

## Update on Charter School Discussions, Next Steps with Transitional Options and a Further Matter

### Proposal

1. This paper provides an update on the removal of partnership schools kura hourua (charter schools) from the education system, and potential policy changes I intend to explore for the schools in response to issues they have raised about the state schooling models available and transition to those models. I would like to transfer unspent contingency funding from 2017/18 into 2018/19 as it was not required in this financial year.

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### Executive summary

3. The Ministry has been in discussions with all sponsors of charter schools on a “without prejudice basis” about the potential termination of their contracts. Discussions about termination of contracts and the potential establishment of new schools are two separate legal processes.
4. There are 11 charter schools currently operating with around 1300 students. Notice of termination must be given at least six months before the end of the school year if Minister’s termination for convenience is to be used.
5. If the Government does not want charter schools to open in 2019, this will mean that termination decisions will be required in May 2018. Termination of contracts would occur on the last day of the final term of the year, if notice has been given or if mutual agreement is reached. Five charter school contracts are as yet unopened charter schools.
6. The Ministry has been and will continue to work towards contract termination with the sponsors of *unopened* charter schools before the notice of termination deadline of 15 May 2018. The five contracts are: Blue Light Ventures Incorporated, City Senior School Limited, Vanguard Military School Christchurch Limited, Te Whare Wānanga o MUMA Limited and Turanga Tangata Rite. I am expecting termination agreements to be ready for my approval shortly, to be concluded either by mutual termination or by termination for the Minister’s convenience.
7. Where termination decisions for *unopened* charter schools are not made by 15 May 2018 the charter schools would have the right to open for the 2019 school year. I will inform Cabinet of my proposed approach where further decisions are required, before this termination deadline.

8. An application to establish a State designated character school to replace their charter school has been received from Vanguard Military School (Auckland). We agreed that I would have the power to set deadlines for the applications and a deadline of 1 May 2018 was set. This was communicated to sponsors prior to it being announced publicly.
9. Legislation has been introduced (the Education Amendment Bill 2018) to remove the charter school model. It also allows charter schools to continue operating until contract termination has occurred.
10. Sponsors have raised a range of issues with a potential transition to the State system. I have considered the individual issues (consistent with our case-by-case approach) and this has informed the overall approach outlined in this paper. Key areas of concern include governance structures, resourcing (quantum and form), the issue of religious elements within schools and the transition of staff to any potential new schools. Policy options will be explored however the integrity of the State education system is a paramount concern. I intend to bring a paper to Cabinet in May 2018 to progress the potential policy changes further.
11. In the meantime I intend to inform sponsors that:
  - a) allowing trusts to become the legal entity that governs a new state school will not be further explored;
  - b) one-off transitional funding for charter schools and more flexibility for staffing will be considered further but that permanent funding changes (including fully cashed up funding) will not be explored further;
  - c) State integrated or private school models would be the best options for sponsors interested in establishing schools with a formal religious character, however the property support available would be significantly less than State schools;
  - d) potential transition options for staff from charter schools to the state system will be explored further but details cannot be provided to sponsors at this time. The Ministry will, however, raise the issue of the timely provision of Limited Authorities to Teach with the Education Council.
12. In addition one sponsor, He Puna Marama Trust (the Trust), is concerned about the loss of control and character that would be associated with becoming a State school. The kaupapa of its charter school recognises the sacrifices made by the men of the 28th Māori Battalion. The Ministry is looking at options that might provide a response to the Trust's concern and I will report back on this in my Cabinet paper in May 2018.
13. The potential cost of establishing State schools may be significant. I will report back on this by August 2018. I expect to seek additional funding for these costs.
14. I propose to transfer the removal of charter schools operating contingency to ensure we keep unspent funding from 2017/18.
15. The previous Government initiated the dispute process in the contract with the failed charter school in Whangaruru to try to recover Crown funding.

## Background

16. Legislation has been introduced (the Education Amendment Bill 2018) to remove the charter school model. Until the contracts are terminated they remain valid and schools will operate as usual. The legislation will allow charter schools to continue operating until contract termination has occurred.
17. In total, 17 charter school contracts were signed by the previous Government, of which one was terminated in March 2016. This paper also considers a proposal about the recovery of funds from the charter school that was terminated in 2016.
18. The Crown liability for the remaining duration of the contract terms is \$132 million (2018 to 2024). Each contract has a term of six years (unless it is renewed).
19. As at 27 March 2018, there are 11 charter schools currently operating with around 1300 students.
20. Notice of termination of contracts must be given at least six months before the end of the school year (with termination occurring on the last day of the final term of the school year) if Minister's termination for convenience is to be used. This means that where termination decisions are not made by 15 May 2018 (termination deadline) the charter schools would have the right to open and operate for the 2019 school year.
21. Although termination of contracts are a separate process to the potential establishment of new schools within the State system, discussions towards termination by mutual agreement have been hampered by the sponsors' view that the two processes are intertwined.
22. Sponsors have raised a number of issues with the potential transition of charter schools into the State system including governance, resourcing and transition of staff.
23. One application from a charter school for establishment of a State school in 2019 has been received. Two further applications are expected to be received in April 2018. Others considering making applications are working to the 1 May 2018 deadline. One sponsor has indicated it cannot make an application until it knows the response to the changes it is seeking to the State school model. All sponsors have been informed that the issues they have raised are under consideration and that they can expect an update on them in early April 2018. In the meantime they have been advised to rely on the current requirements that apply (as set out in the legislation and application form).

## Comment

### Contract discussions with charter schools

24. As outlined in CAB-18-MIN-0010, the Ministry has been in discussions with sponsors of charter schools on a "without prejudice basis" about the potential termination of their contracts. Discussions about termination of contracts and the potential establishment of new schools are two separate legal processes.
25. Discussions with the 11 schools that are currently open began in February and March 2018 and are progressing well; this includes the Round Four charter school that the Ministry met with in 2017 that went ahead and opened in 2018.
26. If the Government does not want charter schools to open in 2019, this will mean that termination decisions will be required before the termination deadline (15 May 2018).

27. The Ministry has been and will continue to work towards contract termination with the sponsors of unopened charter schools before the termination deadline of 15 May 2018. The five contracts are: Blue Light Ventures Incorporated, City Senior School Limited, Vanguard Military School Christchurch Limited, Te Whare Wānanga o MUMA Limited and Turanga Tangata Rite. I am expecting termination agreements to be ready for my approval shortly, to be concluded either by mutual termination or by termination for the Minister's convenience.
28. I will inform Cabinet of my proposed approach where further decisions are required, before the termination deadline.
29. Discussions will remain ongoing even where the notice period for termination for Minister's convenience has begun. This may enable more favourable termination agreements to be negotiated (where possible) with sponsors' mutual agreement, prior to termination taking effect. Mutual agreement allows a shorter notice period to be agreed, however, closure would still be at the end of the school year.

#### Applications to establish new schools

30. On 26 March 2018 I advised Cabinet about the application received so far from Vanguard Military School (Auckland). I also discussed whether we should set a deadline for applications to enter the state schooling system. Usually this is 1 April in order to give a new school time to be established. Some sponsors have been working to a mid to late April date and others have not indicated the timeline they would be working to. Cabinet agreed that I would have the power to set deadlines and 1 May 2018 was set. This was communicated to sponsors prior to it being announced publicly.
31. This deadline will mean I should be able to consider decisions on a case by case basis in July 2018. That in turn will provide certainty to the school communities involved, and ensure the schools are fully operational in the State system for the 2019 school year. I will advise Cabinet prior to making commitments to establish State schools. I intend to report back by August 2018.

#### Issues with potential transition to the State system

32. Sponsors have raised a range of issues with a potential transition to the State system. I have considered the individual issues (consistent with our case-by-case approach) and this has informed the overall approach outlined in this paper. Key areas of concern include governance structures, resourcing (quantum and form), the issue of religious elements within schools and the transition of staff to any potential new schools. The integrity of the State education system has been a paramount concern in consideration of possible policy options.
33. The new deadline for applications may not be long enough for policy design to be fully completed. The issues that will be further explored by officials are outlined below. I expect to bring a policy paper to Cabinet in May 2018 to progress some of these further.

### *Governance*

34. 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. An alternative constitution also does not guarantee that the board of a new State school will maintain the philosophy of the existing charter school in perpetuity. I propose to inform sponsors that I am not considering exploring additional changes at this time.
35. The He Puna Marama Trust (the Trust) is concerned about the loss of control and character that would be associated with becoming a State school. The kaupapa of its charter school recognises the sacrifices made by the men of the 28<sup>th</sup> Māori Battalion. The school does this every day by paying tribute to them in every karakia, mihi, powhiri, whakatau. They have built it into their planning and into their curriculum.
36. The Trust believes that the only way the schools can continue to exhibit the kaupapa is if the trust is the legal entity governing the school. This cannot be done as a State school is by definition a Crown entity rather than an independent trust.
37. The Ministry is looking at options to preserve this designated character in a way that might provide a response to the Trust's concern that a future board of trustees could change the kaupapa rather than make the Trust the legal entity for the school. I intend to explore this further and report back on this in my policy Cabinet paper in May 2018.

### *Resourcing*

38. Sponsors are interested in options for both transitional and potentially permanent funding changes to provide the schools with funding flexibility. Due to precedent and equity issues for other State schools, sponsors' proposals for permanent funding adjustments (including the ability to fully cash-up funding) will not be considered further.
39. I am, however, prepared to consider some transitional arrangements for resourcing, either through a transitional grant and/or the ability to cash up a limited amount of staffing for a short period. I have asked for further work on this.
40. I propose to inform sponsors that while I will be considering one-off transitional funding for charter schools and more flexibility for staffing, I am not considering we explore any permanent funding changes at this time.
41. State schools are fully funded whereas private schools, and to a lesser extent, State-integrated are not. State-integrated schools meeting specific criteria may receive up to 85 percent of funding for construction of new buildings. Proprietors may charge attendance dues to make up the shortfall; however, this may not be a viable option in all cases because of the affordability for families. The lower level of state funding is likely to be a significant limiting factor where sponsors consider the State-integrated or private school models.

### *Religious Designated Character*

42. 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.

43. 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 or ethical belief, both in the taking of enrolments and in curriculum delivery.
44. State-integrated or private school models would be the best options for sponsors interested in establishing schools with a formal religious character.

#### *Transition of staff*

45. Sponsors have raised multiple and varied concerns on the potential transition of staff from charter schools to the state system, including on salary levels of teachers and principals, the continued employment of chief executives; the employment relationships between schools and their teaching staff; impacts on the structure of their schools; possible options to transfer staff to a new state school and determine redundancy options.
46. While one-off transitional funding and flexibility discussed above may be of assistance with staff transition costs, I propose that further potential options for staff from charter schools to the State system will also be explored.
47. The timely provision of Limited Authorities to Teach (LATs) by the Education Council has been raised. I have asked the Ministry to work with the Education Council to help smooth the transition. I propose sponsors are informed of this.
48. The question of legislative transition options to transfer staff to a new state school and determine redundancy options require careful consideration of the inter-relationship between the Employment Relations Act 2000, the State Sector Act 1988 and the Education Act 1989. Such provisions are relatively common where new statutory entities are created. They usually provide for a priority of appointment of employees in an organisation that is going out of existence to a replacement organisation where there is a similar position available. In return, rights to redundancy are curtailed. Further policy work is underway to consider the detail of such amendments to the relevant legislation. I intend to take further advice and to cover this in my policy Cabinet paper in May 2018.

## *Infrastructure*

49. Sponsors are seeking detail on infrastructure arrangements for potential schools.
50. State school property costs include: land acquisition, design and build; taking over existing leases; or negotiating new leases if needed. Land acquisition and the design and build of new infrastructure would require a capital injection, whereas leasing costs would require operating funding. Assessment of additional funding will be undertaken as part of the application process. Our preferred option is to lease property for the designated character schools established to replace charter schools. Taking over existing leases would provide a smooth transition into the state system for the schools. It is also the most cost-effective and time-efficient option, as the construction of new school property can take between 3 to 5 years and has much higher cost implications.
51. An assessment of the charter schools' existing lease arrangements, including cost, size and standard of accommodation is being undertaken as is further work to gather information on other potential infrastructure costs such as transport, furniture and equipment and connection to fibre. This information will form part of the paper reporting on potential establishment of new designated character schools.
52. If there are charter schools that become State-integrated school (as discussed in paras 42-44 above), they may require additional property support over and above what is normally provided under the State-integrated school model. The option of making changes to property support for state-integrated schools will be left open so I can reconsider it, if required, at a later point.

### Ngā Parirau Mātauranga Charitable Trust: next steps with the failed charter school in Whangaruru

53. The previous Government initiated the dispute process in the contract with the failed charter school in Whangaruru to try to recover Crown funding. The charter school contract was terminated in March 2016 due to non-performance against three performance standards and breach of contract in eight areas.
54. The sponsor, Ngā Parirau Mātauranga Charitable Trust (the Trust), is a charitable trust that was set up for the purpose of running the charter school.

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### Consultation

60. The Treasury was consulted. The Department of the Prime Minister and Cabinet was informed. Crown Law was consulted on the proposals relating to Ngā Parirau Mātauranga Charitable Trust.

### Financial implications

61. The future cost of each agreement to terminate will vary, with each sponsor on a case-by-case basis, but we assess it is likely to be less than the potential cap of \$1 million for committed costs that applies for each charter school where termination for Minister's convenience is exercised.
62. I will consider drawing down funding from the 'removal of the charter school model' tagged operating contingency (expiry is 30 June 2019) where costs cannot be met from Vote Education baselines. The current balance of the operating contingency is as follows:

	\$ m				
	2017/18	2018/19	2019/20	2020/21	2021/22 & outyears
Operating Contingency: Removal of the charter school model					

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63. The timing of any termination payments are likely to vary with the first payments from the first termination I approve, possibly in April 2018. Initial termination decisions are expected to have modest costs that will be manageable from Vote Education.
64. Re-phasing of the contingency is recommended, as expenditure in 2017/18 is unlikely (costs being deferred, not avoided). I propose to transfer the removal of charter schools operating contingency to ensure we keep unspent funding.
65. The establishment costs of potential new schools is currently unknown, and it may be significant if new schools sites and construction are required. I expect better information to become available once applications have been received and developed. Our current preferred option will be leasing arrangements, at least for the first year.
66. The potential cost of establishing State schools may be significant. I will report back on this by August 2018. I expect to seek additional funding for these costs.

67. I intend to report back to Cabinet before any decision is made on the establishment of new schools, this will include advice on the potential funding requirements.

### Human rights, Gender and Disability implications

68. There are no human rights, gender or disability implications associated with the proposals in this paper.

### Legislative implications

69. No legislative changes outside of the current Education Amendment Bill 2018 are proposed at this stage.

### Regulatory impact analysis

70. Not required.

### Publicity

71. I intend to announce the areas where further policy work is to be undertaken, to give sponsors assurance. However, I will be clear with sponsors that transition arrangements are to be explored further and that they are still subject to Cabinet's final approval.

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### Recommendations

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The Minister of Education recommends that the Committee:

1. **note** that Cabinet authorised the Minister of Education (the Minister) to set an application deadline of 1 May 2018 for charter schools to apply for the establishment of schools under State school models, and that power-to-act was given to the Committee to consider this paper;  
**Noted**
2. **note** that the Ministry of Education (the Ministry) has been and will continue to work towards contract termination with the sponsors of unopened charter schools and that the Minister expects termination agreements for unopened charter schools to be ready for approval shortly, to be concluded either by mutual termination or by termination for the Minister's convenience before the termination deadline of 15 May 2018;  
**Noted**
3. **note** that if the Government does not want charter schools to open in 2019 this will mean that termination decisions will be required by 15 May 2018, after the 1 May 2018 application deadline has been reached, and that therefore the Minister will inform Cabinet of the proposed approach where further termination decisions are to be recommended;  
**Noted**

4. **note** that charter schools may choose to submit an application by 1 May 2018 for the establishment of a State school in 2019 and that I will advise Cabinet prior to making commitments to establish State schools;  
**Noted**
5. **note** that sponsors have raised a range of issues with a potential transition to the State system; the issues include: governance structures, resourcing (quantum and form), the issue of religious elements within schools, and the transition of staff to any potential new schools;  
**Noted**
6. **note** I intend to bring a paper to Cabinet in May 2018 to progress the potential policy changes further, while advising charter schools what will be explored further and what will not and being clear that the integrity of the State education system is a paramount concern;  
**Noted**
7. **agree** that allowing trusts to become the legal entity that governs a new State school is not recommended for further exploration, and that sponsors can be informed;  
**Agree/Disagree**
8. **agree** that a solution to the issue raised by He Puna Marama Trust in relation to the 28<sup>th</sup> Maori Battalion will be explored further; and that sponsors can be informed;  
**Agree/Disagree**
9. **agree** that one-off transitional funding for charter schools and more flexibility for staffing will be considered further but permanent funding changes including fully cashed up funding are not for further exploration, and that sponsors can be informed;  
**Agree/Disagree**
10. **agree** that State-integrated or private school models would be the best options for sponsors interested in establishing schools with a formal religious character, and that sponsors can be informed that changes to the State school model are not for further exploration;  
**Agree/Disagree**
11. **agree** that sponsors will be informed that potential transition options for staff from charter schools to the state system will be explored further; noting that one-off transitional funding and flexibility discussed in recommendation 9 will be of some assistance for staff transitions, but that more detailed information on transitional options for staff will be available once Cabinet has considered further advice;  
**Agree/Disagree**
12. **agree** to re-phase the operating contingency over the period 2017/18 to 2018/19 as follows:

	\$ m				
	2017/18	2018/19	2019/20	2020/21	2021/22 & outyears
Operating Contingency: Removal of the charter school model			-	-	-
Transfer between years			-	-	-
Revised Balance			-	-	-

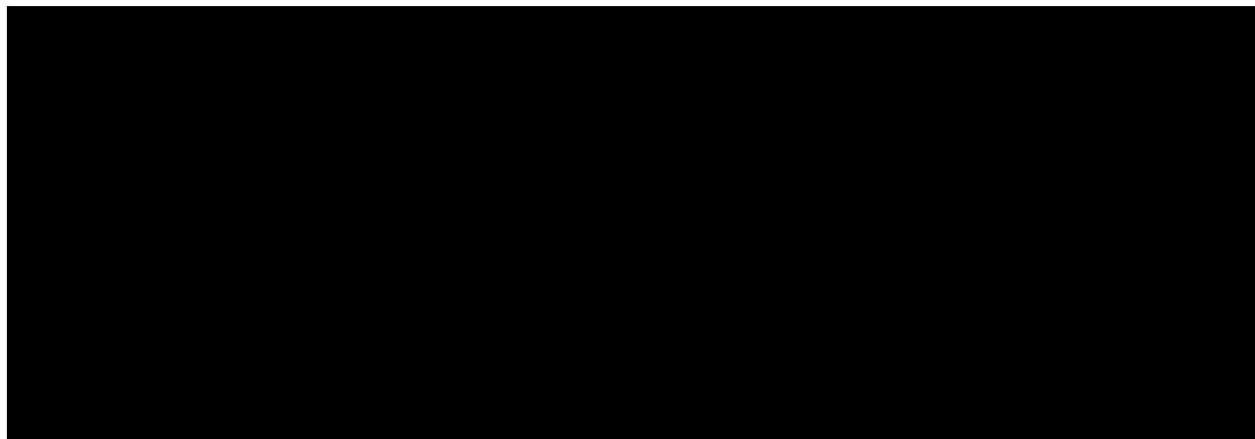
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**Agree/Disagree**

13. **note** that the Minister will report back to Cabinet on the potential cost of establishing State schools by August 2018;

**Agree/Disagree**

*Ngā Parirau Mātauranga Charitable Trust: next steps with the failed charter school in Whangaruru*



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Hon Chris Hipkins  
**Minister of Education**