

23 August 2016

Education Report: Approval of Sponsors to operate a Partnership School | Kura Hourua from 2017 - Contracts

Executive Summary

On 18 April 2016 you gave approval for the Ministry of Education to enter into contract negotiations on your behalf with three preferred applicants to operate a Partnership School | Kura Hourua from 2017.

These were:

- Kia Ata Mai Educational Trust
- Te Aratika Charitable Trust
- Te Whānau o Waipareira

Contract negotiations with two of the three parties have now been successfully concluded and we ask you to sign a contract with each of these parties.

The third preferred applicant, Te Whānau o Waipareira, elected in mid-July 2016 to withdraw their application.

The Ministry has applied a risk assessment methodology with a particular focus on financial sustainability to this round of negotiation. This is to ensure the preferred applicants and the Ministry are clear on the types of risk and possible mitigations through the establishment phases of the schools. Ensuring financial sustainability has been a key consideration under the revised funding model, particularly whilst the school roll is building over the first year of operating.

The two remaining preferred applicants have yet to make a final decision on the premises for their schools. Each party is required confirm their premises at least 90 days prior to the opening of their schools, as required in the Partnership Schools | Kura Hourua Agreement.

The estimated cost to establish and operate the two schools is \$5.825m over four years consistent with the amount agreed by Cabinet [SOC-16-MIN-0037 refers], less the funding attributed to the third preferred applicant. Subject to your agreement and appropriate Cabinet approvals we propose to set aside the surplus resulting from only two of the three schools being established, and use this to offset the cost of any schools approved in either round four or five.

We now recommend you:

- sign the contracts for the two preferred applicants to be sponsors of a Partnership School | Kura Hourua pursuant to section 158D of the Education Act 1989; and
- sign and date the attached Gazette notices to be published in the *New Zealand Gazette*.

Recommendations

We recommend that you:

- a. **note** that we have approached the negotiation of the third round of application by applying a risk assessment methodology with a particular focus on financial sustainability.
- b. **note** that, following your earlier decisions, the Ministry has successfully negotiated contracts with the following sponsors for the establishment of a Partnership School | Kura Hourua from 2017:
 - Kia Ata Mai Educational Trust
 - Te Aratika Charitable Trust
- c. **note** that Te Whānau o Waipareira elected in mid-July 2016 to withdraw its application.
- d. **note** that the cost to establish two schools is projected to require \$5.825m of the \$9.800m appropriated for this purpose over the first four years.
- e. **note** that we recommend any surplus is used to offset the cost of any schools approved in either round four or five, subject to your agreement and Cabinet approval.
- f. **note** that of the issues identified in the advice on which applicants to be taken forward to contract negotiations [METIS 985894], with the exception of confirming property arrangements, all have been satisfactorily resolved, or an acceptable plan agreed.
- g. **agree** to sign contracts to operate a Partnership School | Kura Hourua for 2017 with:
 - Kia Ata Mai Educational Trust
AGREE / DISAGREE
 - Te Aratika Charitable Trust
AGREE / DISAGREE
- h. **sign** and **date** the two attached contracts.
- i. **sign** and **date** the two attached Gazette notices.
- j. **return** the notices to the Ministry so they can be sent to the *New Zealand Gazette* for publication.
- k. **agree** that, following your approval, this report and a copy of the contracts be forwarded to the Authorisation Board.

AGREE / DISAGREE

- l. **agree** that, following your approval and announcement, the Ministry will proactively release the signed contracts and this Education Report on the Ministry of Education website, with appropriate redactions.

 AGREE / DISAGREE

- m. **agree** that the documents attached as Appendix 3 be released on the Ministry of Education's website, that the documents listed in paragraph 47 be re-released with redactions referring to the Third Round removed, and that the remaining applications be released with appropriate redactions at a later date, in consultation with your office.

 AGREE / DISAGREE



Lisa Rodgers
Deputy Secretary
Early Learning & Student Achievement



Hon Hekia Parata
Minister of Education



David Seymour
Parliamentary Under-Secretary to the
Minister of Education



Education Report: Approval of Sponsors to operate a Partnership School | Kura Hourua from 2017 - Contracts

Purpose of Report

1. This report seeks your agreement to:
 - sign contracts with two of the recommended applicants to operate a Partnership School | Kura Hourua from 2017;
 - sign the *New Zealand Gazette notices* approving the two as sponsors and establishment of the Partnership Schools; and
 - release documents relating to this application round for operating Partnership Schools | Kura Hourua.

Background

2. Section 158D of the Education Act 1989 gives the Minister of Education the power to enter into a contract with the sponsor of a Partnership School | Kura Hourua.
3. Following an application and evaluation process carried out in accordance with the requirements of whole of government procurement activities across 26 applications, you received advice from the Authorisation Board and from the Ministry of Education [METIS 985894 refers] on which applicants should be considered for the contract negotiations.
4. In April 2016 you advised Cabinet of your intention to select three applicants to enter into contract discussions. Cabinet noted your intention and approved changes to appropriations to establish the third round of Partnership Schools | Kura Hourua [CAB Min (16) 0163 refers].
5. On 18 April 2016 you confirmed your decisions on the preferred applicants for the Ministry to initiate contract discussions with [METIS 985894]. They were:
 - Kia Ata Mai Educational Trust
 - Te Aratika Charitable Trust
 - Te Whānau o Waipareira
6. The Ministry has been negotiating with the three applicants on your behalf since early May 2016.

Negotiations

7. For Kia Ata Mai Educational Trust and Te Aratika Charitable Trust, all of the issues identified in the advice on which applicants should be taken forward to contract negotiations [METIS 985894], with the exception of confirming property arrangements, have been satisfactorily resolved, or an acceptable plan agreed.
8. Te Whānau o Waipareira, also satisfied the issues that were identified and had initially agreed to the requirements and the terms and conditions set out in the agreement. In early-July 2016 the Trust sought to alter the agreement to include a binding and formal recognition of its iwi status determined by the Waitangi Tribunal under the Wai 414 judgment.

9. We advised that the Crown was not willing to consider this alteration to its standard terms and conditions at such a late stage in the negotiations. This resulted in the Trust publicly announcing that it was withdrawing from the application process.

Approval

10. The Ministry has now successfully completed the contract negotiations and the two remaining preferred applicants have now signed their agreements. An overview of each applicant and their proposal is provided in Appendix 1.
11. We recommend you now sign the contracts.

Sponsor Readiness

12. We confirm that we consider adequate plans are in place and that all sponsors are in a position to commence establishing their schools to open in February 2017. An update on these issues is provided below:

Kia Ata Mai Educational Trust

13. Kia Ata Mai Educational Trust has identified a preferred site of the school, but has yet to confirm this formally. The Trust is required under the contract to confirm its premises at least 90 days prior to opening their school.
14. The Trust has noted that the funding provided in the third round requires them to invest a relatively significant amount into the establishment of the school. The Trust confirms that it has set aside additional cash reserves to cover operational costs in the event that they are unable to attract the required number of students to meet its break-even point.

Te Aratika Charitable Trust

15. Te Aratika Charitable Trust has yet to confirm the location of the school, but has identified a preferred site. The Trust is required under the contract to confirm its premises at least 90 days prior to opening their school.
16. The Trust in its original application proposed a residential facility as critical to support the development of foundation skills and support the learning journey of the students it intends to attract. Provision of a hostelling solution is not part of the contract to operate a Partnership School, and remains subject to the Trust meeting the legislative requirements to operate such a facility and securing the necessary funding to do so. The Trust has confirmed that it intends to progress the establishment of a residential facility.
17. The Trust has noted that it has a willingness to invest to cover operational costs in the event that they are unable to attract the required number of students to meet its break-even point.

Financial Considerations

18. As part of Budget 2015, an operating contingency was set aside for the establishment of Partnership Schools [CAB Min (15) 12/2(8) refers]. We advised in April 2016 [METIS 895394] that the available funding was sufficient for a maximum of three schools to open in 2017 (with particular roll levels) with utilisation of the provision for annual cost increases and roll growth to meet an eventual shortfall in the outyears.

19. The cost to establish and operate the three proposed schools was projected to require the full \$9.800m appropriated for this purpose over the first four years.
20. The final cost to establish two of the schools is \$5.825m over the first four years. Subject to your agreement and appropriate Cabinet approval, we propose to set aside the surplus resulting from only two of the three schools being established, and use this to offset the cost of any schools approved in either round four or five.
21. As funding for the third round is payable on a per-student basis, actual costs will be variable whilst the schools grow to their maximum rolls. The Ministry will need to monitor the actual costs against the projected costs and utilise the provision for annual cost increases and roll growth, if the schools reach their maximum roll more rapidly than anticipated.

Contractual Matters

22. You agreed to a number of enhancements to the draft agreement issued with the round three application [METIS 945671 refers]. Through the negotiation process, we have further refined details of the agreement.
23. The most significant refinement has been to remove the school's objectives and the financial performance standards from your consideration on whether they should be paid the 1% of funding held in retention. This change comes about to better reflect the policy intent of focusing on student outcomes.
24. Other key changes to the agreement through the negotiation phase include:
 - Addition of Ngā Whanaketanga Rumaki Māori standards to recognise Māori medium provision;
 - Addition of the school curriculum handbook as an operative document and a requirement to make this publicly available;
 - Addition of further grounds to terminate the agreement where the sponsor fails to meet the or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan; and
 - Clarity on how the schools assets would be valued in a termination event.
25. Refer to Appendix 2 for a table setting out the remainder of the changes that have been made to the contract.

Contractual Off-Ramps prior to opening of the school

26. Sponsors are required to confirm and/or deliver a number of artefacts during the establishment period each of which collectively, or on their own, could trigger the Crown's right to intervene.
27. Sponsors must:
 - provide their parents, family, whānau, iwi and community engagement policy by 1 October;
 - provide their health, safety and wellbeing policies, and curriculum handbook by 1 November; and

- confirm their intended property a minimum of 90 days prior to opening.
28. In addition, the Minister may terminate the agreement if the Sponsor fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan.
 29. The contract provides the Minister with a general ability to intervene if she has any reason to believe that a sponsor is failing to discharge their duties under the Act or is otherwise not acting in accordance with the Act (or any other applicable laws) or their agreement such that there are reasonable grounds to believe that there is a risk to the operation of the school. This option does not require the intervention framework to be followed.
 30. Therefore, through the ERO readiness review, the delivery of the requirements set out above (including the need for Sponsors to meet their own establishment milestones), and potentially any notification/concern raised by the Governance Facilitator, the Ministry will be able to make an assessment of the sponsor's readiness to open in early November. This will enable the Minister to make a decision to prevent the school from opening by the end of November, if required.
 31. If a decision were made to prevent a school from opening, it would be done through clause 22 (General ability to intervene) and clause 25.1 (Minister's right to terminate). The Minister would be required to issue a notice of intention to terminate. This would then provide the sponsor ten days to respond with reasons why the agreement should not be terminated.
 32. If the sponsor were able to address the issues and/or provide the required level of assurance, then the Minister need take the matter no further. Otherwise, the Minister could issue a notice of termination taking effect at a minimum of 20 business days from the date of that decision.
 33. As the termination event occurred in the first three years of the agreement, the sponsor would be obligated to pay the Crown the set-up component of the establishment grant (\$400k for secondary schools), or an amount equal to the value of the school's assets (where the asset value is less than \$400k).

Performance Standards

34. The values of the required Student Engagement and Financial Performance Standards are the same as required from the already established Partnership Schools | Kura Hourua.
35. The Student Achievement targets for National Standards and Ngā Whanaketanga Rumaki Māori set at 85% for 2018, the second year of operation.
36. For its first year of operation Kia Ata Mai Educational Trust has set its performance standards at the higher of the Waikato and national achievement outcomes for 2015 for Ngā Whanaketanga Rumaki Māori and National Standards.
37. In accordance with our previous advice to you on Partnership Schools | Kura Hourua NCEA Performance Standards [METIS 1009972 refers], the following NCEA performance standards will apply:
 - a. 85% roll based NCEA pass rates as defined and reported by NZQA - to apply from 2018; and

- b. 85% of School Leavers with NCEA level 2 (or above) - to apply from 2019.
- 38. For 2018, being the first year that it will offer NCEA level 2, Te Aratika Charitable Trust has set its 'NCEA level 2 or above' leaver rate at the national outcome for Māori boys in 2014. For 2019 the target is 85% of school leavers getting NCEA level 2 or above.

Communication

- 39. The Ministry has developed a communications plan and will engage with your office, the office of the Under-Secretary, and sponsors to announce the establishment of the successful Partnership Schools.
- 40. Following your agreement and approval of the contracts, we will provide this Education Report and a copy of the signed contracts to the Authorisation Board.
- 41. The Ministry will also proactively release the signed contracts, this Education Report and the successful applicants' proposals on the Ministry of Education website following your agreement.

New Zealand Gazette Notices

- 42. The Ministry has prepared two establishment notices for the *New Zealand Gazette* for you to sign and date. Notice in the *New Zealand Gazette* is required to formally approve the sponsors and to establish the schools.
- 43. Once signed and dated, the notices need to be returned to the Ministry so they can be sent to the *New Zealand Gazette* for publication.

Information Being Released

- 44. The documents to be released are as follows:
 - a. Application templates and documents (previously available on GETS);
 - b. Applications from the five shortlisted applicants;
 - c. Education Reports on progress with the assessments;
 - d. Cabinet Paper seeking approval for contract discussions to begin with the recommended Sponsors to open Partnership Schools;
 - e. Signed Agreements with the two selected Sponsors.
- 45. As there were 26 applications the total amount of information to be released is considerable. It is therefore proposed to initially release only the applications from the five shortlisted applicants, along with the Education Report, Cabinet Paper, and application templates and documents. The remaining applications will be released as resources permit.
- 46. A full list of the information proposed to be released initially is attached as Appendix 3 (with redacted copies of the documents).
- 47. It is also proposed to re-release the following documents with redaction of references to the Third Round removed. These documents also have reference to

the Partnership School| Kura Hourua support entity, and those redactions have also been removed ready for re-release [METIS 1000861 refers]:

- a. 924404 – Proposed Changes to the PSKH Funding Model and Establishing a Contingency for Round 3 PSKH;
- b. Cabinet Paper: Partnership Schools | Kura Hourua: Monitoring and Evaluation, Proposed New Funding Model, Operational Review, and Further Application Round; and
- c. Cabinet Minute – CAB Min (15) 26/4A.

Official information requests for documents being released

48. The Ministry has not received official information requests for any of these documents.

Information withheld from the documents being released

49. Documents being released in full are:
 - a. The Education Report - Update on PSKH 2015 application process;
 - b. The Education Report - Advice re Applications to open new Partnership Schools | Kura Hourua in 2017;
 - c. Cabinet paper - Selection of Partnership Schools | Kura Hourua to open in 2017;
 - d. Application documents as published for the application process:
 - i. Application form;
 - ii. Application Guidelines;
 - iii. Financial template;
 - iv. Draft Agreement.

Applications and agreements

50. The applications have had redactions made of personal contact details, under section 9(2)(a) of the Act, to protect the privacy of natural persons; and redactions made of commercially sensitive financial information, under section 9(2)(b)(ii) of the Act.
51. The signed Agreements will have redactions made of personal details of witnesses, under section 9(2)(a) of the Act, to protect the privacy of natural persons.

Appendix 1 – Overview of Proposed Partnership Schools

Kia Ata Mai Educational Trust.

Organisational type	A charitable trust established in 1994 and exclusively involved with the educational advancement of learners in immersion and Māori-medium programmes in schools and kura.
School name	Te Kōpuku High
Type of school	Co-educational composite secondary school for years 7 to 13
Location	Hamilton
Target groups	Māori students and students from low socio-economic backgrounds
Size of school	An opening roll of 90, with a maximum roll of 300 by 2021.
Special character	Late immersion Kaupapa Māori.
Proposed teaching and learning programme	Has developed own curriculum framework Te Nikau™ which includes elements of the New Zealand Curriculum and Te Marautanga o Aotearoa delivered within a kaupapa Māori context to better facilitate high quality bilingual educational outcomes.
Teaching staff	The core curriculum will be planned, taught and overseen by registered teachers with a current practising certificate.

Te Aratika Charitable Trust

Organisational type	Te Aratika Trust is a newly formed charitable trust created by Te Aratika Drilling a civil construction firm with interests across the north island. Te Aratika drilling has been providing cadetships since 1998 and supports the development of rangitahi across a range of disciplines into sustained employment.
School name	Te Aratika Academy
Type of school	Single sex (Male) Senior Secondary school for years 11 to 13+
Location	Napier
Target groups	Male Māori and Pasifika students and students from low socio-economic backgrounds.
Size of school	An opening roll of 67, with a maximum roll of 200 by 2019.
Special character	Kaupapa Māori vocationally focused, with a future residential option.
Proposed teaching and learning programme	Te Aratika Academy will be a secondary school for Māori/Pasifika, by Māori/Pasifika and determined by Māori/Pasifika focused on the integration of STEM based programmes through its vocational and NCEA Level 1-3 pathways
Teaching staff	Core subjects delivered by registered teachers with a current practising certificate.

Appendix 2 – Summary of alterations to contract

Clause	Subject	Change
4(b)	Term of Agreement	<ul style="list-style-type: none"> Change of minimum notice of intent to extend the agreement from 6 to 12 months.
5(c)	Education Circulars	<ul style="list-style-type: none"> Addition of 'reasonable' to timeframe to comply with any new requirements of changed or additional circulars
7.4	Providing a safe physical and emotional environment	<ul style="list-style-type: none"> Health and wellbeing policies need to be submitted by 1 November for approval – previously 1 December.
7.8	Reporting to Parents	<ul style="list-style-type: none"> Addition of definition of Parents to include primary caregiver and legal guardian. Addition of Ngā Whanaketanga Rumaki Māori and NCEA to reporting requirements.
9.1	Curriculum	<ul style="list-style-type: none"> Addition of curriculum handbook as an operative document, and a requirement to make this publicly available.
10.6	Engagement with Parents, family, whānau, iwi and communities	<ul style="list-style-type: none"> Policies need to be submitted by 1 October for approval – previously 1 November.
15	Part 3 Performance Regime - Objectives	<ul style="list-style-type: none"> Addition - Although progress towards the Objectives is reported quarterly, they are not considered a Performance Standard for the purposes of assessing the release of any funding withheld under clause 7.3c of Schedule 7 "Payment".
17.1	Performance Standards in the Performance Management System	<ul style="list-style-type: none"> Redraft of section – removing financial performance measures from consideration of the 1% held at risk.
18.2(b)(ii)	Annual reports	<ul style="list-style-type: none"> Moved from 31 January to 17 February, to allow for receipt of reporting from NZQA.
18.3	Reporting to Ministry	<ul style="list-style-type: none"> Addition of Ngā Whanaketanga Rumaki Māori and/or NCEA to reporting requirements.
20.2	Measuring performance against the Objectives and Performance Standards	<ul style="list-style-type: none"> Whilst objectives have been removed from assessment of performance, have added a right for the Minister to raise any matters arising through the Sponsor failing

Clause	Subject	Change
		to meet their own objectives.
20.3	Guidance on measuring performance against the Performance Standards	<ul style="list-style-type: none"> • Addition of need to use PaCT and Te Waharoa Ararau assessment instruments as appropriate for the learning area.
25.1	Termination	<ul style="list-style-type: none"> • "The Sponsor becomes bankrupt or insolvent" – addition of "and is not underwritten by the Sponsor's board" • Addition of a new ground to terminate the agreement "the Sponsor fails to meet or cannot demonstrate it has made every reasonable effort to meet the milestones set out in its establishment plan." • Addition of clause to remove ambiguity of how an asset will be valued if termination under this clause occurs. "For the avoidance of doubt, where the School is or is contemplated to be used for multiple purposes, the value of the School's Assets is considered to be 100% of the value of the asset, irrespective of the portion of its use designated for schooling activity."
31.2	Intellectual Property	<ul style="list-style-type: none"> • Addition of reference to schedule 9 as place to record pre-existing IP being used in the Partnership School.
Schedule 1	Student Enrolment and Absences	<ul style="list-style-type: none"> • Addition of a Minimum Roll "The Minimum Roll for the 2017 School Year is xx (set at 75% of the target roll). The Minimum Roll must be met during the Year and by no later than the end of the School Year."
Schedule 4	Governance and Teachers – Teaching Positions	<ul style="list-style-type: none"> • Removal of tables and replacing with a statement setting out the minimum number of FTE teaching positions for the school.
Schedule 4	Governance and Teachers – Percentage of people holding a Practising Certificate or Limited Authority to Teach	<ul style="list-style-type: none"> • Removal of tables and replacing with a statement setting out the minimum percentage of teaching positions that hold a Practising Certificate or Limited Authority to Teach at the school.
Schedule 4	Percentage of Curriculum time taught by people holding a Practising Certificate or	<ul style="list-style-type: none"> • Removal of tables and replacing with a statement setting out the minimum percentage of curriculum

Clause	Subject	Change
	Limited Authority to Teach	time to be taught by Teachers holding a Practising Certificate or Limited Authority to Teach at the school.
Schedule 6 Performance Standards	Student Achievement	<ul style="list-style-type: none"> • Addition of Ngā Whanaketanga Rumaki Māori • Addition of NCEA measure - Roll based pass rates as defined and reported by NZQA • Confirmation of NCEA level 2 leaver rate to be "level 2 or above"
Schedule 6 Performance Standards	Financial Performance	<ul style="list-style-type: none"> • Removal of enrolment variance performance standard • Addition of a performance standard covering solvency, through provision of a quarterly solvency certificate
Schedule 6 Performance Standards	Student Engagement	<ul style="list-style-type: none"> • Correction to the stand down, suspension measures from days to instances
Schedule 7	Payment	<ul style="list-style-type: none"> • Removal of option to request a decile review

Appendix 3 – Information proposed for release

Information proposed to be released (copies attached with redactions, except for application documents previously released on GETS)

No	Document	Type	METIS NO	Date	Information withheld
1.	Education Report - Update on PSKH 2015 application process	Ed Report	977341	23/12/2015	Nil
2.	Advice re Applications to open new Partnership Schools Kura Hourua in 2017	Ed Report	985894	5/4/2016	9(2)(f)(iv)
3.	Selection of Partnership Schools Kura Hourua to open in 2017	Cab SOC paper			9(2)(f)(iv)
4.	Application Guidelines				Nil- previously released on GETS
5.	Application Form				
6.	Financial Application Form				
7.	Draft Agreement				
Applications - Shortlisted Applicants					
8.	Alliance Health Plus				9(2)(a), 9(2)(b)(ii)
9.	Central Pacific Collective and Te Runanga o Toa Rangatira				9(2)(a), 9(2)(b)(ii)
10.	Kia Ata Mai Educational Trust				9(2)(a), 9(2)(b)(ii)
11.	Te Aratika Trust				9(2)(a), 9(2)(b)(ii)
12.	Te Whānau o Waipareira				9(2)(a), 9(2)(b)(ii)
Contracts – selected applicants					
13.	Kia Ata Mai Educational Trust				9(2)(a)
14.	Te Aratika Trust				9(2)(a)