

# King's School Foundation

## Constitution

(Revised Version)

**CONTENTS**

**NAME** 1

**INTERPRETATION** 1

**CHARITABLE PURPOSE** 2

**ADDITIONAL PURPOSES** 3

**MEMBERSHIP** 4

**MEMBERS NOT TO BENEFIT** 4

**CLASSES OF MEMBERSHIP** 4

**APPLICATION FOR MEMBERSHIP** 5

**QUALIFICATION FOR CLASSES** 5

**MANAGEMENT** 6

**BOARD** 7

**APPOINTMENT OF BOARD MEMBERS** 7

**CESSATION OF BOARD MEMBERSHIP** 8

**OFFICERS** 9

**PROCEEDINGS OF THE BOARD** 9

**POWERS AND DUTIES OF THE BOARD** 10

**EXECUTIVE** 14

**COMMITTEES** 15

**CONFLICTS OF INTEREST** 15

**GENERAL MEETINGS** 15

**CHAIR OF GENERAL MEETINGS** 16

**QUORUM** 16

**VOTING** 16

**PROXIES** 17

**SECRETARY AND MINUTES** 17

**ACCOUNTS** 17

**MONEY RECEIVED BY THE FOUNDATION** 18

**LIABILITY OF BOARD MEMBERS** 19

**INDEMNITY** 19

**RULES** 19

**WINDING UP** 19

**ALTERATIONS TO DEED** 20

**INCORPORATION** 20

**COMMON SEAL** 20

## **KING'S SCHOOL FOUNDATION**

This Declaration made on the 26<sup>th</sup> day of March 1984, by the following members of **The Board of Governors of King's School, Auckland**, namely,

**Peter James Harrison** of 27 Fernglen Road South, St Heliers Bay, Auckland 5, Company Director, **Williams Graeme Caughey** of 22 Landscape Road, Mt Eden, Auckland 4, Company Director and **Richard Denver Olde** of 232 Remuera Road, Remuera, Auckland 5, Sharebroker.

**WHEREAS** the said Board of Governors of King's School, Auckland, wishes and the above named have agreed to establish the **King's School Foundation** for the purposes of providing financial and other assistance for the benefit of the said school as hereinafter provided:

### **NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

#### **NAME**

- 1 The Foundation established by this Deed shall be known as:  
"KING'S SCHOOL FOUNDATION".

#### **INTERPRETATION**

- 2 In this Deed unless the context otherwise requires:
  - (a) *this Deed* means this deed as amended by any variations or alterations lawfully made from time to time;
  - (b) *the School* means King's School, Auckland;
  - (c) *Board Member* means a member of the Board;
  - (d) *the Board of Governors* means the Board of Governors of the School;
  - (e) *the Foundation* means King's School Foundation;
  - (f) *the Board* means the governing body of the Foundation;
  - (g) *the Headmaster* means the Headmaster of the School and includes any acting Headmaster of the school;
  - (h) *member* means a person who has made a gift or notified the Board of intention to make a gift or bequest which qualifies for a class of membership of the Foundation under this deed and who has had an application to the Board for membership accepted by the Board;

- (i) *the Trust Fund* means and includes:
  - (i) all sums of money and all real or personal property and other benefits at any time or times paid or transferred to and accepted by the Board by way of addition or accretion to, or otherwise held upon, the trusts of this Deed; and
  - (ii) the investments and other property from time to time representing such sums of money, real or personal property or other benefits and any part or parts of them and the income from them;
- (j) *gift* means a gift of cash or a gift of an asset made or transferred during the donor's lifetime;
- (k) *bequest* means a legacy or other benefit passing under a testamentary document;
- (l) *in writing* includes printing, email communication and other modes of reproducing or representing words in a visible form;
- (m) Words importing persons include trusts, corporate bodies and unincorporated bodies;
- (n) Words importing a gender include all genders;
- (o) Words importing the singular number include the plural number and vice versa;
- (p) A references to a clause is to a clause of this Deed;
- (q) A reference to "including" or similar words includes a reference to "without limitation"; and
- (r) A reference to any statute is a reference to that statute as amended, or to any substituted statute.

#### **CHARITABLE PURPOSE**

- 3 The Foundation is established, and the Trust Fund shall only be used, for the charitable purpose of the advancement of education within New Zealand.
- 4 Without derogating from that purpose or imposing any limitation upon the Board or the Board of Governors in the exercise of their powers or any of them, it is declared that the purposes of the Foundation will be achieved by the maintenance and upholding of the standards and independence of the School.

## **ADDITIONAL PURPOSES**

- 5 Subject to the provisions of clauses 3 and 4, the Trust Fund shall be applied and used exclusively towards the educational purposes of the School which shall be charitable purposes including:
  - (a) to provide financial assistance for the employment of teaching and other staff, educational research projects, scholarships, bursaries, endowments, educational allowances and visits from academic and teaching specialists;
  - (b) to provide financial assistance for the acquisition by the School of library books, works of art, and educational plant and equipment of all kinds;
  - (c) to provide financial assistance for the development of new teaching methods and the cultural environment of the School;
  - (d) to provide finance for the acquisition of land or facilities or the acquisition, construction or maintenance of buildings used or to be used by the School;
  - (e) to raise money for the purposes set out above by any method that seems desirable (including the undertaking of, or participating in, commercial ventures of all kinds).
- 6 The Foundation shall assist the Board of Governors to preserve, develop and maintain the independence, standards, position, services and facilities of the School and, in particular, shall:
  - (a) create opportunities for the School to attract and retain the continuing interest and financial support of a concerned and interested group of supporters;
  - (b) solicit donations and gifts to or for the benefit of the School and any of its funds or accounts from its supporters and from any other source deemed appropriate to the promotion of the purposes of the Foundation; and
  - (c) attract and encourage bequests, legacies and all forms of deferred gifts.
- 7 The Foundation shall promote the spread of the Christian faith through the aims and objects of the School.
- 8 The Foundation shall have such charitable purposes as may be decided upon by the Board and agreed to by the Board of Governors from time to time (within the meaning ascribed to that expression by Section YA 1 of the Income Tax Act 2007 and Section 38 of the Charitable Trusts Act 1957).
- 9 The purposes in each clause and paragraph of this Deed shall not, except where the context specifically or expressly requires it, be in any way limited or restricted by the terms of any other paragraph or from the name of the Foundation. None of those purposes shall be deemed subsidiary or ancillary to any other purpose. The

Foundation through its Board shall be fully empowered to carry out any one or more of such purposes independently of any other such purpose.

### **MEMBERSHIP**

- 10 The Foundation shall consist of persons who qualify for membership in accordance with this Deed.
- 11 To qualify for admission to membership a person must:
  - (a) have made a gift or notified that person's intention to make a gift to any of the Trust Fund of the Foundation, King's School, Auckland, Friends of King's School or any other body or appeal approved by the Board; and
  - (b) be accepted for membership by the Board.
- 12 Subject to clauses 28 and 29 membership of the Foundation in the case of members being:
  - (a) natural persons shall be for life;
  - (b) corporate and unincorporated bodies shall be subject to such terms and conditions and for such period of time as the Board thinks fit from time to time.
- 13 A member which is a corporate or unincorporate body must, by written notice to the Foundation, nominate a natural person to represent that member. That nominated person alone shall be able to represent, act as, and exercise the membership rights of such member. Any such member may from time to time alter such nomination by giving written notice to the Foundation.
- 14 Where a gift is made in the joint names of two or more persons, those persons may together and jointly be classified as members, but in the event of voting only the first named of such persons shall have and may exercise the rights to vote, with rights of survivorship during the joint lives of the donors.

### **MEMBERS NOT TO BENEFIT**

- 15 Memberships shall not confer on any member any right to receive any of the income or capital of the Trust Fund nor to control the Board in the exercise of its powers.
- 16 No member, nor any person associated with a member, may determine or materially influence any decision of the Board relating to the conferring of any benefit or advantage on, or on behalf of, that member or associated person.

### **CLASSES OF MEMBERSHIP**

- 17 There shall be four classes of members as follows:
  - (a) Members;

- (b) Fellows;
  - (c) Directors; and
  - (d) Patrons.
- 18 The board may from time to time establish any new class of membership and set the qualifications for that class of membership.
- 19 Each member who qualified for a class of membership as at the date of adoption of this revised Deed shall continue to be a member of that class. In particular, each member who was classed as a Supporter prior to the date of adoption of this revised Deed shall be entitled to remain a member of that class notwithstanding cessation of that class of membership
- 20 On and from the date of adoption of this revised Deed, the minimum value of gifts to qualify for each class of membership shall be as set out in the table below or such greater amount for any class of membership as may from time to time be determined by the Board:

| <b>Class</b> | <b>Minimum Value of Gift</b> |
|--------------|------------------------------|
| Member       | \$2,000                      |
| Fellow       | \$10,000                     |
| Director     | \$25,000                     |
| Patron       | \$50,000                     |

**APPLICATION FOR MEMBERSHIP**

- 21 Any person wishing to become a member of the Foundation shall make an application for membership in writing in a form prescribed by the Board from time to time and shall in that application specify the class of membership sought and the manner in which qualification for that class will be achieved.
- 22 The Board may accept or decline to accept any application for membership or any gift, notification of intention to make a gift, or notification of an intended bequest in its absolute discretion without assigning any reason.

**QUALIFICATION FOR CLASSES**

- 23 If a person gives notification of his or her intention to contribute a gift of not less than \$2,000.00 in value in aggregate (or such greater amount as may from time to time be determined by the Board) within a period of seven years from the date of such notification (or such longer period as may be approved by the Board) such person shall be deemed for the purpose of determining the class of membership to

have made a gift of the aggregate amount referred to in the notification, subject to the acceptance of such notification by the Board. Any such notification shall be in the form or forms as are prescribed from time to time or to like effect or as shall be acceptable to the Board.

- 24 A person whose gift or intended gift exceeds the qualifying amount for his or her nominated class of membership may make application to have some other person accepted as a member in the class of membership for which the excess qualifies.
- 25 Any person may make a gift or give notification of intention to make a gift in accordance with this Deed and make an application to have some other person accepted as a member in the class of membership for which the value of the gift or intended gift qualifies.
- 26 If any of the provisions of this Deed specifying any amount of money are amended (including by the Board), any such amendment shall apply only to applications for membership made after the date of such amendment.
- 27 Any member may at any time progress to a higher class of membership by making or giving notification of intention to make, within a period of seven years (or such longer period as may be approved by the Board), such additional gift as at the date of the notification as will qualify him or her for membership at the appropriate higher class of membership.
- 28 A member may resign from membership of the Foundation by giving notice in writing delivered to the Office of the Foundation and such member shall cease to be a member at the time of delivery of that notice.
- 29 Unless the Board determines otherwise, a member of the Foundation shall cease to be a member if:
  - (a) a gift referred to in a notification of intention to gift has not been made within six months of the due date; or
  - (b) a member who has qualified for membership by a notification of intention to gift has revoked the intended gift, or if the Board is not satisfied as to the continued ability of the member to make such a gift.
- 30 If the Foundation has received gifts from a person who was previously a member the Board may re-admit that person as a member in the class of membership for which the received value of the gifts qualifies.
- 31 All gifts made to the Foundation by a member shall be irrevocable, shall remain the absolute property of the Foundation, and shall not be affected by cessation of membership.

## **MANAGEMENT**

- 32 The control, management and conduct of the Foundation shall be vested in the Board provided that the Board shall not expend any monies of the Foundation for



any purposes other than in the ordinary course of the day to day administration and operations of the Foundation and the investment of the Trust Fund or for the purposes set out in clause 5 without first obtaining the approval of the Board of Governors.

- 33 In the case of a difference of opinion between the Board and the Board of Governors as to the operation or interpretation of clause 32, the opinion of the Board of Governors shall prevail.

## **BOARD**

- 34 There shall be no fewer than six, nor more than ten, Board Members at any time. If the Board Members number less than the minimum number the remaining Board Members, or if there are none the Board of Governors, must promptly appoint new Board Members.

- 35 The Board shall comprise:

- (a) up to nine representatives of the persons who qualify as members of the Foundation, elected by those members; and
- (b) any person nominated by the Board of Governors.

## **APPOINTMENT OF BOARD MEMBERS**

- 36 The Board Members elected pursuant to clause 35(a) shall be elected each year at the annual general meeting of the Foundation and (unless such office has been previously vacated by reason of the death of any such Board Member or otherwise) shall hold office until the next ensuing annual general meeting when he or she shall retire from office but shall be eligible for re-election without re-nomination.
- 37 No Board Member who has been a Board Member for 10 consecutive years shall be eligible for appointment to the Board at the next annual general meeting of the Foundation or to fill a casual vacancy unless that proposed appointment is approved by the Board.
- 38 A Board Member who has been elected to represent the members of the Foundation may be removed by an ordinary resolution of the members of the Foundation and his or her place may be filled by resolution of the members. A vacancy caused by any such resolution shall not be a casual vacancy.
- 39 The election of the representatives of the members of the Foundation shall take place in the following manner:
- (a) Any two members shall be at liberty to nominate any other member to serve as a Board Member;
  - (b) The nomination, which shall be in writing and signed by the member and his or her nominators, shall be lodged with the Secretary of the Foundation at

least 14 days before the annual general meeting at which the election is to take place;

- (c) A list of candidates' names in alphabetical order with the nominators' names shall be posted in a conspicuous place in the office of the Foundation at least seven days immediately preceding the annual general meeting;
  - (d) If the number of candidates standing for election exceeds the number of vacancies balloting lists shall be prepared containing the names of the candidates in alphabetical order and their class of membership. Each member present at the annual general meeting shall be entitled to vote for the number of such candidates being equal to the number of vacancies;
  - (e) In case there shall not be a sufficient number of candidates nominated the Board may fill the remaining vacancy or vacancies from the members of the Foundation.
- 40 A casual vacancy amongst the Board Members may be filled by the Board and any Board Member so appointed shall hold office until the next ensuing annual general meeting when he or she shall retire from office but shall be eligible for re-election without re-nomination.
- 41 Any nominee of the Board of Governors may be appointed to, or removed from, office as a Board Member by written notice from the Board of Governors delivered to the office of the Foundation.

#### **CESSATION OF BOARD MEMBERSHIP**

- 42 A Board Member shall cease to hold office if he or she:
- (a) retires from office by giving written notice to the President or the Board;
  - (b) completes his or her term of office without being reappointed;
  - (c) refuses to act;
  - (d) is absent without leave from 3 consecutive ordinary meetings of the Board;
  - (e) becomes physically or mentally incapacitated to the extent that, in the opinion of the other Board Members, expressed in a resolution, he or she is unable to perform the duties of a Board Member properly;
  - (f) ceases to qualify as an officer of a charitable entity under section 16 of the Charities Act 2005; or
  - (g) in the opinion of the other Board Members expressed in a resolution, is for any other reason unfit to carry out the duties of a Board Member.
- 43 Upon every appointment, retirement, re-appointment or termination of office of any Board Member, the Board will ensure that an entry is made in the minute book of

the Foundation to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Board Members are satisfied.

- 44 Where, for any reason, a Board Member is not properly appointed or is disqualified from holding office, anything done by that Board Member (or by a meeting at which that Board Member was present as a Board Member) before discovery of the irregularity, shall be as valid as if that Board Member had been duly appointed or had not been disqualified (as the case may be).

## **OFFICERS**

- 45 The officers of the Foundation shall comprise a President (who shall be Chairman of the Board) and a Vice-President, who must be Board Members, and a Secretary (who need not be a Board Member).
- 46 The Board may also appoint such other officers (who need not be Board Members) as it thinks fit from time to time.
- 47 The officers of the Foundation shall be appointed each year by the Board at its first meeting after the annual general meeting of the Foundation and, subject to clause 48, shall hold office until such time as their respective successors have been appointed (or until such earlier date as he or she ceases to be a Board Member or resigns from office).
- 48 The Board may remove and replace any officer so appointed. In the event of any vacancy occurring amongst the officers, the Board shall as soon as practicable fill such vacancy.

## **PROCEEDINGS OF THE BOARD**

- 49 Except as set out in this Deed, the Board may meet for the despatch of business adjourn and otherwise regulate its meetings as it thinks fit.
- 50 Each Board Member has one vote. Questions arising at any meeting of the Board shall be decided by a majority of votes. In the case of an equality of votes the Chairman shall have a second or casting vote.
- 51 The President or Vice-President may at any time summon a meeting of the Board by not less than 2 days' notice of meeting sent to every Board Member and to the Headmaster. Any irregularity in the notice is waived if all Board Members attend the meeting without protest as to the irregularity, or if all Board Members agree to the waiver.
- 52 The quorum necessary for transacting the business of the Board shall be a majority of the Board Members. No business may be transacted at a meeting of Board Members if a quorum is not present.
- 53 The President shall chair and in his absence the Vice-President shall chair meetings of the Board. If none of them is present, the Board Members shall choose one of their number to chair the meeting.

- 54 The Headmaster shall be entitled to receive notice of and to attend and speak at all meetings of the Board, but he or she shall not be entitled to vote.
- 55 A resolution in writing signed by all the Board Members shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Board Members.
- 56 A meeting may be held by means of audio, or audio and visual, communication by which all Board Members participating and constituting a quorum can simultaneously hear each other throughout the meeting.

#### **POWERS AND DUTIES OF THE BOARD**

- 57 The Board shall hold the Trust Fund upon the trusts and with the powers and to the purposes set out in this Deed.
- 58 The Board, in addition to having power to invest the assets of the Foundation in any of the modes of investment from time to time authorised by law for the investment of trust funds, may invest the assets of the Foundation in any one or more of the following modes of investment (wherever situated, for any period or tenure):
- (a) In the purchase or other acquisition or development or upon mortgage of land improved or unimproved or of any interest in land;
  - (b) In the purchase or other acquisition of government securities or bonds or of any government, semi-government, local government, municipal, or statutory authority, of New Zealand, or of any foreign country, state, territory, colony or political subdivision;
  - (c) On deposit with any bank;
  - (d) On loan, with or without interest, to any person or persons whether an executor, trustee or otherwise or on deposit with or loan to any firm or business with or without interest and with or without security;
  - (e) On deposit with or loan to any company wherever or incorporated with or without interest and with or without security;
  - (f) In the acquisition by original subscription or by purchase or otherwise of the shares or stock (whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability including options) of any company wherever incorporated or carrying on business and debentures, notes or other securities of any such company with power to take up new shares or other securities in any such company;
  - (g) In any firm or business (or any interest therein);
  - (h) In units or sub-units of any fixed or flexible unit trust or syndicate;

- (i) In the erection of buildings or carrying out improvements to land or buildings of any description or type or the effecting of improvements renovations or repairs to any buildings or other improvements;
- (j) In the construction and operation of any commercial residential or industrial buildings.

59 In addition to all the powers vested in the Board by law or by statute or otherwise by this Deed, the Board shall have and may exercise at any time or times any or all of the following powers:

- (a) To allow all investments or assets at any time forming part of the Trust Fund to remain in the original form in which they are received by the Foundation at any time or times to sell, call in, and convert the same into money or other securities or property;
- (b) To accumulate the income of the Foundation by investing the same and the resulting income from time to time in any of the modes of investment authorised by this Deed;
- (c) To change, vary or transpose any investments or assets for the time being forming part of the Trust Fund;
- (d) To pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any real or personal property and to manage any property and effect such repairs as the Board may consider necessary or advisable, and where the Board is unable to charge such expenditure against income the Board shall be at liberty to resort to capital;
- (e) To apply any moneys for the time being forming part of the Trust Fund in improving or developing property and in erecting enlarging improving or rebuilding such property;
- (f) To lease or licence all or any part of any real or personal property for any period upon such terms and conditions and for such rent as the Board shall in its absolute discretion think fit and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and generally to deal with real and personal property in a proper manner and in due course of management as if beneficially entitled to it;
- (g) To determine whether any moneys shall be considered as capital or income, and out of what part of the Trust Fund (whether out of income or capital) any expenses, outgoings or losses will or ought to be paid or borne;
- (h) To exercise as the Board shall in its absolute discretion think fit all the voting powers attaching to any shares, stock, debentures, debenture stock, bonds, notes, options or other securities at any time forming part of the Trust Fund and to appoint directors to any company;

- (i) To surrender and deliver up any shares, stock, debenture stock, bonds, notes, options and securities of any kind (together called "securities") forming part of the Trust Fund for such consideration and upon such terms and conditions as the Board shall think fit to any company reducing its capital and the Board may receive such consideration in the form of cash, securities or other assets as may be agreed upon between the Board and such company;
- (j) To consent to any reorganisation or reconstruction of any company the securities of which form part of the Trust Fund and to consent to any reduction of capital or other dealing with such securities as the Board may consider advantageous or desirable;
- (k) To employ and to act upon the opinion or advice of, or information obtained from, any financial adviser, lawyer, accountant, valuer, surveyor, auctioneer or other expert or professional person and the Board shall not be responsible for any loss depreciation or damage occasioned by acting or not acting in accordance with any such advice, opinion or information;
- (l) To determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Foundation;
- (a) Generally to do all such other lawful acts and things as are incidental or conducive to the attainment of the purposes and the conduct of the Foundation and to pay any expenses incurred in doing so from the Trust Fund;
- (m) To seek and procure the registration of the Foundation in accordance with the provisions of any Act or law from time to time in force relating to charitable funds if the Board thinks fit so to do;
- (n) To set aside out of the capital or income of the Trust Fund from time to time such sum of money as may, in the opinion of the Board, be sufficient to meet any debt or obligation due or accruing due;
- (o) To guarantee all and any of the obligations of King's School, Auckland;
- (p) To raise or borrow money either bearing or free of interest and subject to the approval of the Board of Governors in each instance to secure the repayment of money so borrowed and any interest by mortgage or charge over all or any of the investments or assets of the Trust Fund and to apply such money for any of the purposes of the Foundation including the investment of money in any manner. No lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;
- (q) To accept gifts, legacies, bequests and other forms of donation of any real or personal property of whatever nature and kind and wherever situated and subject to such conditions, limitations or reservations as may be acceptable to the Board;

- (r) To accept loans or deposits of moneys or securities upon such terms and conditions as to interest, repayment, security or otherwise as may from time to time be acceptable to the Board and to give and execute any securities or acknowledgements as may be agreed to from time to time by the Board;
- (s) To hire, engage, employ or otherwise avail itself of the services of personnel, specialists, firms and companies including brokers, bankers, agents, accountants, solicitors, architects, surveyors, consultants, managers, secretaries, clerks or other persons to carry out all or any of the trusts and powers contained in this Deed and remunerate them out of the Trust Fund and any Board Member shall be entitled to be employed and to charge in his professional capacity and shall not be disqualified from acting as a Board Member as part of the carrying on as a business of professional public practice by that person of professional services to the Trust Fund;
- (t) To hold one or more investments without any obligation to diversify, or to consider diversifying between investments or nature or types of investment and without being liable for any resultant loss to the Trust Fund;
- (u) To appoint any person as an investment manager to invest and manage all or any investments forming part of the Trust Fund on such terms as the Board thinks fit;
- (v) To sell or otherwise dispose of any real or personal property forming part of the Trust Fund in the manner and on the terms and conditions the Board thinks fit, including power to allow such part of the purchase price as the Board think fit to remain on loan with or without security or to be payable by instalments;
- (w) To postpone the sale or disposal of any real or personal property forming part of the Trust Fund for as long as the Board thinks fit without being liable for any resultant loss to the Trust Fund;
- (x) To grant acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition. An option may be granted acquired or disposed of on such terms and conditions as the Board thinks fit, and in respect of a grant, may be granted at a price determined at the time of the grant or at such later date as the Board thinks fit. The Board Members shall not be personally liable for any loss arising from their exercise of this power and shall be indemnified accordingly out of the Trust Fund;
- (y) To make any loans or advances (with or without security) for any of the purposes of the Trust Fund in such manner and on such terms and conditions as the Board thinks fit;
- (z) To insure any building or other insurable property to any amount up to its full insurable value, or at the Board's option, up to its full replacement value, against destruction or damage by fire, earthquake, fire following earthquake

and such other risks as the Board thinks fit. The Board may pay the premiums out of income or capital as it thinks fit;

- (aa) Without being liable for loss, to waive any debts due to the Trust Fund, either absolutely or on such terms as the Board thinks expedient;
  - (bb) To hold any part of the Trust Fund uninvested and in any currency for as long as the Board thinks fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction;
  - (cc) To enter into any type of contract whatever to protect, maintain or enhance the value of any assets of the Trust Fund or which the Foundation may have the right to acquire or hold;
  - (dd) To enter into any type of contract, commitment, arrangement or understanding to assume or reallocate risk, rewards, rights or obligations on such terms as the Board thinks fit;
  - (ee) To vary, assign, novate, waive, terminate or otherwise deal with on such terms as the Board thinks fit any contract, commitment, arrangement or understanding to which the Foundation is party;
  - (ff) To appoint and remove auditors of the financial statements of the Foundation and fix their remuneration;
  - (gg) To do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Foundation.
- 60 The Board shall open and maintain in the name of "King's School Foundation" an account or accounts at such bank or banks as the Board shall from time to time determine and shall decide who shall be the signatories to such account or accounts.

#### **EXECUTIVE**

- 61 The day to day administration of the Foundation shall be under the control of an executive which shall also be responsible for implementing the policies of the Board.
- 62 The Executive shall comprise:
- (a) the officers of the Foundation;
  - (b) the Chairman of any committee appointed by the Board; and
  - (c) such other persons as may be appointed from time to time by the Board.
- 63 The Headmaster shall be entitled to attend and speak at all meetings of the Executive but he or she shall not be entitled to vote.
- 64 The Executive in the exercise of its powers and responsibilities shall conform to any regulations or by-laws that may be made or imposed on it by the Board.



## **COMMITTEES**

- 65 The Board may from time to time appoint committees consisting of such Board Members, or such members of the Foundation, as it thinks fit. Any committee so formed shall in the exercise of its powers and responsibilities conform to any regulations or by-laws that may be made or imposed on it by the Board.

## **CONFLICTS OF INTEREST**

- 66 A Board Member who has a material financial interest in a transaction entered into, or to be entered into, by the Foundation must disclose that interest and may not vote on a matter relating to the transaction, nor be included among the Board Members present at the meeting for the purpose of determining a quorum, but may:
- (a) attend a meeting of Board Members at which a matter relating to the transaction arises;
  - (b) sign a document relating to the transaction on behalf of the Foundation; and
  - (c) do anything else as a Board Member in relation to the implementation of the transaction, as if he or she were not interested in the transaction.
- 67 Subject to clauses 87 to 91, each Board Member may act as a Board Member and still contract or otherwise deal with the Foundation in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Board Member.

## **GENERAL MEETINGS**

- 68 The Board may whenever it thinks fit convene a general meeting of the Foundation by giving not less than 14 days' notice of meeting in writing to the Board Members and the Executive and the Headmaster, and by posting the notice of meeting on any web site maintained by the School or the Foundation not less than 14 days prior to the date of the meeting.
- 69 An annual general meeting of the Foundation shall be held once in every calendar year at such time and place as the Board may determine.
- 70 The business of the annual general meeting shall be:
- (a) to receive and consider a report from the President, the Financial Statements of the Foundation for the previous financial year, and the report of the auditors of the financial statements;
  - (b) to elect the Board Members; and
  - (c) any other business decided upon by the Board.

## **CHAIR OF GENERAL MEETINGS**

- 71 The President shall preside as Chairman at every general meeting of the Foundation or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Vice-President shall preside or if he or she is not so present or is unwilling to act then the members present shall elect any member who is present and who is willing to be Chairman of the meeting.

## **QUORUM**

- 72 No business shall be transacted at any general meeting of the Foundation unless a quorum of members is present at the time when the meeting proceeds to business. Eight members present in person or by proxy or representative shall be a quorum.
- 73 If within half an hour from the time appointed for a general meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present (being not less than five) shall be a quorum.

## **VOTING**

- 74 At any general meeting of the Foundation a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the Chairman; or
  - (b) by at least three members present in person or by proxy or by representative.
- 75 Unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Foundation shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 76 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. The demand for a poll may be withdrawn.
- 77 In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
- 78 Every member present in person or by proxy or representative duly appointed in writing shall have one vote.



(c) cause those financial statements of the Foundation to be audited by an independent auditor.

84 The annual financial statements of the Foundation for the most recently completed financial year of the Foundation and the audit report on those financial statements shall accompany the notice of each annual general meeting of the Foundation.

85 The accounts shall be kept at the office of the Foundation or at such other place or places as the Board thinks fit from time to time and shall be open for inspection during normal business hours by any Board Member and by a member of the Board of Governors nominated by it, from time to time.

### **MONEY RECEIVED BY THE FOUNDATION**

86 All monies received by or on behalf of or as a result of the activities of the Foundation shall, after meeting normal management operation and collection costs, be applied for the purposes of the Foundation.

87 No portion of the funds of the Foundation shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Foundation provided that nothing in this clause prevents the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Foundation or to any member of the Foundation for services actually rendered to the Foundation.

88 No Board Member shall be appointed to any salaried office of the Foundation or any paid office of the Foundation and no remuneration or other benefit in money to money's worth shall be given by the Foundation to any Board Member except repayment of out-of-pocket expenses.

89 A Board Member may retain any remuneration or benefit he or she receives from any company or undertaking with which the Foundation may be in any way concerned or involved where that remuneration or benefit is not directly attributable to the Foundation's concern or involvement with that company or undertaking.

90 In the carrying on of any business under this deed no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Board Member, shareholder or director of any company or trust by which such business is carried on, settlor or trustee of a trust that is such a shareholder, or person associated with any of them where that person, in that capacity, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

(a) the nature or amount of that benefit, advantage or income; or

(b) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

91 A person who is in the course of, and as part of the carrying on of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Foundation or to any company by which any

business of the Trust is carried on, be in breach of the terms of clause 89 or clause 90.

### **LIABILITY OF BOARD MEMBERS**

- 92 A Board Member shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Board Member shall be bound to take, or liable for failing to take, any proceedings against another Board Member for breach or alleged breach of trust.
- 93 Where a Board Member is engaged in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that Board Member shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that Board Member shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others. This clause shall constitute a contrary intention for the purposes of section 13D of the Trustee Act 1956.

### **INDEMNITY**

- 94 A Board Member shall be entitled to exoneration and indemnity out of the assets of the Foundation for any liability which that Board Member incurs in relation to the Foundation and which is not attributable to that Board Member's dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust.
- 95 No Board Member shall be responsible for loss arising out of the investment of monies of the Foundation in the administration of the Trust Fund unless any such loss shall arise from his or her own dishonesty or wilful default or neglect.

### **RULES**

- 96 The Board may at its discretion determine rules for the operation of the Foundation, its committees or officers not otherwise provided for in this Deed.

### **WINDING UP**

- 97 The Board may wind up the Foundation if in its opinion, it becomes impossible, impracticable or inexpedient to carry out the purposes of the Foundation.
- 98 If upon the winding-up of the Foundation there remains after satisfaction of all debts and liabilities, any surplus assets, those assets must not be paid to or distributed among the members of the Foundation but must be given or transferred to the Board of Governors to be used for the benefit of the School, or if the School has ceased to exist, used for the benefit of one or more other educational institutions to be used for the advancement of education within New Zealand.

### **ALTERATIONS TO DEED**

- 99 This Deed may be amended or varied in any way by resolution at a general meeting of the Foundation provided that:
- (a) the proposed amendment or variation has been set out in the notice of meeting;
  - (b) the proposed resolution has the prior approval of the Board of Governors; and
  - (c) the resolution is passed by a three-quarters majority of the votes of members of the Foundation present at the meeting in person or by representative or proxy.
- 100 No amendment or variation shall be made enabling any benefit to be conferred on any member of the Foundation or any part of the Trust Fund to be applied other than for the purposes set out in clauses 3 to 9.

### **INCORPORATION**

- 101 The Board may apply under the Charitable Trusts Act 1957 for incorporation as a Board.

### **COMMON SEAL**

- 102 In the event of incorporation of the Foundation it shall have a common seal and any deed or document to which the seal is to be affixed shall only be executed pursuant to the authority of the Board and in the presence of two Board Members.
- 103 The Secretary shall retain custody of the seal and keep a record of all deeds or documents sealed.

**IN WITNESS WHEREOF** this Declaration was made on the date hereinbefore written.