be assumed by Tararua Wind Power;
- (b) the TANZL Transferring Liabilities and the TANZL Vested Litigation Matters will (upon being so ordered by the Final Court Orders) transfer from TPW to TANZL and be assumed by TANZL; and
- (c) the BEL Transferring Liabilities, the BEL Vested Litigation Matters, and the Joint Litigation Matters will (upon being ordered by the Final Court Orders) transfer from TPW to BEL and be assumed by BEL.

3.3 **TPW Contracts:** On and with effect from the Implementation Time and in the following sequence:

- (a) the Tararua Transferring Contracts will (upon being so ordered by the Final Court Orders) transfer from TPW to Tararua Wind Power and be assumed by Tararua Wind Power as if Tararua Wind Power had been named as a party to the relevant contract instead of TPW;
- (b) the TANZL Transferring Contracts will (upon being so ordered by the Final Court Orders) transfer from TPW to TANZL and be assumed by TANZL as if TANZL had been named as a party to the relevant contract instead of TPW;
- (c) the BEL Transferring Contracts will (upon being so ordered by the Final Court Orders) transfer from TPW to BEL and be assumed by BEL as if BEL had been named as a party to the relevant contract instead of TPW.

- 3.4 **Assumption of employee obligations:** Without limiting paragraph 3.2:
- (a) BEL will on and with effect from the Implementation Time, assume the obligation of TPW to pay all Liabilities (including any amount of salary or wages unpaid, annual leave, alternative holidays, long service leave, sick leave and any other accrued entitlements or emoluments) in respect of the BEL Transferring Employees (and will, where necessary, enter into separate arrangements with BEL Transferring Employees); and
 - (b) TANZL will procure that the relevant TANZL Group member will, on and with effect from the Implementation Time, enter into separate arrangements with TANZL Transferring Employees.

4. CONTRACTS

- 4.1 If any Transferring Contract is to be varied so that both BEL and TANZL (or any member of their respective group) can be a party to it or it is to be varied so that each of BEL and TANZL (or any member of their respective group) can have their own arrangements with the counterparty in respect of matters dealt with by the Transferring Contract, and such variation has not occurred by the Implementation Time, then the parties agree that such Transferring Contract shall be transferred to BEL by the Final Court Orders and, until that contract is so varied or TANZL (or its relevant group member) has entered into its own arrangements so that it does not need the benefit of that contract, the arrangements in clause 7 of the Transitional Services Agreement will apply.

5. LITIGATION

- 5.1 **Purpose:** This paragraph 5 governs:
- (a) the on-going management of Claims brought before the Implementation Time;
 - (b) the management of Claims brought after the Implementation Time; and
 - (c) related matters.
- 5.2 **Management:** In this paragraph 5, "management" includes decision-making and actions concerning the commencement, continuation and/or resolution (and the terms thereof), resisting, defending, disputing, avoiding, counterclaiming, setting off, settling, compromising, appealing, or taking any relevant step in the Claim; and "manage" shall have a corresponding meaning.
- 5.3 **Management of TANZL Vested Litigation Matters:** On and from the Implementation Time, TANZL is to manage and bear the Costs incurred after the Implementation Time of each TANZL Vested Litigation Matter.
- 5.4 **Management and Costs of Joint Litigation Matters:**
- (a) On and from the Implementation Time, BEL or TANZL (as appropriate) will cause each Joint Litigation Matter to be managed by:

- (i) BEL (if the Joint Litigation Matter relates primarily to BEL Group's business, or if there is any dispute between BEL and TANZL as to whether a Joint Litigation Matter relates primarily to the BEL Group or TANZL Group business); or
 - (ii) TANZL (if the Joint Litigation Matter relates primarily to TANZL Group's business).
- (b) The party managing the Joint Litigation Matter must keep the other fully informed of, and facilitate their involvement in, such matters relating to that Joint Litigation Matter as are appropriate. To the extent that there is any disagreement between the parties in relation to any aspect of the management of the Joint Litigation Matter, the reasonable requirements and directions of the party managing the Joint Litigation Matter are to prevail.
- (c) BEL and TANZL will share:
- (i) the Costs (including any award, fine, penalty) incurred in relation to each Joint Litigation Matter; and
 - (ii) the benefits (including sums recovered) in relation to each Joint Litigation Matter,

in proportion to the extent to which the benefits or Liabilities accruing from such Joint Litigation Matter relate to their respective businesses.

5.5 Claims against BEL on and from the Implementation Time relating to TANZL: If, on and from the Implementation Time and in relation to a BEL Transferring Liability:

- (a) BEL will be responsible for the management of, and Liability (including Costs) or loss associated with any Claim brought against any member of the BEL Group on and from the Implementation Time, except in the circumstances set out in this paragraph 5.5.
- (b) If, after the Implementation Time:
 - a Claim is brought against a member of the BEL Group by a person other than a member of the TANZL Group; or
 - (aa) a member of the BEL Group becomes aware of a fact or matter which could reasonably be expected to give rise to a Claim by a person other than a member of the TANZL Group against a member of the BEL Group,

and the Claim relates partly or wholly to any member of the TANZL Group ("TANZL Related Claim"), then:

- (bb) BEL must promptly provide TANZL a copy of the documentation (if any) that constitutes the TANZL Related Claim together with all other information in the possession, custody or control of a member of the BEL Group which is relevant to the TANZL Related Claim;

- (cc) to the extent permitted by law, and with the consent of any required parties, if the TANZL Related Claim relates wholly to members of the TANZL Group, BEL will, acting reasonably, assign that TANZL Related Claim to TANZL or another member of the TANZL Group, in which case TANZL will be solely responsible for the Costs and management of the TANZL Related Claim, and will indemnify BEL and each member of the BEL Group against any Liability (including Costs) incurred by BEL or another member of the BEL Group in connection with that TANZL Related Claim;
- (dd) unless a TANZL Related Claim has been assigned in accordance with paragraph 5.5(b)(iv):
 - (aa) BEL may, in its absolute discretion, either retain responsibility for the management of the TANZL Related Claim or require TANZL to assume responsibility for the management of the TANZL Related Claim;
 - (bb) BEL and TANZL will share the Costs (including any award, fine, penalty) and any benefits (including sums recovered) of the TANZL Related Claim in proportion to the extent to which the benefits and Liabilities in connection with the TANZL Related Claim relate to the BEL Group and the TANZL Group respectively; and
 - (cc) if there is any disagreement between BEL and TANZL in relation to a TANZL Related Claim:
 - (A) if the TANZL Related Claim relates primarily to the TANZL Group, the reasonable requirements and directions of TANZL are to prevail;
 - (B) if the TANZL Related Claim relates primarily to the BEL Group (or this is not able to be readily determined), the reasonable requirements and directions of BEL are to prevail.

5.6 Claims against TANZL on and from the Implementation Time relating to BEL: If, on and from the Implementation Time and in relation to a TANZL Transferring Liability or a Tararua Transferring Liability:

- (a) TANZL will be responsible for the management of, and Liability (including Costs) or loss associated with any Claim brought against any member of the TANZL Group on and from the Implementation Time, except in the circumstances set out in this paragraph 5.6.
- (b) If, after the Implementation Time:

- (i) a Claim is brought against the member of the TANZL Group by a person other than a member of the BEL Group; or
- (ii) a member of the TANZL Group becomes aware of any fact or matter which could reasonably be expected to give rise to a Claim by a person (other than a member of the BEL Group) against a member of the TANZL Group,

and the Claim relates partly or wholly to any member of the BEL Group (a "BEL Related Claim"), then:

- (iii) TANZL must promptly provide BEL a copy of the documentation (if any) that constitutes the BEL Related Claim together with all other information in the possession, custody or control of a member of the TANZL Group which is relevant to the BEL Related Claim;
- (iv) to the extent permitted by law, and with the consent of any required parties, if the BEL Related Claim relates wholly to members of the BEL Group, TANZL will, acting reasonably, assign that BEL Related Claim to BEL or another member of the BEL Group, in which case BEL will be solely responsible for the Costs and management of the BEL Related Claim, and will indemnify TANZL and each member of the TANZL Group against any Liability (including Costs) incurred by TANZL or another member of the TANZL Group in connection with that BEL Related Claim;
- (v) unless a BEL Related Claim has been assigned in accordance with paragraph 5.6(b)(iv):
 - (aa) TANZL may, in its absolute discretion, either retain responsibility for the management of the BEL Related Claim or require BEL to assume responsibility for the management of the BEL Related Claim;
 - (bb) BEL and TANZL will share the Costs (including any award, fine, penalty) and any benefits (including sums recovered) of the BEL Related Claim in proportion to the extent to which the benefits and Liabilities in connection with the BEL Related Claim relate to the TANZL Group and the BEL Group respectively; and
 - (cc) if there is any disagreement between TANZL and BEL in relation to a BEL Related Claim:
 - (A) if the BEL Related Claim relates primarily to the business of the BEL Group, the reasonable requirements and directions of BEL are to prevail;

- (B) if the BEL Related Claim relates primarily to the business of the TANZL Group, the reasonable requirements and directions of TANZL are to prevail.

5.7 Principles applying to management of certain Claims:

- (a) The party having responsibility for the management of a Claim under paragraphs 5.4, 5.5 and 5.6 (in this paragraph 5.7 the "first party") agrees not to do, and must not permit any of its Representatives to do, any of the following things in respect of the Claim without the prior written consent of the party who is to bear the greater proportion of the Costs in respect of the Claim under paragraph 5.4, 5.5 or 5.6 (respectively) (in this paragraph 5.7 the "second party") (which consent must not be unreasonably withheld):
- (i) admit, compromise, settle or pay the Claim; or
 - (ii) take any other steps which may materially prejudice the prosecution, defence or challenge of the Claim including the discontinuation of any proceeding or appeal instituted or defended by the second party in the name of the first party.
- (b) The first party must consult with the second party in relation to:
- (i) the terms of the Claim; and
 - (ii) any action in the name of the first party to resist, defend, dispute, avoid, counterclaim, set off, settle, compromise or appeal the Claim.
- (c) The first party must keep, at all times, the second party fully informed of and facilitate the second party's involvement in all matters relating to the Claim including:
- (i) retainer of solicitors and counsel;
 - (ii) preparation and calling of evidence and the making of submissions;
 - (iii) provision of all documents relating to the Claim; and
- if an appeal is to be made, all matters relating to the appeal (including the matters specified in sub-paragraphs 5.7(c)(i) to (iii)).
- (d) If the party having responsibility for the management of a Claim under paragraphs 5.4, 5.5 or 5.6 is also the party which is to bear the greater proportion of the Costs in respect of the Claim, then that party must keep the other party fully informed of and facilitate the other party's involvement in such matters relating to the Claim as are appropriate having regard to the other party's interest in the Claim.

5.8 **Access and cooperation:** Save for when the relevant Claim has been validly assigned pursuant to paragraphs 5.5 or 5.6, in connection with any TANZL Vested Litigation Matter, Joint Litigation Matter, TANZL Related Claim, BEL Related Claim, or BEL Vested Litigation Matter:

- (a) BEL and TANZL must ensure that the other party and its respective subsidiaries (and their Representatives) are given:
 - (i) full and timely access to, and are permitted to take copies of, all relevant records in the possession, custody or control of the party and each of its subsidiaries for the purposes of assessing and prosecuting or defending the Claim;
 - (ii) reasonable and timely access to appropriate Representatives of the party and each of its subsidiaries for the purposes of assessing the Claim or preparing evidence, analysis, factual research and extracting data for use in or in connection with the Claim; and
 - (iii) all other reasonable and timely assistance in relation to the Claim,

and each of BEL and TANZL agrees to take, and must procure that its relevant subsidiaries take, reasonable steps to minimise disruption caused to the business of the other.

- (b) For the avoidance of doubt, BEL and TANZL must ensure that their Representatives and the Representatives of each of their subsidiaries who are potential witnesses relevant to a Claim are made available to prepare evidence for the Claim (including, for example, meeting with counsel as necessary) and to appear and give evidence at any hearing in the Claim.
- (c) In the event of a disagreement between the parties as to what comprises reasonable and timely access or assistance under this paragraph 5.8, the reasonable directions of the party managing the Claim shall prevail.
- (d) BEL and TANZL must, and must ensure their respective subsidiaries (and their Representatives) take all necessary steps and actions to enable the management of Claims as envisaged in this paragraph 5.

5.9 **Excluded Litigation Matters:**

- (a) Despite the provisions of clause 10 of the Separation Deed, this paragraph 5 and Schedule 3 of the Separation Deed, BEL and TANZL agree that the indemnities in clause 10 of the Separation Deed, in this paragraph 5 and in Schedule 3 of the Separation Deed do not apply to:
 - (i) any Claim to the extent, and only to the extent, that the Claim contains any allegation of fraud made against either:
 - (aa) a member of the BEL Group;

- (bb) a member of the TANZL Group;
 - (ii) any criminal prosecution against a member of the BEL Group (and not against a member of the TANZL Group);
 - (iii) any criminal prosecution against a member of the TANZL Group (and not against a member of the BEL Group); or
 - (iv) any dispute with any governmental agency concerning Taxation (including a Claim made by a party against a governmental agency concerning Taxation).
- (b) In the case of any dispute with any governmental agency concerning Taxation (including a Claim made by a party against a governmental agency concerning Taxation), the Claim will be managed as set out in clause 11 of the Separation Deed.
- (c) Where the predominant aspect of a Claim is an allegation of fraud, or the Claim is a criminal prosecution, the Claim will be managed by the party against which the Claim is brought, at its own cost.
- 5.10 **Assignment of litigation proceeds:** BEL must, and must procure that each other member of the BEL Group, acting reasonably and to the extent permitted by law, assigns to TANZL the proceeds of any TANZL Vested Litigation Matter.
- 5.11 **Assignment of litigation proceeds:** TANZL must, and must procure that each other member of the TANZL Group, acting reasonably and to the extent permitted by law, assigns to BEL the proceeds of any BEL Vested Litigation Matter.
- 5.12 **Disclosure of information:** To the extent any of the information to be provided between the parties pursuant to this paragraph 5 is privileged, privilege is not waived by such provision of information.

6. HEADINGS AND REFERENCES

- 6.1 In this Separation Plan, unless the context otherwise requires:
- references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
 - (ii) references to an individual or a natural person include his estate and personal representatives;
 - (iii) a reference to a clause, schedule or annex is a reference to a clause, schedule or annex of or to the Separation Deed;
 - (iv) references to a party include the successors or assigns (immediate or otherwise) of that party;
 - (v) a reference to any instrument or document includes any variation or replacement of it;

- (vi) unless otherwise indicated, a reference to any time is a reference to that time in New Zealand;
- (vii) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (viii) singular words include the plural and vice versa;
- (ix) a word of any gender includes the corresponding words of any other gender;
- (x) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (xi) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words; and
- (xii) the headings do not affect interpretation.

6.2 The following terms have the following defined meanings:

"**Asset**" means any real property, personal property, rights (whether present or future, actual or contingent), powers, interests (whether present or future, actual or contingent), revenues, choses in action, or engagements. A reference to an Asset also includes any legal or equitable interest in that Asset.

"**Authority**" means any minister, department of state, government authority, regional council, territorial authority or other statutory authority having jurisdiction or authority to perform or exercise functions or powers under or pursuant to any statute.

"**BEL**" means Bay Energy Limited.

"**BEL Constitution**" means the constitution to apply in respect of BEL which has been adopted by BEL subject to the Demerger being implemented.

"**BEL Group**" means BEL and its subsidiaries, including those subsidiaries of TPW that are, pursuant to the Implementation Plan, to become subsidiaries of BEL, but excluding any subsidiaries of BEL which, pursuant to the Implementation Plan, are to cease to be subsidiaries of BEL pursuant to the Demerger.

"**BEL Shares**" means shares in the capital of BEL after the subdivision referred to in paragraph 2.3(c)(i).

"**BEL Transferring Assets**" means:

- (a) all of TPW's right, title and interest in all of its Assets (including TPW's rights (whether present or future, actual or contingent) against third parties in respect of such Assets, including any Claim) which are not TANZL Transferring Assets, Tararua Transferring Assets, shares issued by TANZL or shares issued by BEL;
- (b) all of TANZL's right, title and interest in the shares in GSP;

- (c) certain income arising to TPW from the operation of wind farms pursuant to a lease with Tararua Wind Power (as provided in clause 6.4 of the Separation Deed); and
- (c) any debt owing from each of Tararua Wind Power and the Trustpower Australia Financing Partnership to TPW.

"BEL Transferring Contracts" means all TPW Contracts which are neither TANZL Transferring Contracts nor Tararua Transferring Contracts.

"BEL Transferring Employees" means those employees of TPW transferring their employment from TPW to a member of the BEL Group.

"BEL Transferring Liabilities" means all Liabilities (including those which may arise after the Implementation Time) which are not TANZL Transferring Liabilities or Tararua Transferring Liabilities, and includes certain costs and expenses which TPW is obligated to pay pursuant to a lease with Tararua Wind Power (as provided in clause 6.4 of the Separation Deed).

"BEL Vested Litigation Matters" means all litigation matters involving TPW as at the Implementation Date other than Joint Litigation Matters or TANZL Vested Litigation Matters and as referred to in clause 6.3(e) of the Separation Deed.

"Business Day" means a day (other than a Saturday, Sunday or a public holiday) on which banks are generally open in Auckland.

"Certificate" means the directors' certificate to be executed by the TPW Directors on the Distribution Date at the time specified in Schedule 3 to the Separation Deed, which notes the grounds for the passing of the solvency component of the Resolution.

"Claim" means any allegation, investigation or inquiry, cause of action, claim, litigation, proceeding, demand, judgment, award, claim for contribution or indemnity, suit or demand of any nature which exists now or at any time in the future, whether at law, under contract, in equity, due to negligence of a party, under statute or otherwise.

"Companies Act" means the Companies Act 1993.

"Costs" means external legal costs and expenses (including, without limitation, solicitors' and counsels' fees, expert costs, court costs and fees, arbitrators' or mediators' fees, and in each case on a full indemnity basis and including GST that is not otherwise recoverable), penalties, fines and any other like costs directly associated with a matter.

"Court" means the High Court of New Zealand.

"Demerger" means the Court approved scheme of arrangement to effect the demerger of TPW into BEL and TANZL, the key elements of which are described in the Implementation Plan, subject to any amendments or variations made in accordance with the Separation Deed or as may be required by the Court.

"Distribution Date" means the Business Day occurring immediately after the Implementation Date.

"EKF Debt" means any financial indebtedness made available under the following facilities:

- (a) the NZ\$50,000,000 export credit facility agreement dated 24 November 2010 between Trustpower Limited as borrower and ANZ Bank New Zealand Limited as Lender; and
- (b) the NZ\$110,908,857 term loan facility agreement dated 2 March 2006 between Trustpower Limited as borrower and ANZ Bank New Zealand Limited as Lender.

"Final Court Orders" means orders of the Court that the Demerger shall be given effect, which shall be binding on TPW, BEL, TANZL, Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) of the Companies Act.

"Financing Arrangements" means bank borrowings and the EKF Debt.

"GSP" means GSP Energy Pty Limited.

"GSP Wind Assets" means the wind assets transferred by GSP to a subsidiary of TANZL pursuant to an agreement for sale and purchase between GSP and Blayney and Crookwell Windfarm Pty Ltd (ACN 612 416 029) with settlement to occur on or prior to the Implementation Date.

"GST" means tax charged in New Zealand under the Goods and Services Tax Act 1985 and any similar value added tax charged or levied in any other jurisdiction.

"Implementation Date" means the Business Day occurring immediately after the Record Date, or such other date as the parties may agree in writing.

"Implementation Plan" means the plan annexed as Schedule 2.

"Implementation Time" means the first moment in time on the Implementation Date.

"Joint Litigation Matters" means any and all Claims brought before the Implementation Date by or against any member of the TPW Group that relates both to BEL (whether in respect of the BEL Transferring Assets or otherwise) and TANZL (whether in respect of the TANZL Transferring Assets or otherwise) (excluding, for the avoidance of doubt, BEL Vested Litigation Matters and TANZL Vested Litigation Matters).

"Liability" includes any liability, duty and obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety by way of guarantee or otherwise) whether for the payment of money or otherwise, whether ascertained or a liability for damages, and whether payable or to be performed in New Zealand or elsewhere, owed to any person at the Implementation Time.

"Liquidators" means the liquidators of TPW proposed to be appointed pursuant to clause 2.3 of the Implementation Plan.

"Main Board" means the main board equity security market operated by NZX.

"NoA" means the notice of appointment to be executed by the TPW Directors on the Distribution Date at the time specified in Schedule 3 of the Separation Deed, appointing Liquidator(s) to TPW.

"NZX" means NZX Limited.

"Record Date" means 5.00pm on the date which is five Trading Days after the Sealed Date.

"Register" means the register of Shares maintained by Computershare Investor Services Limited on behalf of TPW.

"Representative" means, in relation to an entity, a director, officer, employee, agent, partner, contractor or adviser of that entity;

"Resolution" means the director's resolution to be passed by the TPW Directors on the Distribution Date at the time specified in Schedule 3 of the Separation Deed, under which the board will resolve (a) to approve the execution of the NoA, and (b) that TPW can pay its debts when due.

"Sealed Date" means the date the Final Court Orders are sealed.

"Separation Deed" means the deed between TPW, BEL, TANZL and Tararua Wind Power, to which this Implementation Plan is annexed as Schedule 2 thereto.

"Share" means a fully paid ordinary share in the capital of TPW.

"Shareholder" means a person who is recorded in the Register as the holder of one or more Shares from time to time.

"TANZL" means Trustpower Australia (New Zealand) Limited.

"TANZL Assets and Liabilities Allocation Plan" means the asset and liabilities allocation plan attached as Appendix 2 to the Scheme Booklet listing assets or liabilities of TPW or any member of the BEL Group which are to be transferred to TANZL.

"TANZL Constitution" means the constitution to apply in respect of TANZL which has been adopted by TANZL subject to the Demerger being implemented.

"TANZL Group" means TANZL and its subsidiaries (including for the avoidance of doubt the Trustpower Australia Financing Partnership), including those subsidiaries of TPW that are, pursuant to the Implementation Plan, to become subsidiaries of TANZL (including Tararua Wind Power), but excluding any subsidiaries of TANZL which pursuant to the Implementation Plan are to cease to be subsidiaries of TANZL, pursuant to the Demerger.

"TANZL Shares" means shares in the capital of TANZL after the subdivision referred to in paragraph 2.3(c)(ii).

"TANZL Transferring Assets" means the Assets that are identified or designated as such on the TANZL Assets and Liabilities Allocation Plan, including TPW's rights (whether present or future, actual or contingent) against third parties in respect of such Assets including any Claim.

"TANZL Transferring Employees" means those employees of TPW transferring their employment from TPW to a member of the TANZL Group.

"TANZL Transferring Contracts" means:

- (a) those TPW Contracts which are listed in Part B of Appendix 1 of the Separation Deed; and
- (b) any TPW Contracts entered into after the date set out in Appendix 1 of the Separation Deed as to when Appendix 1 of the Separation Deed was prepared, and where TPW and TANZL agree that the Contract should be listed in Part B of Appendix 1 of the Separation Deed.

"TANZL Transferring Liabilities" means:

- (a) all Liabilities and Claims against TPW arising out of or in connection with the TANZL Transferring Assets excluding any Financing Arrangements; and
- (b) any existing debt owed by TPW to any member of the TANZL Group; and
- (c) all Liabilities that are identified or designated as such in the TANZL Assets and Liabilities Allocation Plan.

"TANZL Vested Litigation Matters" means the litigation matters identified in the TANZL Assets and Liabilities Allocation Plan and as referred to in clause 6.3 of the Separation Deed.

"Tararua Transferring Assets" means the Assets identified or designated as such in Appendix 3 of the Separation Deed, including TPW's rights (whether present or future, actual or contingent) against third parties in respect of such Assets including any Claim.

"Tararua Transferring Contracts" means

- (a) those TPW Contracts which are listed in Part A of Appendix 1 of the Separation Deed; and
- (b) any TPW Contracts entered into after the date set out in Appendix 1 of the Separation Deed as to when Appendix 1 of the Separation Deed was prepared, and where TPW and Tararua Wind Power agree that the Contract should be listed in Part A of Appendix 1 of the Separation Deed.

"Tararua Transferring Liabilities" means all Liabilities and Claims arising out of or in connection with a Tararua Transferring Asset, except for those Liabilities to the extent that they relate to the operation or maintenance of the Tararua Transferring Assets, arising in the ordinary course and relating to any period prior to the Implementation Time.

"Tararua Wind Power" means Tararua Wind Power Limited.

"Taxation" or **"Tax"** means all forms of taxation including all statutory or governmental taxes, levies, duties and rates, whether imposed in New Zealand, Australia or elsewhere, and includes:

- (a) any reassessments of any such taxation; and
- (b) all penalties, interest, fines, or the like imposed in respect of any such taxation.

"TPW Contract" means any contract that TPW is a party to, or undertaking given to or given by TPW (whether or not in writing) that is subsisting at the Implementation Time.

"TPW Directors" means the board of directors of TPW.

"TPW Group" means TPW and its subsidiaries.

"Trading Day" has the meaning ascribed to that term in the NZX Participant Rules 2004, as amended from time to time.

"Transferring Contract" means any TPW Contract that has not been varied, novated or transferred (either by agreement or in accordance with its terms) such that, from the Implementation Time, each of BEL or TANZL (or any member of their respective group) will have their own arrangements with the counterparty in respect of the matters dealt with by that TPW Contract.

"Transitional Services Agreement" means the agreement of that name between BEL and TANZL whereby the parties are to provide transitional services to the other and its respective group members.

"Trustpower Australia Financing Partnership" means the Trustpower Australia Financing Partnership (ABN 68 709 436 924), a limited partnership constituted pursuant to the Partnership Act 1958 (Victoria, Australia).