

## **Education Report: Progress Report on Partnership Schools | Kura Hourua (PSKH) contract negotiations**

---

### **Executive Summary**

---

This report updates you on the progression of contract negotiations with the five PSKH applicants (sponsors) you have approved, and seeks your approval for the Ministry to investigate options for clarifying the 'termination for convenience' clause of the contract.

The Ministry aims to successfully conclude negotiations with all five sponsors by early September 2013, with an establishment date for the schools of early 2014.

The following issues have been raised during contract negotiations by all five of the sponsors:

- a. Tight implementation timeframes - sponsors are concerned about their ability to set up a school in the time available.
- b. Termination for convenience clause – as currently worded it is unlikely to give sufficient assurance to sponsors.
- c. Managing public interest – the sponsors are concerned about the effect of negative public reaction to the schools.
- d. Agreeing the details of the performance management regime – the sponsors are seeking to have the 1% at-risk payments dependent on key outcomes, rather than all of the specified performance indicators.
- e. Creation of new legal entity to act as sponsor – creation of new legal entities to be the sponsoring bodies for the PSKH may risk delays to contract execution and further reduce the implementation period.

The termination for convenience clause as currently worded could be a significant stumbling block to the successful conclusion of negotiations. We propose to investigate amendments to the clause to more clearly specify the compensation to be paid upon termination for convenience.

Each of the individual sponsors also has specific issues relating to their proposal that the Ministry is working through with them. In particular, Whangaruru Whenua Toopu Trust is having difficulty locating a site for their school. It is unclear whether this issue can be resolved in the required timeframe, but the Ministry is monitoring the process, and will keep you informed.

The Ministry has not identified any other critical issues at this time that will prevent preferred applicants from successfully completing the contract process.

## Recommendations

---


We recommend that you

- a. **note** that the Ministry is currently working with five preferred applicants (sponsors) to reach contractual agreement on the terms and conditions for operating a PSKH
- b. **note** that there are common issues that the Ministry is working through with all five of the sponsors, including the details of the performance management regime
- c. **note** that all applicants are concerned about the contract's termination for convenience clause, which enables the Minister of Education to terminate the contract at their convenience, with a commitment that compensation may be paid
- d. **agree** that the Ministry should investigate options to clarify the compensation commitment associated with any termination for convenience, and report to you early next week

### AGREE / DISAGREE

- e. **note** that the Ministry remains concerned that Whangaruru Whenua Toopu Trust will not be able to secure a suitable site to open in February 2014, but we are working with the Trust to identify possible solutions to this issue, including the possibility of temporary classrooms
- f. **note** that Villa Education Trust has taken responsibility for securing facilities for both themselves and Rise UP Trust in close proximity to each other in South Auckland. It is unclear whether suitable premises will be available in the required timeframe, but the Ministry is monitoring the process, and will keep you informed
- g. **note** that the Ministry has not identified any other critical issues at this time that will prevent preferred applicants from successfully completing the contract process
- h. **agree** that this report be forwarded to the Associate Minister of Education and the Authorisation Board for their information

### AGREE / DISAGREE

 s 9(2)(a) OIA  
Ben O'Meara  
Group Manager  
Schooling Policy

### NOTED / APPROVED

Hon Hekia Parata  
**Minister of Education**  
\_\_\_\_/\_\_\_\_/\_\_\_\_

## Education Report: Progress Report on Partnership Schools | Kura Hourua (PSKH) contract negotiations

---

### Purpose of report

---

1. This report updates you on the progression of contract negotiations with the five preferred PSKH applicants (sponsors). It seeks your approval for the Ministry to investigate options for clarifying the 'termination for convenience' clause of the contract to address sponsors' concerns.

### Background

---

2. Section 158D of the Education Act 1989 (the Act) enables the Minister of Education, on behalf of the Crown, to enter into a contract with a sponsor approved by the Minister for the operation of a PSKH. The contract records the terms and conditions upon which the sponsor will operate and manage a PSKH and the payments that the Minister will make to the sponsor.
3. You have approved five PSKH applicants to proceed to contract negotiations (Metis 795802 refers).

### Process for contract negotiations

---

4. The objectives of the negotiations are to:
  - ensure that preferred applicants are fully cognisant of, and agree to, all of the terms and conditions in the draft contract
  - confirm the arrangements for the proposed school including its mission and vision; roll; curriculum; facilities; and applicable funding
  - mitigate risks and/or issues that were identified in the application evaluation process
  - give the Ministry a detailed understanding of the supports the school will require for successful set up
  - confirm a clear sponsor-led transition from the point of award of contract to the opening of the school in 2014, and
  - establish an open and trusting relationship with the sponsor.
5. Face to face meetings with each sponsor took place in Auckland and Whangarei from 5-12 August 2013. The process is likely to require two further rounds of meetings. On the current timeline, we expect to be able to provide you with a contract award report by Friday 6 September.

### Common issues raised in the contract negotiations to date

---

6. The following issues are common to all five of the sponsors:
  - a. **Tight implementation timeframes** – sponsors are concerned about their ability to set up appropriate facilities and hire suitably qualified and experienced staff, including a principal, in the time available.
  - b. **Termination for convenience clause** – although standard in Crown contracts, this is the most contentious clause of the contract. It enables the Minister of