

DEED OF VARIATION OF TRUST No. 2

Executed by:

The MOUNT ALBERT GRAMMAR SCHOOL COMMUNITY SWIMMING
POOL TRUST BOARD

EXECUTED BY

THE MOUNT ABLERT GRAMMAR SCHOOL COMMUNITY SWIMMING POOL TRUST BOARD, a board of trustees incorporated under the Charitable Trusts Act 1957, registration number 669907, having its registered office at Auckland (Trustees).

BACKGROUND

- A. As set out in its Trust Deed, the Trust has been established and the Trust fund is to be held and applied by the Trustees for exclusively charitable purposes, namely the promotion of sports, recreation and community facilities for Mt Albert Grammar School and members of the public and in particular the establishment, operation, promotion, and use of a swimming pool complex at the school.
- B. Under clause 8 of the trust Deed, the Trustees have the power to vary the terms of the Trust set out in the Trust Deed.
- C. The Trustees have determined to exercise their power of variation under clause 8 of the Trust Deed to vary the terms of the Trust, by way of a resolution passed or signed by the Trustees on or about the date of this deed. The purpose of this deed is to formally record the variations to the terms of the Trust.
- D. In accordance with clauses 8 and 15 of the Trust Deed:
- None of the variations recorded in this deed in any way detracts from the exclusively charitable objects of the Trust, nor do any of the variations alter the exclusively charitable nature of the Trust; and
 - The Council and School Board must confirm the variations as a condition of the variations becoming effective.

TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 **Definition:** In this deed, unless the context indicates otherwise:

Council means the Auckland Council, being a unitary authority established under the Local Government (Auckland Council) Act 2009,

First Deed of Variation means the Deed of Variation dated on or about April 2013 and registered with the Companies Office on 10 May 2013.

Operative Date, in relation to any variation recorded in this deed, means the latter of:

(a) **Date of Resolution:** The date of the resolution by the Trustees as referred to in paragraph C of the background; and

(b) **Receipt of Confirmations:** the Trustees' receipt of confirmation of the variation from both the Council and the School Board

School Board means board of trustees of Mt Albert Grammar School;

Trust means the Mt Albert Grammar School Community Swimming Pool Trust; and

Trust Deed means the original trust deed setting out the terms of the Trust, dated 23 December 1994

1.2 **Interpretation:** In this deed, unless the context indicates otherwise:

- (a) **Clauses:** references to clauses are to clauses in this deed;
- (b) **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning throughout this deed, including in the background;
- (c) **Headings:** clause and other headings are for ease of reference only and will not affect this deed's interpretation; and
- (d) **Plural and Singular:** references to the singular include the plural and vice versa.

2. VARIATION OF TRUST TERMS

The Trustees record that, with effect from the Operative Date, the Trust Deed is varied as follows:

2.1 **Board of Trustees:** Clause 6 of the Trust Deed, is deleted and replaced with the following:

6. BOARD OF TRUSTEES

- (a) *The Trust shall have five Trustees, including:*
 - (i) *the Chairperson, who shall be appointed by the Council (following consultation with the other Trustees for the time being);*
 - (ii) *The Headmaster of the School for the time being, who shall hold office as an ex officio Trustee;*
 - (iii) *one further Trustee appointed by the School Board; and*

EITHER:

- (iv) *two further Trustees appointed by the Council, one of whom shall be an elected member of the Albert-Eden Local Board;*

OR

- (iv) *two further Trustees appointed by the Council;*

Provided further that if at any time the Trust has fewer than five Trustees (including any situation where fewer than five persons validly hold office as Trustees):

- (v) upon becoming aware of that situation, the Chairperson, or in the event of there being no Chairperson the remaining Trustees, must notify the Council and/or the School Board, as the case may be, and use best endeavours to ensure that the Council and/or the School Board fill any vacant Trustee position so that the number of Trustees is increased to five, as soon as reasonably practicable; and
- (vi) so long as the remaining Trustees are able to establish a quorum in accordance with clause 7(b), all proceedings at any quorate meeting of Trustees, any resolution of Trustees, and any other conduct of the Trustees in accordance with the terms of this Deed shall be as valid and effective as if there were five Trustees.

(b) In relation to the term of office of Trustees:

- (i) any Trustee other than the Headmaster of the school may be replaced at the discretion of whichever of the School Board or the Council has appointed that Trustee; and
- (ii) the initial term of office of any Chairperson shall be three years, provided that upon the expiration of that term the Council may reappoint the Chairperson (following consultation with the other Trustees for the time being) for a further term or terms not exceeding in the aggregate a further three years.

2.2 **Administration:** Clause 7 of the Trust Deed is deleted and replaced with the following:

7. ADMINISTRATION

- (a) The Trust shall meet together for the conduct of the affairs of the Trust from time to time (but generally no less than 2 times per year) and shall regulate and conduct their meetings as they think fit and for such purpose they may make rules and regulations as they consider desirable.
- (b) A quorum for meetings of the Trustees shall be three Trustees, which shall include at least one Trustee appointed by the School Board, one Trustee appointed by the Council, and the Chairperson or Deputy Chairperson.
- (c) All decisions of the Trustees shall be by a majority. The Chairperson or Deputy Chairperson shall have a casting as well as a deliberative vote in the event of a tie and equality of votes, provided that the Deputy Chairperson shall only have or exercise a casting vote in accordance with whatever conditions or restrictions may be imposed by the Chairperson.
- (d) A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees. Any such resolution may consist of several documents in like form each signed by one or more Trustee.

- (e) *Minutes of the proceeding of all meetings, of the Trustees shall be prepared by the secretary and if confirmed at a subsequent meeting of the Trustees, shall be prepared by the secretary and signed by the Chairman as a true and correct record and every such minute purporting to be so signed shall be prima facie evidence of the facts therein stated.*
- (f) *The Trustees shall keep an account or account or accounts at such bank or banks as they shall time to time to time determine and cheques shall be drawn signed and endorsed by such person or persons as the Trustees shall from time to time authorise in writing.*
- (g) *The Trustees shall cause true accounts to be kept of all their receipts, credits, payments and liabilities and all other matters necessary for showing the true state and condition of the Trust and, if the Trustees so resolve, such accounts shall be audited by a chartered accountant appointed for that purpose by the Trustees.*
- (h) *The Trustees shall from time appoint either one of their number or some other person to be secretary, to hold office at their pleasure.*
- (i) *The Trustees shall apply to be incorporated as a Board under Part II of the Act and the name of the Board following incorporation shall be the "The Mount Albert Grammar School Community Swimming Pool Trust Board".*
- (j) *If and when the Trustees shall have become incorporated as a Board of Trustees in accordance with the Act pursuant to section 12, they shall provide a common seal for the Board of Trustees which shall be deposited with the secretary for the time being and which shall be affixed by the authority of the Trustees previously given at a meeting of the Trustees to any document requiring execution by the Board of Trustees. Every such affixing shall be performed in the presence of and accompanied by the signatures of two Board of Trustee members and shall be sufficient evidence of the authority to affix such seal and no person dealing with the Trustees shall be bound or concerned to see or inquire as to the authority under which any document is sealed and in whose presence.*

2.3 **Modification of terms of this Deed:** Clause 8 of the Trust Deed, is deleted and replaced with the following:

8. MODIFICATION OF TERMS OF THIS DEED

The Trustees may from time to time by resolution carried by not less than four of their number, but subject to confirmation by both the Council and the School Board, modify the terms of this deed provided however that no such modification shall at any time be made which detracts from the exclusively charitable objects of the Trust

3. CONFIRMATION OF OTHER TRUST TERMS

The Trustees confirm that except as expressly varied by this deed the terms of the Trust Deed, including those varied under the First Deed of Variation remain fully effective and unaltered.

EXECUTED AND DELIVERED AS A DEED

SIGNED on behalf THE BOARD OF TRUSTEES OF THE MT ALBERT GRAMMAR SCHOOL COMMUNITY SWIMMING POOL TRUST by:	
Signature of Trustee	Signature of Trustee
Name of Trustee	Name of Trustee