



Education Report: Transition of Partnership Schools | Kura Hourua into the State System – Further Advice

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| To: | Hon Chris Hipkins, Minister of Education | | |
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Purpose of report

The purpose of this paper is to:

- Outline the issues raised by sponsors of partnership schools | kura hourua (charter schools) around transitioning the schools into the State system, and to seek your agreement to flexibilities and changes that can be offered, or not. This will enable the Ministry to progress applications from sponsors to enter the State system.
- Alert you to timeline risks around both the exiting of contracts with sponsors and obtaining applications from sponsors for schools to become a part of the State system, and seeking your agreement to a timeline to manage these risks.

Summary

1. Initial meetings with all sponsors on the future of partnership schools | kura hourua (charter schools) have been completed¹. Sponsors have been focussed on which parts of the charter school model can be retained in the State system. Appendix 1 provides a quick view summary of where issues have been raised.
2. Most sponsors will hold off making applications to move schools into a State model (or decisions not to proceed) until they have a clearer indication of whether the

¹ We have another meeting with Te Rangihakahaka Company Ltd on Monday, 12 March to further clarify their position since they opened. We have met with them this term, and pre-opening at the end of last year.

Government will be offering any flexibility or changes². For us to effectively progress discussions with sponsors we will need some decisions on these matters. This report provides you with advice on each of the key areas for which sponsors are seeking flexibility or changes.

3. As we have met with each sponsor and further corresponded with some, a number of timeline risks have emerged. This is, in part, due to there currently being no timelines set for any part of the process.

Progressing Application and Contract Discussions

4. While the Ministry is handling the ending of contracts as separate from applications to move into the State system, the timelines have become intertwined as schools view the processes as interdependent.
5. It has become apparent that at least some of the sponsors will not make applications until they know the deadline for doing so. The usual date for applications is 1 April. Schools are unlikely to meet a 1 April deadline for an application to become a designated character or state integrated school.
6. Most sponsors also will not discuss or agree to mutual termination options for their contracts until they have a clearer idea of the likely outcome of any application to establish a new school. Agreement to mutual termination is therefore becoming less likely as time passes. This risk might be mitigated if clear process deadlines are provided for the schools, i.e. when applications must be in for becoming a State school and what steps the Government will take in regards to their contracts by when.
7. If schools are to cease operating as charter schools by the end of this school year, notice to terminate their contracts for convenience must be given by mid-May 2018. The exact date varies by school but notice to terminate by 15 May 2018 is recommended. Any decision to terminate for convenience for closure at the end of the 2018 school year will likely be made before any decision has been made on potential applications to establish new schools.
8. If schools have not agreed to mutual termination by mid-May 2018, and they have not been issued with termination for convenience, they will be aware that the Government has no option other than to let the charter school model run for them for another full school year. The next opportunity to give notice to terminate for convenience would be for closure at the end of the 2019 school year.
9. If it is agreed that schools will close by the end of the school year 2019, timeframes for applications to establish new schools and termination of contracts are still required and should be communicated as early as possible. For charter schools that submit applications, we recommend an application deadline of 7 September 2018 is set to keep to timeframes, so final decisions on applications can be obtained by December 2018. For these charter schools we will seek to conclude termination by mutual agreement, until termination by Minister's convenience is necessary for the contract to be terminated by 2019.
10. For charter schools that do not apply to establish new school(s), to give certainty to students, whānau and staff, notice of termination could be issued from September

² In addition to the alternative constitution amendments you are progressing through the Education Amendment Bill 2018.

2018 (to take effect from the end of the 2019 school year). Negotiation towards agreement to mutual termination could potentially be continued until notice of termination for Minister's convenience is required, no later than in May 2019.

Concerns raised about transitioning into the State system and possible solutions

11. Key concerns regarding potential applications to establish new schools raised by sponsors include: the role of sponsor Trusts in governance structures and reflecting the cultural characteristics of their charter school in any potential new school, resourcing, property arrangements, teacher conditions and the transition of staff, and the nature of their potential designated character. This paper explores these issues and possible options.
12. *Governance*: Some sponsors have indicated a desire for their current trusts to become the legal entity that governs a new state school. Due to the different legal nature of Trusts and Crown entities, this will not be possible. However, it would be possible to have members of a Trust on the board of trustees of a State school. This would be enabled through your alternative constitution amendment in the Education Amendment Bill 2018.
13. Sponsors are also seeking certainty around the ongoing nature of an alternative constitution. Constitutions can only be changed in accordance with the processes for change set out in the Education Act 1989. Changes in constitution are usually initiated by the board itself. We would want to retain the ability to use provisions in the Act if necessary. This means while no guarantees can be given they can be told they can retain the establishment constitution within the provisions of the Act.
14. *Transition of staff*: Sponsors are concerned about the impact of collective employment agreements and transitional provisions for staff employed at charter schools. Adopting terms and conditions that differ significantly from current collective agreements is not likely to be possible, even with Individual Employment Agreements, but additional legislative provisions to transfer staff and determine redundancy options is something you could consider.
15. In addition you could consider some grandparenting options around salaries, where reasonable. Discussed more below under resourcing.
16. *Resourcing*: Sponsors are interested in options for both transitional and permanent funding changes to provide the schools with funding flexibility. Options include a transitional grant and making changes to the mix of entitlement staffing and operational grant funding that schools receive.
17. Some sponsors have also indicated that they would like to cash up centrally funded resources that they feel are unnecessary. To do so would be complex and raise questions about which supports are unnecessary.
18. Sponsors have raised concerns about their decile rating. If the schools transition into the State system they will undergo a decile review at the time of their transition to establish what their decile rating will be³.

³ This would take place ahead of a general decile recalibration following the census. Whether this recalibration takes place depends on whether or not decile is replaced within the next few years.

19. *Property:* Sponsors are seeking detail on property arrangements for designated character schools. Property solutions will require case by case negotiations. Our preferred solution is for the Ministry to take over current PSKH property leases.
20. There may also be an issue with the funding for purchase of furniture and equipment for the schools. Each newly established school receives a specific grant for the new Board to purchase furniture and equipment. Across the 11 open schools a rough estimate would be \$2.76 million. This is a one off issue.
21. *Religious Designated Character:* Three charter schools have a religious element woven within the character of their school, and this aspect could not continue as is within the designated character model.
22. The sponsors with a religious character to their school may need to consider becoming a State integrated school. These schools would require additional property support over and above what is normally provided to an integrated school.
23. *A Māori name for the designated character school model:* One of the sponsors has requested that they be able to retain the Māori name for partnership schools – kura hourua – and use that instead of designated character school. Whilst they can use any name they wish, they don't want to be called a "designated character school". It would be possible to have a Māori name for non-kura kaupapa Māori designated character schools, but this would require legislative change to formalise.
24. We recommend a budget bid for Budget 2019 is developed, once potential funding implications including establishment costs and property have been assessed.

Next Steps

25. Given the nature of decisions being sought in this report, you may want to consider advising Cabinet prior to making decisions.

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that initial meetings with all sponsors of partnership schools | kura hourua (charter schools) have been completed and that decisions are now needed on timelines for making applications to enter the State system and for ending contracts, and on any flexibilities or changes to the State system that will be offered

Noted

- b. **note** that discussions on possible termination by mutual agreement and on getting applications to become a State school have been limited by sponsors not being prepared to engage without further information on the process for establishment of new schools and what flexibilities or changes there may be

Noted

Timeframes

- c. **note** that, if existing charter schools are to close by the end of the school year 2018, termination by mutual agreement must have been reached or notices for the Minister's convenience must be issued by 15 May 2018

Noted

- d. **note** that if existing charter schools are to close by the end of the school year 2019 that termination by mutual agreement must be reached or notices for termination for the Minister's convenience must be issued by early May 2019;

Noted

Option A: contracts to end in 2018

- e. **agree** that if charter schools are to close by the end of the school year 2018
- i. that applications to enter the State system will be required to be received by 9 April 2018 in order to give any possibility that a decision could be made on the application before contracts are acted upon, and
 - ii. that notices of termination for convenience will be required to be issued by 15 May 2018

Agree / Disagree

OR

- i. that notices of termination for convenience will be required to be issued by 15 May 2018
- ii. that decisions on schools opening as State schools will be made after contracts are acted upon and that applications to become a State school for 2019 will be with the Ministry by 9 May 2018

Agree / Disagree

OR

Option B: contracts to end in 2019

- f. **agree** that if charter schools are to close by the end of the school year 2019:
- i. that a deadline for applications of 7 September 2018 will be set to be communicated to all sponsors; and,
 - ii. for charter schools that do not provide an application by 7 September 2018, that the right to terminate for Minister's convenience will be exercised, and this will be communicated to all sponsors so it is clear that they will all stop operating as a charter school by the end of 2019; and,
 - iii. for charter schools that do provide an application by 7 September 2018, negotiations to reach termination by mutual agreement will continue until notice of termination for Minister's convenience is required, no later than in May 2019.

Agree / Disagree

- g. **note** that applications to become a designated character or state integrated school must be received by 7 September 2018 for decisions to be made by early December 2018, if approved, to allow a new state school to operate from January 2020

Noted

- h. **note** that subject to your preferences, we will provide an aide memoire to support you to provide an oral item at Cabinet on 26 March 2018, with a Cabinet paper in early April 2018 to confirm decisions, so that decisions can be made public as soon as possible

Noted

Flexibilities and changes requested

Governance Structures

- i. **note** that, under an alternative constitution, a trust can appoint members to a board of trustees

Noted

- j. **note** that a trust cannot legally be a State school board of trustees, which must be a Crown Entity

Noted

- k. **agree** that changing the nature of a Crown Entity to be a trust is not possible

Agree / Disagree

Transition of Staff

- l. **note** that some sponsors are concerned about the impact of collective employment agreements and transitional provisions for staff employed at charter schools

Noted

m. **note** that enabling new schools to contract out of current employment arrangements for State schools would require significant legislative change

Noted

n. **note** that it is not possible to automatically transfer the staff of a charter school to a newly established State school due to the requirements of the State Sector Act 1988

Noted

o. **agree** that we should undertake further policy work on legislative transition options to transfer staff and determine redundancy options

Agree / Disagree

p. **agree** that legislative changes are considered in order to transition staff from their charter school employment to employment with the new State school

Agree / Disagree

Resourcing

q. **note** that sponsors are interested in options for transitional and permanent funding changes to provide flexibility

Noted

r. **agree** to only pursue a one-off transitional funding grant for charter schools, rather than permanent or ongoing arrangements, because of the precedent and equity issues this would have for other State schools

Agree / Disagree

s. **indicate** whether you would like to progress changes to the staffing order, to enable greater operational grant funding flexibility for the new schools, with set limits

Yes / No

t. **agree** not to pursue changes to enable fully cashed-up funding for former charter schools, because of the precedent it would set and equity issues for other State schools

Agree / Disagree

u. **agree** that permanent fully cashed up resourcing is not an option but a one-off 12 month transitional grant will be investigated as is the ability to have limited flexibility to decrease staffing and increase the operational grant

Agree / Disagree

Property

- v. **note** that all sponsors have raised concerns about future property arrangements and the Ministry will undertake case by case negotiations with each sponsor about future options

Noted

- w. **note** that taking over existing charter school leases could be the best property option, provided the leases meet or could meet State school standards and are good value for money to the Crown

Noted

- x. **note** that an accurate assessment of likely costs for leasing property is yet to be undertaken

Noted

- y. **agree** that we commence work on a budget bid for Budget 2019, to assess potential funding implications including establishment costs and property

Agree/Disagree

Religious Designated Character

- z. **note** that three charter schools have a religious element woven within the character and teaching of their school, and this could not continue in the designated character school model

Noted

- aa. **note** that sponsors of schools with a religious character may need to consider becoming a State integrated school, and are likely to require full property support to do so, and that this would mean the same funding for property as for designated character schools

Noted

- bb. **agree** not to pursue providing additional property support for the establishment of charter schools as integrated schools, because of the precedent it would set, and because other State integrated schools have not received such support

I don't want to rule this out yet.

~~Agree/Disagree~~

Māori name for designated character school model

- cc. **note** that one sponsor has requested that kura hourua is used for the designated character school model

Noted

- dd. **agree** that we consult the sector to determine an appropriate Māori name for non kura kaupapa Māori designated character schools, and that this be include in planned future legislative changes

Agree/Disagree

Next steps

ee. **agree** to bring an oral item to Cabinet on 26 March on the timing issues associated with issuing termination for convenience in May 2018 and to provide an update on the expected applications to establish new schools

Agree / Disagree

ff. **agree** that this Education Report is **not** proactively released at this time, because the negotiations for the termination of charter school contracts is ongoing. Information contained in this report may prejudice those negotiations.

Agree / Disagree



Ellen MacGregor-Reid
Deputy Secretary
Early Learning and Student
Achievement Group

14/3/2018



Katrina Casey
Deputy Secretary
Sector Enablement and
Support

14/3/2018



Hon Chris Hipkins
Minister of Education

15/3/18

I want to keep open the
option of terminating the
contracts of charter schools
that have yet to open
in May this year to prevent
them opening in 2019.

Issues being raised during discussions

1. The Ministry has met with all the sponsors of charter schools. Currently, of the sponsors there are potentially 13 charter schools (11 currently open and 2 contracted to open in 2019) that have indicated they wish to provide education beyond the end of the charter school model. Three charter schools have strong in principle objections to changing from the charter school model.
2. Discussions with sponsors have focussed on understanding the requirements for potential applications to establish a new school in the state system and exploring their areas of concern. Discussions on possible termination by mutual agreement have been limited by sponsors not being prepared to engage without further information on the process for establishment of new schools and what flexibilities there may be.
3. Appendix 1 provides a table that outlines the key issues related to potential establishment of a new school that have been raised by sponsors during the discussions.
4. Deadlines for the exercise of the right to terminate for convenience or by mutual agreement are approaching if charter schools are to close at the end of the 2018 school year. Decisions on approach and timing are therefore needed.

Termination of contracts and application for new school timeline

5. While the Ministry is handling the ending of contracts as separate from applications to move into the State system, the timelines have become intertwined if schools are to know the outcome of any application to become a State school before termination of their contracts.
6. It has become apparent that at least some of the sponsors will not make applications until they know the deadline for doing so. The usual date for applications is 1 April. Schools (with the exception of Vanguard Military School Auckland) are unlikely to meet a 1 April deadline for an application to become a designated character or state integrated school. A deadline of 9 April would be needed if schools are to commence term 1 2019 as State schools.
7. Most sponsors will not discuss or agree to mutual termination options for their contracts until they have a clearer idea of the likely outcome of any application to establish a new school. Agreement to mutual termination is therefore becoming less likely as time passes. This risk might be mitigated if clear process deadlines are provided for the schools, i.e. when applications must be in for becoming a State school and what steps the Government will take in regards to their contracts by when.
8. The benefit of moving with speed on both applications and contracts is that it would provide certainty for students, parents, staff and sponsors. There is also the concern that ongoing uncertainty about the future of schools beyond this year will begin to impact enrolments and general morale.
9. The downside of moving this year to a resolution with all sponsors is that, for the majority of cases, this will likely mean using the termination for convenience clause.

It would also mean that many of the schools will not yet have a final decision on the shape of their transition (if the school proceeds to transition) to the State system. For example any legislative provisions will not have been passed. Despite their desire to give their communities certainty some sponsors may also make claims of being rushed.

10. Mutual termination is therefore becoming less likely as time passes. Any decision to terminate for convenience at the end of the 2018 school year will likely be made before any decision has been made on potential applications to establish new schools.
11. If schools are to cease operating as charter schools by the end of this school year, notice to terminate their contracts for convenience must be given by mid-May 2018. The exact date varies by school, and notice to terminate by 15 May 2018 is recommended. If notice is not given, the contracts will continue, and the next opportunity to give notice to terminate for convenience would be for closure at the end of the 2019 school year.
12. If schools have not agreed to mutual termination by mid-May 2018, and they have not been issued with termination for convenience, they will be aware that the Government has no option other than to let the charter school model run for them for another full school year.
13. If it is agreed that schools will close by the end of the school year 2019, timeframes for applications to establish new schools and termination of contracts are still required and should be communicated as early as possible. For charter schools that submit applications, we recommend an application deadline of 7 September 2018 is set to keep to timeframes, so final decisions on applications can be obtained by December 2018. It should be made clear to sponsors that they will all stop operating as a charter school by the end of 2019. For these charter schools we will seek to conclude termination by mutual agreement, until termination by Minister's convenience is necessary for the contract to be terminated by 2019.
14. Applications to become a designated character or state integrated school must be received by 7 September 2018 for decisions to be made by early December 2018 (if approved) to allow a new state school to operate from January 2020.
15. For charter schools that do not apply to establish new school(s), to give certainty to students, whānau and staff, notice of termination could be issued from September 2018 (to take effect from the end of the 2019 school year). Negotiation towards agreement to mutual termination could potentially be continued until notice of termination for Minister's convenience is required, no later than in May 2019.

Governance structures

16. The question of governance structure has dominated many discussions regarding potential establishment of new schools. Two of the sponsors have indicated that they would like their entire Trust to be the board of trustees of the newly established school. The schools have indicated that they would like their board to be made up of the Trust and with no other members (e.g. parent representatives).

17. An alternative constitution provides flexibility around the governance structure of a State or State integrated school. There are no restrictions on the sort or number of members that make up a board of trustees under an alternative constitution. There would be nothing to prevent the constitution of the schools having a number of board members appointed by the trust.
18. It is not possible for the Trust itself to be the legal entity governing the school. This is because State schools have boards of trustees as their governing model. These are Crown entities set up by statute and, as such, are required to comply with the statute law that establishes them. A trust is an independent legal entity. It does not have to comply with any of the law that is specific to boards of trustees, and it can change its objectives and functions at any time. Trusts are private entities, and the Ministry would not be able to 'look in' should any questions about the relationship between the two entities arise.
19. Theoretically the board of trustees with an alternative constitution could be made up entirely of members appointed from the Trust (e.g. 10 members of ABC Trust) who would need to be very clear that they wear 'two hats' when exercising their different roles.
20. However, before determining the constitution, the Minister would generally seek the views of the parents of students and potential students at the school about the make-up of the board of trustees, and take their views into account. The school could do this itself and provide the results to the Minister to demonstrate that they have the support of their community for their proposal. If the parents of students and potential students are happy for the members of the Trust to be the only representatives on the board of trustees then it would be possible for the Minister to approve this. If the Minister does not consult with the community of the school before approving an alternative constitution then this could be grounds for a legal challenge.
21. Constitutions can only be changed in accordance with the processes for change set out in the Education Act 1989. Changes in constitution are not undertaken lightly and are usually initiated by the board itself.

Transition of staff

22. Sponsors have raised five main concerns about transitioning their staff into the State system:
 - a. Salary levels for teachers and principals;
 - b. Impacts on the relationships between schools and their teaching staff;
 - c. Impacts on the structure of their schools;
 - d. Transition arrangements to avoid making staff redundant and re-employing them;
 - e. Timely provision of LATs by the Education Council.

Addressing the remuneration differences

23. Charter schools are currently able to set teacher salaries without reference to the relevant collective agreements for teachers and principals. Some charter schools

have advised us that they pay salaries that are higher than those provided for in the relevant collective agreement (up to 15% in the case of one school). Even if teachers are not paid more than the top of the base salary scale in the relevant collective agreement, remuneration decisions for them could differ when assessed under the 'salary on appointment' provisions in the teacher collective agreements.

24. As discussed below, charter schools that transition to State schools will have some flexibility to set remuneration for their staff. One option they will have to do this will be to use 3R payments.
25. Operational funding, other than for 3R payments for teachers, could only be used to pay teachers and principals above the salary and allowances rates set out in the applicable collective agreements, if the Secretary approved this under section 75 of the State Sector Act 1989 and the Minister approved the payments under section 91F of the Education Act 1989.
26. Under current legislative settings, if a teacher is a member of the relevant union they will automatically be covered by the collective agreement that covers his or her work. The employing Board of Trustees cannot alter the conditions of employment without the Secretary's express concurrence. The Secretary's ability to give concurrence is limited to approval of terms and conditions not inconsistent with the conditions of the collective agreement. This differs from collective to collective.
27. Where an employee in the education service is not bound by any collective agreement (ie is not a member of the union that is party to the collective agreement that covers the work they do) the conditions of employment can be agreed between the employing Board of Trustees and the individual employee. However, the Secretary's approval is still required: the employer must either offer the individual agreement promulgated by the Secretary (which mirrors the relevant collective), or obtain the written concurrence of the Secretary to the conditions of employment.
28. These approval mechanisms are a key part of the controls on the Crown spend on teachers' salaries. Under section 91C of the Education Act 1989 it is the Secretary for Education, rather than individual boards of trustees, who is responsible for the payment of teachers' salaries.
29. Unless the Education Act 1989, State Sector Act 1988 and Employment Relations Act 2000 are all amended, then a designated character schools' ability to offer anything other than the standard terms and conditions is extremely limited.

Impacts on the relationships between schools and their teaching staff

30. A relatively minor issue raised by some sponsors is that joining the State schooling system may change the relationship between teachers and the school. This is because teachers will effectively become employees of the State, and their terms and conditions will be negotiated with the government rather than with the board of the school. In other words, the government will "stand between" teachers and the new board's role as the employer of teachers.
31. One of the consequences of joining the State schooling system is that teachers and principals will have a relationship with the government that they do not currently have. It is therefore not possible to do anything to address this concern.

Impact on the structure of schools

32. Sponsors are also concerned that joining the State system will impact on the management structures within their schools. Some schools wish to retain flat structures, with different arrangements for the roles of principals, and how the staffing structure of the school is organised.
33. The staffing structure of a school in the State system is decided by the Board of Trustees. However, a principal must carry out the statutory roles for the principal set out in the Education Act 1989 and the roles and responsibilities set out in the employment agreement. Beyond this the board or trustees can choose the staffing structure of their school. However, many of the charter schools have smaller rolls than other schools in the State system and therefore will likely be eligible for less funding through their staffing entitlement, if they transition into the State system.
34. Schools that join the State system will, in addition to a staffing entitlement, receive an entitlement of management units to recognise management responsibilities. How schools choose to allocate these units to individual teachers to build their staffing or leadership structure will be entirely at each school's discretion.

Possible legislative changes for transition provisions for staff in charter schools

35. There are concerns about the process for ending current staff contracts and then reemploying them.
36. The sponsor of a charter school is responsible for redundancy of staff under the terms of their contract. Initial modelling shows that most schools will have to make between two and four teachers redundant because they are in excess of the State staffing entitlement unless they can fund them from the operational grant. This is likely not to be an option given they are mostly small schools and will have a relatively small operations grant. It is possible that the schools may try to claim redundancy costs as a compensation in the termination discussions.
37. It is not currently possible to automatically transfer the staff of the charter school into the newly established State school due to the requirements of the State Sector Act 1988 (such as the requirement to advertise).
38. If you wish to give rights to the staff of the charter school to transfer to the newly established State school, legislation will be required to provide for this. This would require further work due to the inter-relationship between the Employment Relations Act 2000, the State Sector Act 1988 and the Education Act 1989.
39. Should you wish to consider making a legislative change through the Education Amendment Bill through a Supplementary Order Paper or through the Departmental Report we will provide further advice, including policy choices around:
 - a. the process;
 - b. whether a person can receive redundancy and an equivalent position;
 - c. when a person is offered a position.

Limited Authority to Teach (LAT)

40. In the past there has been issues with the non-registered teachers at the current charter schools not being provided with LATs by the Education Council. We are

aware that this may be a concern to sponsors as all teachers will need to be registered to work in a State, State integrated or private school.

41. We are meeting with the Education Council about this issue to explore possible options to smooth the LAT process for any staff who need them.

Resourcing – flexibility and cashing up

42. A number of charter schools have a CEO/Director who is not the professional leader of the school. An issue has been raised about the ability to employ a CEO/Director if the charter school transitions to become a designated character school [METIS 1092213 refers].
43. It would be possible to employ a CEO/Director as well as a principal, but such a position would need to be funded out of the operations grant. An important note however, is that the size of the operations grant under the State system will limit school's ability to do this. An option may be to pay schools additional funding as a transitional grant to help cover this cost.
44. The school would need to work through the relationship and duties of the principal and CEO/Director, because some of the roles and responsibilities of principals are set out in legislation and collective agreements.
45. A further issue is the legal requirement that school principals must be registered teachers. Section 349(2) provides that "no employer ... may permanently appoint to any teaching position any person who does not hold a practising certificate." Section 348 defines a 'teaching position' as including anybody who is the professional leader of the school.
46. Legislation would therefore need to be amended if you wanted to provide for the CEO/Director of former charter schools not to be a registered teacher.
47. Some charter schools have also stated that they wish to retain the flexibility they currently have regarding their funding, especially in terms of their ability to retain total funding control.
48. Charter schools currently receive all their funding 'cashed up' including funding for their staffing. This cashed up funding provides charter schools with greater flexibility in how they can use this funding including paying:
 - a. teachers above the award rate;
 - b. a CEO/Director;
 - c. greater numbers of non-teaching staff.
49. It should be noted that many of the charter schools have smaller rolls than other schools in the State system. As such, they will likely be eligible for less funding through their staffing entitlement, if they transition into the State system.

Transition or permanent solution?

50. It is possible to make changes to funding arrangements to address the above issues. However any flexibility will depend on the schools receiving equivalent funding under

the State system to that which they receive as a charter school. Initial modelling indicates that this will not be the case for some of the schools. The options include both transitional and ongoing arrangements. However there is a risk that making permanent changes to funding arrangements would set a precedent, and other schools may see this as an equity issue, and also seek flexibility around their funding.

51. It should be noted that many of the charter schools have relatively smaller rolls. As such, they will not have a great deal of flexibility in how they allocate their resources.

Option One: *Possibilities around flexible funding that already exist in the State system and a transition grant*

52. The current State system already provides some flexibility as each Board determines how the school's allocation of staffing entitlement and management units are used to meet the needs of its students.
53. State schools can also use the recruitment, retention and responsibility (3R) payment to increase a teacher's remuneration. These payments are funded through the school's operational budget so schools would have to trade-off the higher salary against other things that they might wish to spend their operational grant on.
54. There is no limit on the number of 3R payments a Board can allocate to each teacher (this differs from the conditions that apply to the supply package "3R fund" which provides Boards access to additional funding where they need a recruitment incentive of a 3R payment when employing a untrained teacher who holds a LAT and do not have the resources to fund the payment).
55. State schools can also use the banking staffing regime to 'cash up' some of their unused entitlement staffing at the end of the school year. However, the former charter schools will not be able to use the banking staffing regime until they have been operating in the State system for one year and have some unused staffing that they have banked.
56. Banking staffing is the tool schools use to manage their annual entitlement staffing. Within the banking staffing year school boards' of trustees can anticipate up to 10% of their entitlement staffing and use it in advance, or overuse it. School boards can also store up, or underuse, staffing for times when they know they will need extra staffing⁴. Banking staffing is not without risk, since poor management of banking staffing has been a factor in a number of State schools getting into financial difficulty.
57. At the end of the balancing period schools that have not balanced their Banking Staffing are charged for overused staffing (recovered directly from operational funding) and reimbursed for underused staffing (paid as part of operational funding).
58. The maximum that can be reimbursed is 10% of a school's annual staffing entitlement while the reimbursement rate is set at a level intended to encourage

⁴ Schools should be aiming to have a zero balance at the end of the banking staffing year. At the end of the banking staffing year there is a balancing period which runs from February through March to help schools balance any over- or under use from the preceding banking staffing year.

schools to utilise their full entitlement staffing. The 2018 reimbursement rate is \$55,000 per FTTE (GST excl.)

59. Operational funding (including operational funding generated through banking staffing) could be used to partly or fully fund a CEO/ Director. It could be used to pay for outside experts who are not registered teachers but such a person would need to be in the classroom under the supervision of a registered teacher. It does, however, depend on the schools receiving enough operational funding to be able to do this as well as meeting core operating costs. As small schools, their funding may not be sufficient.
60. In addition to the flexibility outlined above, and subject to funding being available, you could consider a transition grant that would provide these schools with some funding up front to manage the start-up period⁵. We do not anticipate that the transition grant for each school would be sizable.
61. This option has the advantage that it gives the schools some initial support but does not create an ongoing exception to the existing funding rules for State schools.

Option Two: *Possible changes to the staffing order (i.e. changes to the ratio of entitlement staffing and operational funding)*

62. The annual staffing order provides formulae to calculate the overall number of FTE teachers in the State schooling system that central government is prepared to fund through the allocation of entitlement staffing.
63. It is possible to use the staffing order to provide a lower FTE entitlement staffing for former charter schools, with the balance being given in cash as part of the operations grant. This could be either as a transitional or a permanent arrangement. A permanent arrangement would, in particular, allow flexibility for the ongoing employment of a CEO/Director. There are currently types of school that have a different FTE calculation applied, such as special schools.
64. There are four risks associated with doing this:
 - a. The staffing orders come within the ambit of the Regulations Review Committee. There is a risk that the committee could find that this unorthodox approach to entitlement staffing in the staffing order is not within the scope of the empowering provision. The rationale for treating this class of school differently would be important.
 - b. There could be judicial review from those who might consider that this change is an undesirable first step towards cashed-up staffing for a broader group of schools. This would be on the basis that the change is not in line with the intent of Part 8A of the Education Act 1989.
 - c. The staffing order, combined with the constraints of banking staffing, indirectly generates a minimum number of FTE registered teachers in each school. By setting these schools' entitlement staffing lower, the Crown loses some control over the number of FTE registered teachers employed by the school. Initial modelling shows that the FTTE generated by the State system is lower than

⁵ While there is money available in the partnership school contingency fund, using this would reduce the ability to use this for other priorities.

actuals in the PSKH model and to reduce the FTTE further by cashing up may cause risk that the staff employed through the operations grant would not be used for teaching, resulting in poor delivery of the curriculum. It would be optional and so the schools would go into it knowing what they were doing.

- d. Precedent would be created and some ordinary State schools may see this as a way of dealing with the teacher shortage and seek the same flexibility of less FTTE teachers and more cash. For example kura have long supported cashed up funding and if you made a change for the former charter schools you would have to open it up to other designated character schools such as kura.
- 65. As charter schools have relatively small rolls, they will not receive a level of staffing that would allow for a great deal of flexibility in the use of this resource. Therefore, it will not be possible to cash up much of the entitlement staffing. This could lessen the risk of Regulations Review Committee or judicial review.
- 66. As charter schools are small schools, it will not be possible to cash up much of the entitlement staffing. This could lessen the risk of Regulations Review Committee or judicial review.
- 67. We also considered allowing the former charter schools to 'anticipate' some funding from cashed up entitlement staffing through the banking staffing regime and receive it at the beginning of the year, which would provide them with greater flexibility, and would give them a greater ability to retain their existing workforce structures.
- 68. However giving the schools an entitlement at the beginning of the year may increase the risk that they will get into 'debt', which would be difficult for the Ministry to recover. This is because monitoring of banking staffing during the year would be made more complex. This change would require changes to existing policy settings that, would represent a considerable departure from existing practice, and could raise concerns across the sector that this represents a form of 'back door' cashed up funding even if it was a one-off arrangement. This is a flexibility that other schools may wish to have.

Option Three: *transition payment and possible changes to entitlement staffing*

- 69. It is possible to both provide the former charter schools with a transition grant and make changes to the entitlement staffing in order to provide both transitional assistance to these schools, and a permanent arrangement to allow flexibility for the ongoing employment, amongst others, of a CEO/ Director.

Cashing up 'unnecessary State provided services'

- 70. State schools have access to various resources that are centrally funded, the most significant of which is Professional Learning and Development. These resources are cashed up for charter schools through a small flat per-student rate (\$276) which is difficult to calculate.
- 71. One sponsor has requested that we consider cashing up 'unnecessary State provided services'.
- 72. The per-student rate that charter schools receive does not include anything resourced through staffing (e.g. Resource Teachers: Learning and Behaviour or Ministry of Education advisors), and cashing up staffing is not practical.

73. Cashing up some of the centrally funded resources for the newly established schools would be difficult to do, and would also create questions about which supports are unnecessary. The schools would have to agree on which supports were to be cashed up – allowing individual schools to choose would be logistically complex. There would need to be ongoing decisions when any new supports are introduced into the State system. In the past, cashed-up options for State schools have also provoked strong reactions within the sector and the wider public.
74. In the past, Kura have also expressed that they would like to cash up Ministry support. As support is provided through people, cashing up the centrally funded resources for designated character schools would lead to staff redundancies.
75. We recommend that, rather than attempting to continue to cash up centrally-funded initiatives, you allow former charter schools access to these on the same basis as any other similar State school.

School Decile/funding

76. The charter schools were established with the equivalent of decile 3 funding with the aim of reviewing their decile when they reached their maximum roll. So far, only one school has reached this and has had its decile adjusted downwards.
77. If the schools became State schools, their decile would be reviewed at the time of the transition. This requires them to provide the Ministry with the addresses of their students, so we cannot yet say with certainty which decile they would get.
78. As a charter school, they have been required to target priority students so their initial decile is likely to be low. However, they would no longer have this requirement under the State system, so their decile could increase over time.

Property issues

79. Currently charter schools receive cashed up funding, including a component for property based on a Cash for Building formula. They are free to allocate what they wish on property. Charter schools also do not need to follow Ministry guidance, such as the School Property Guide (e.g. guidelines on property quality or size).
80. Within the State school system, three property options are available:
 - a. Option 1: Purchase and build
 - b. Option 2: Taking over existing leases
 - c. Option 3: Cash for Buildings.
81. All funding for property costs will have financial implications. Purchase and build would require a capital injection, whereas leasing costs and the Cash for Buildings programme would require operating funding.

82. The extent of funding available depends on the form and type of school. As State integrated schools are not fully funded for provision of property, we expect current charter schools will apply to become designated character schools. Four current charter schools have a religious element and therefore may apply to become State integrated schools.

Preferred option: Lease

83. Our preferred option is to lease property for the charter schools that choose to become designated character schools. At this time, we have no visibility of the terms and conditions of existing leases. We therefore cannot currently provide accurate costs for taking on the existing leases and for making improvements, if required.
84. An assessment of the existing lease arrangements is being undertaken over the next few weeks in order to determine next steps. This includes assessment of appropriateness of size and quality of leased premises. One possibility could be to assign the lease from the sponsor to the Ministry, but some leases may have a clause prohibiting this or may have terms that are not appropriate for the Crown to take on. We consider it is also likely that landlords would use the opportunity to re-negotiate the leases to terms more favourable to them.
85. For those schools that apply to increase the year groups they cover (for example from 11-13 to 9-13) or their maximum roll, we would also need to develop leasing arrangements that could accommodate their increased maximum roll.
86. There are a large number of unknowns at this stage, including potential costs associated with bringing leased premises up to State school standards. Existing non-departmental appropriations for charter schools may not be sufficient to cover costs associated with leases taken on by the Ministry. Some transfer between appropriations may be possible, but additional funding may need to be sought.
87. Charter schools have not been required to report to the Ministry on property expenditure. We have assessed their 2016 audited accounts to identify the value of the schools' leases at that time.⁶ As the 2017 audited accounts are not yet available, we have no oversight of more recent expenditure.
88. Initial estimates suggest it may cost between \$2.1 million to \$3.01 million per year to continue the existing leases for the nine schools. This includes a 20 per cent contingency for possible roll growth. Please note that these are based on non-audited estimates. We expect to be in a position to provide more accurate figures in the next few weeks, including for the two schools we do not have any information for at this time.
89. Two charter schools that were approved for establishment in 2019 – Waatea High and Turanga Tangata Rite are also expected to apply to become designated character schools. They are currently excluded from the lease cost estimates above.

⁶ We do not have 2016 audited accounts information for Te Kōpuku High and Te Rangihakahaka Centre for Science and Technology. We therefore do not have any oversight of current leasing costs for these two schools.

Additional property support for charter schools to become integrated schools

90. Section 456 of the Education Act 1989 provides that one of the responsibilities of the proprietor of a State integrated school is to own, hold upon trust or lease the land and buildings of the school. The Proprietor is responsible for capital works and receives State funding for ongoing major maintenance, for which they are also responsible, while the board of trustees of the integrated school receives State funding for minor maintenance. Proprietors are able to charge compulsory attendance dues to pay for capital works debts associated with these capital works, insurance and other administrative costs of running the property.
91. Proprietors therefore have to acquire, through either purchasing, leasing or vesting, the land for the school, and they must ensure that its buildings meet the minimum standard set by the Secretary of Education for State schools.

Land

92. In order to assist a charter school sponsor that wished to integrate, the Crown could purchase land or use land it already owns and lease it to the proprietor, however this would require new funding, and would be precedent setting.
93. The proprietor could continue to lease their current land and building that they occupy as a charter school as long as they meet the minimum standard required for State schools and have sufficient funding to meet the lease requirements. The Education Act 1989 would not prevent the government from providing funding to the proprietor to meet these leasing costs, but this would also set a precedent that other integrated schools may seek to benefit from.

Buildings

94. The Crown can provide funding for 85 per cent of the cost of building new classrooms in an existing integrated school or new buildings for a new integrated school (known as Policy 2 funding), based on entitlement calculated through the Schools Property Guide. The funding the Crown provides excludes the cost of land, site works and designation. As the Proprietor must pay for these costs, the real cost to them of establishing a school is more than simply 15 per cent for construction. f
95. In order to be considered for this funding the school needs to meet the following criteria:
 - a. The application defines the local school network (using the boundaries set out in the area report);
 - b. Current demand for enrolment in that network is over 85% of its capacity;
 - c. Projected demand will go beyond the network's current capacity within 10 years; and
 - d. A new State school is likely to be needed within 10 years if the integrated school is not built.
96. Policy 2 funding is discretionary, and is negotiated as part of the Budget process. There is no legal obligation for either the Minister or the Ministry to provide an

integrated school with Policy 2 funding even if the above criteria is met. The Minister may approve the establishment of an integrated school but decline Policy 2 funding.

97. Proprietors' buildings depreciate in value. In order to ensure State integrated schools are at the same standard as State schools, proprietors receive some government funding to maintain and modernise their integrated property.⁷

Religious Designated Character

98. Sponsors have raised concerns as to what "designated" character would meet the requirements for becoming a designated character school. For three schools, the sponsor has indicated it considers its faith/religious elements to be an essential character of its charter school; this is indicated in their Gazette notices. One school is a primary school, and the other two are middle schools.
99. The designated character of a designated character school must not be discriminatory under section 19 of the New Zealand Bill of Rights Act 1990 or section 21 of the Human Rights Act 1993. A religious character school is likely to fail that check as it would be discriminating on the grounds of religious belief in both in the taking of enrolments and in curriculum delivery.
100. The Education Act 1964 sets out the legislative framework for religious instruction and observances in State primary schools, outside of school hours.
101. Section 77 of the Education Act 1964 provides that teaching in every State primary school must, while the school is open, be entirely of a secular character.
102. Section 78 then provides that, despite anything to the contrary in section 77, if the Board, after consultation with the principal so determines, any class or classes or the school as a whole may be closed for the purposes of religious instruction given by voluntary instructors approved by the Board and the school buildings may be used for such instruction.
103. Section 78 also provides that:
- a. The periods of religious instruction and observances must not exceed 60 minutes per week; and
 - b. 20 hours in the school year

⁷ In financial year 2016/17, this amounted to around \$54 million. As the State integrated network expands, we expect this figure to increase.

104. Section 78A provides that, where the Minister is satisfied that:
- a. The majority of parents wish their children to receive religious instruction additional to that allowed for in section 78; and
 - b. Such additional instruction will not be to the detriment of the normal curriculum of the school;
 - c. Then after consulting with the board he shall authorise additional religious instruction up to such an amount and subject to such conditions as he thinks fit.
105. Section 79 provides that a student's parents have an absolute right to opt the student out of religious instruction by writing to the principal.
106. This means that, under the current legislation, if a board of trustees wishes, after consultation with the principal, the school may offer religious instruction and observances given by voluntary instructors while the school is closed. The periods of religious instruction and observances must not exceed 60 minutes per week and 20 hours per school year.
107. Based on section 78A, you, as Minister, could authorise extra time for religious instruction if the majority of parents wish for their children to receive additional religious instruction and it will not be to the detriment of the normal curriculum of the school. However, this instruction would be delivered by volunteers, not the students' teachers.
108. While this would provide the ability for the schools to offer extra religious instruction, we understand that the current charter schools with a religious character use an approach where they weave religious teaching and observances throughout their curriculum teaching. This could, for example, mean starting or concluding a lesson with a prayer or Bible reading or using Christian examples and references as a part of the lesson. The secular clause would not permit this.
109. Delivering religious instruction while the school is closed is unlikely to be a viable alternative to a religious values based curriculum. If this is important to the sponsor, the State integrated or private school models are the best options available to them if the funding and/or property issues can be worked through (see discussion above).
110. There is no equivalent to the secular clause in relation to secondary schools. The Human Rights Act applies to all practices within the school, and the Education Act provides for an opt out from the curriculum on religious or cultural grounds.

Identifying designated character

111. In order for new designated character school to be established it must meet the requirements in section 156(4) of the Education Act 1989. The three key elements that the sponsors will need to demonstrate:
- a. The Designated character school provides education that in some specific way or ways is different from the character of the ordinary State schools;
 - b. It is desirable for students (whose parents wish them to do so) to get such an education;

- c. Students at the school will get education of a kind that differs significantly from the education they would receive at an ordinary State school.

A Māori name for the designated character school model

- 112. He Puna Marama Trust which is the sponsor for Te Kāpehu Whetū - Teina and Te Kura Hourua O Whangarei has requested that there be a Māori name for the designated character school model.
- 113. He Puna Marama Trust have suggested the term the term 'kura hourua'. The reason they gave for this was

It reflects our kaupapa well and is more pleasing to hear than 'special character school. It also signifies our view of a strong relationship between ourselves, the Government, the community, the whanau and ākonga.

- 114. While kura hourua is requested by He Puna Marama Trust, it may not be acceptable to other designated character schools, particularly because of the association with charter schools.
- 115. It would be possible to have a Māori name for non-kura kaupapa Māori designated character schools, however this would require legislative change to formalise. As this would impact all designated character schools, before legislative change was made it would be sensible to consult on suggested names with the existing designated character schools.
- 116. If you would like to pursue this we would need to do further work and consultation on this.
- 117. There is a choice of three legislative vehicles which could be used to make this change:
 - a. An SOP to the current Education Amendment Bill;
 - b. Inclusion in the Education Legislation Bill, scheduled for later this year;
 - c. Inclusion in the Rewrite Bill of 2020.

Budget bid 2019

- 118. We will assess potential funding implications arising from the recommendations in this paper, including establishment costs and property, and will commence work on a budget bid for Budget 2019.

Next steps

- 119. Subject to your preferences, we will provide an aide memoire to support you to provide an oral item at Cabinet on 26 March 2018, with a Cabinet paper in early April 2018. This will enable decisions to be made public as soon as possible.

Appendixes

Appendix 1: Issues being raised during discussions

Appendix 2: Scenario modelling – high level costs

9(2)(f)(iv)



