




## Briefing Note: Partnership School Kura Hourua Contract Accountability Enhancements

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<b>Date:</b>	22 June 2017	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1068674
<b>To:</b>	Hon Nikki Kaye, Minister of Education David Seymour MP, Parliamentary Under-Secretary to the Minister of Education		
<b>Key contact:</b>	Karl Le Quesne, Deputy Secretary (acting), Early Learning and Student Achievement	<b>DDI:</b>	

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### Summary

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- This is a briefing note on what specific enhancements have been made to the Partnership School Kura Hourua contract's accountability framework since it was first created in 2013
- We also explain how the current processes such as the update to the contract for Round Four and Five (METIS 1064290) and the Contract Review (in progress) will further improve the accountability framework for existing sponsors, and what potential further enhancements are under consideration in the review

Karl Le Quesne  
**Deputy Secretary, Early Learning and Student Achievement (acting)**  
Ministry of Education

21 / 06 / 2017

## **Purpose**

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1. Your Office requested a briefing that sets out the changes that have been made to the Partnership School Kura Hourua contracts since the original contract was developed in 2013. This briefing focuses on specific enhancements that have been made to the accountability framework, and how these relate to current processes, such as the update to the contract for Round Four and Five and the Contract Review (in progress).

## **Background**

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2. In September 2013, the Ministry developed a standard-form PSKH contract with expert advice provided by Bell Gully. All five schools that were approved that year (Round One) were signed onto this standard-form contract, with schedules that related to the specifics required for each school.
3. In September 2014, a second selection round was completed and a further four schools were signed using the same standard-form contract (Round Two).
4. Both Round One and Round Two schools remain on the original contract. Round Three contracts were signed in 2016 after two sets of revisions. More information about the revisions is covered below.
5. Recently the standard-form contract has been updated with expert advice provided by Chapman Tripp ready for use in Round Four and Round Five (METIS 1064290).

### *Partnership School in Whangaruru – background to the first use of termination*

6. In Round One, the previous Minister of Education approved Nga Parirau Matauranga Charitable Trust (the Trust) to sponsor a secondary Partnership School Kura Hourua (PSKH) called Te Pumanawa o te Wairua and located in Whangaruru.
7. Following the ERO readiness review report into Te Pumanawa o te Wairua in September 2014, the Minister issued a performance notice to the Trust and commissioned the first of two specialist audits (METIS 907699).
8. Following the second specialist audit (METIS 962678), in December 2015, the Minister terminated the Trust's PSKH contract, effective on 7 March 2016. Over the course of the contract, the Trust was paid \$5.2 million in funding for the PSKH.
9. The Ministry is currently involved in a mediated negotiation process with the Trust to recover as much of the funds invested in the school as possible (METIS 1064292 refers). As at June 2017, discussions are ongoing.

## **Revision 1 to the standard-form contract**

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10. In August 2015, the first set of revisions were completed to the standard-form contract (METIS 945671). This occurred shortly after the 2015 PSKH funding review, which prompted funding-related changes to the contract.
11. The revisions made were intended as a general update of the standard-form contract prior to it being used for Round Three. It included a range of changes to the standard-form contract. Some of the amendments, the Ministry advises, were specific enhancements to the Crown's capabilities to respond to issues where sponsor performance or breach of contract were of concern. Those enhancements are detailed below:

Clause	Relevant clause	Comment
16.3	Evidence as to compliance with Minimum Requirements (new)	The Minister could now require a sponsor to provide evidence that it has met all of the Minimum Requirements. This provided a new option if record keeping was a concern
18.2(c)	Supplementary report (new)	If the Minister considers a Quarterly Report or Annual Report does not provide a satisfactory level of detail, a supplementary report can be required
19.3	Minister's audit (amendment)	The cost of a ministerial audit can now be shared between the Ministry and the sponsor, if the audit discloses there have been performance failures or breach of the contract. A time limit was also removed that would otherwise prevent audits being more frequent than once every six months
21	Termination – consequences for failing to meet performance standards or where there is a breach or is likely to be a breach (substantial amendment)	<p>The section on Consequences was expanded to include that the Minister could act on breach or non-performance, including if it became apparent through audit, monitoring, investigation or otherwise. This amendment responded to the previous Minister's feedback in early 2015 that the operating framework should be refined so that the outcome of an ERO review could lead to contract intervention.</p> <p>It was included that a written notice could be issued by the Minister that included a specified timeframe by which time the sponsor would be required to remedy an issue.</p> <p>It was included that written notice could be issued for likely breaches, and expected future performance, not only breach or non-performance once it had actually occurred.</p> <p>Failure to comply with a written notice could lead to intervention.</p>
22	General ability to intervene (amendment)	A clause was amended to clarify that the Minister's general ability to intervene allowed any intervention to be undertaken if required and this was not limited to first issuing a written notice (clause 21).

24.3	Remedial Plan (amendment)	It was clarified that the Minister could reject a remedial plan, not only approve it or request amendments.  Further clarification was included that explained that any other intervention could be invoked if remedial plan requirements were not met by the sponsor.
24.7	Appointment of specialist adviser (new)	A new intervention was added allowing a specialist adviser to be appointed to assist with improving performance in a particular area or areas, to be paid for by the sponsor.
25.1(c)	Minister's right to terminate (amendment)	A time limit that termination notices be given within three months of the event was replaced with 'a reasonable period of time', to give the Minister more scope if terminating
25.1(g)	Minister's right to terminate (new)	The Minister can now seek recovery of the set up component of the establishment payment if a school is terminated in the first three years

## Revision 2 to the standard-form contract

12. In July 2016, a second set of revisions were completed to the standard-form contract (METIS 1010676). This was completed during the negotiation phase with three preferred applicants in Round Three (only two of these actually proceeded to ministerial approval, Te Aratika and Kia Ata Mai).
13. As with the first revisions, the second revisions included a range of changes to the standard-form contract but there were many fewer revisions made than in the first revisions.
14. Some changes were slight amendments to what had been proposed in the first set of revisions, as nearly a year had elapsed between the two updates allowing time for further consideration. There were also a couple of changes that we advise were further specific enhancements to the Crown's capabilities to respond to issues where sponsor performance or breach of contract were of concern. They were:
  - a. **Minister's right to terminate:** a new clause 25.1(xiii) was added so a sponsor's contract could be terminated if the sponsor could not demonstrate it had made every reasonable effort to meet the milestones in its establishment plan. Note also that separately, we have provided more recent advice to improve the establishment process through 'implementation plans' improvements (METIS 1064290)
  - b. **Contractual Off-Ramps:** we provided advice to the previous Minister that should an establishing school sponsor fail to provide the following

artefacts (by the required deadlines) during the establishment period, then termination of the contract could be invoked:

- i. Parent, Family, Whanau, Iwi and Community Engagement Plan;
  - ii. Health, Safety and Wellbeing Policies;
  - iii. Curriculum Handbook;
  - iv. Have confirmed premises no later than 90 days prior to opening.
15. The “contractual off-ramp” process would be activated in one of two ways. Termination would be triggered by breach of contract if sponsors did not provide the artefacts described above. Alternatively, if the ERO readiness review or governance facilitators had provided advice that gave the Minister reasonable grounds to believe that there is a risk to the operation of the School or to the welfare or educational performance, then the Minister’s general ability to intervene could be invoked (termination).

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### **Revision 3 to the standard-form contract**

16. The recent third set of revisions to the contract discussed in METIS 1064290, made ahead of Round Four and Five is currently with you for consideration.
17. It included only minor changes to the intervention framework, and did not introduce any new or substantially amended accountability enhancements.

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### **Next steps**

18. There is also a PSKH Contract Review currently in progress. The objectives are as follows:
- a. review the performance framework;
  - b. clarify the funding mechanisms;
  - c. more clearly explain how the performance regime and the intervention framework operate;
  - d. provide more certainty for sponsors to better enable access to external funding sources;
  - e. Simplify the contract to focus on outcomes, whilst ensuring that the Crown’s interests continue to be protected.
19. At the conclusion of the review, scheduled for August 2017, we are expecting existing sponsors to accept a revised standard-form contract. If they accept it, this will enable some of the enhancements deployed in the Round Three and Four contracts to be extended to the Round One and Two sponsors, as well as any enhancements arising from the contract review.