

school at the Our Lady of Fatima site. At present, this places the estimate at less than 90 students (based on March 2014 figures). Our Lady of Fatima currently has 234 students.

28. Although numerous requests were made, no information about the number of permanent teaching positions at St Paul's has been made available. Best estimates, based on knowledge of the staff and informal feedback from the Facilitator and the Vicar of Education put the number of permanent staff at St Paul's at 6, with only 4 having an interest in seeking a position at the parish school. Our Lady of Fatima has 22 staff of whom 16 are permanent. Our Lady of Fatima has not lost a single member of staff as a result of this long consultation and the job risk the staff has faced throughout.
29. Because Our Lady of Fatima School has a greater number of permanent staff, the cost of the Bishop's recommendation to close both schools is largely the cost of making redundant the Our Lady of Fatima staff. The Catholic Education Office has advised this sum will be paid by the Ministry. This is a significant cost to the taxpayer and is completely unnecessary. Additionally, the Ministry has advised that EDI funds would be payable for both schools, so a significant part of that would be paid to enable Our Lady of Fatima students to return to the same school site.
30. A closure of our school would also seriously disrupt the learning of 234 children.
31. After almost two years of difficult consultation, the communities need an established school. To ask staff, students and parents to create something new immediately, with all the work on charters, policies, professional development, new visions and new ways of operating may not be in the best interests of the children. They will need teachers who are in the classroom rather than on release, they need teachers whose energy and time is on their learning, not the meetings they will be having after school, and they have parents who want to know what they are choosing for their children.

#### *Legal Considerations*

32. The Board, at the request of its staff, sought legal advice when the Bishop's recommendation was to close both schools. This suggests there are serious issues surrounding the Bishop's ability to make and pursue this recommendation. It also states that the Minister is obliged to make her own assessment of the situation and come to her own decision.
33. An overview of the legal opinion received is provided in Appendix 2.

#### *Other Mechanisms*

34. This Board has made enquiries of NZEI as to whether there are any other options to bring the schools together. The advice received is that there are no other legal mechanisms. This coincides with our view.
35. Any previously discussed solutions all share the enforceability issues the "merger" option does, and were not agreeable to St Paul's School in any event. They were, however, made in good faith by Our Lady of Fatima School and evidence our continued willingness to support the Bishop's vision. Should the Bishop seek to reconsider these proposals and St Paul's School be in a position to receive accurate information about them, Our Lady of Fatima

School would support that process.

36. Confirmation of Our Lady of Fatima School is the only method that preserves the jobs at one of the parish schools and provides the platform for St Paul's staff to transfer to the school, in support of their students and in the expectation that permanent positions will become available to them. NZEI has confirmed the Board's understanding that use of the redeployment provision in Appendix 4 is the only method by which teachers from St Paul's legally can transfer ahead of the open market, and that it is NZEI's view that this method can and does lead to permanent positions for teachers who use it. This Board would do everything in its power to see that outcome achieved.

### Timeframe

37. The implementation date for any decision should remain at the commencement of the 2016 school year.
38. It is better for the students' learning if they complete an entire year with the same teacher. Changing school, classes, teachers and learning plans part way through a year would be unnecessarily disruptive. This would be exacerbated as a split site would be required if the new school becomes operational before all building work is completed.
39. A change date that matches the natural change cycle of schooling allows for farewell and welcome ceremonies and other events that will be important transitional events for the children and also the wider community.
40. It may also be advantageous in staffing terms as year-end is a common time for change in the education job market. This would assist with appointing any new staff and in supporting those seeking positions elsewhere.

### Conclusion

41. Our Lady of Fatima School must be the foundation school of the parish. Whether that means it goes on to be the sole parish school or whether St Paul's staff and students join with it to build a combined future is an opportunity for the communities.
42. The Board has the power under s147 of the Education Act 1989 to change the school name to reflect a joint future if that is what is built. It has already given preliminary consideration to how a unified uniform could be achieved that would incorporate both schools. Representation of the St Paul's parents who become part of the parish school directly on the Board can be achieved by the Proprietor supporting the initiative and either using his powers of appointment to enable this, or better to reduce the number of representatives he appoints to 2 or 3, thus allowing the Board to directly co-opt St Paul's parents to the Board. The current Principal of Our Lady of Fatima School, who is in his tenth year at Our Lady of Fatima, was previously the principal of St Paul's School for 11 years (the gap between the two positions largely being the time he was the coach of the New Zealand Cricket team). In confirming Our Lady of Fatima School, the redeployment provisions of the collective agreements can be used as the platform for St Paul's staff to transfer to the school, in support of their students and in the expectation that permanent positions will become available for them. In preserving one school, the opportunity is created to preserve the

other with it.

43. In this way, the Bishop can fully achieve his vision, in a legal and fair manner. There is little cost associated with this mechanism as only St Paul's School would be entitled to redundancy and EDI monies. There would be no need for a new integration agreement or the cost and risk associated with that process. Additionally, it will mean the children of both schools will start 2016 in an established environment, where the efforts of the teachers, principal and Board can be focused on their learning, rather than on start-up processes such as charter development, policies and procedures and other activities that divert energy and time away from the classrooms. Children will have the best chance to form learning relationships with their teachers, hopefully from both schools.













#### **Actions Requested from this Consultation**

44. We would be satisfied if the Minister simply did not accept the Bishop's recommendation. This would allow Our Lady of Fatima School to remain, and promotes the learning of a significant proportion of the parish's children. It does, however, leave St Paul's School in an unresolved situation.
45. A tidier and more complete response would for the Minister to accept the Bishop's recommendation to cancel St Paul's integration agreement but not cancel the Our Lady of Fatima agreement. This would avoid the need for later consultation to resolve St Paul's legal status once their right to occupy Champion Street ended. The Minister could then consult on whether to increase the roll at Our Lady of Fatima School. We would hope for that, as that would be an official signal that St Paul's is expected to join with us to form the parish school.
46. The Minister has the ability to consult on further matters, but we respectfully suggest that after almost two years of consultation and with advice there are no other options to better fit the Bishop's goal, that the Minister make one of the above decisions.

Noeline Soper  
Chairman  
Our Lady of Fatima Board of Trustees



## Appendix 1

	2000 (01/03/00)	2001 (01/03/01)	2002 (01/03/02)	2003 (01/03/03)	2004 (01/03/04)	2005 (01/03/05)	2006 (01/03/06)	2007 (01/03/07)	2008 (01/03/08)	2009 (01/03/09)	2010 (01/03/10)	2011 (01/03/11)	2012 (01/03/12)	2013 (01/03/13)
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll	Roll
	110	110	110	105	103	92	102	103	113	140	155	133	135	127
	102	111	113	107	92	55	83	93	103	105	104	88	78	83
	187	177	182	185	183	180	206	184	200	180	190	227	202	215
	114	108	110	112	115	115	115	112	106	115	133	145	154	153
	160	181	166	183	182	182	147	157	150	155	155	147	149	153
	322	310	280	293	284	274	256	250	237	230	364	305	303	313
	36	55	43	59	70	93	93	38	105	105	103	107	79	70
	294	284	253	274	277	298	297	237	235	254	274	252	205	203
	27	28	28	35	30	35	32	32	47	55	34	55	47	46
	149	131	145	130	124	122	122	124	137	115	121	115	112	110
	123	119	119	106	107	115	104	102	114	114	136	144	137	136
	173	158	157	148	147	155	183	159	231	224	232	256	255	255
	80	82	76	86	111	116	116	125	147	147	136	137	122	127
	165	172	183	146	165	167	163	171	164	147	140	141	121	110
	217	214	213	216	210	216	223	223	241	240	243	249	229	232
	42	47	40	37	35	40	36	34	31	31	53	65	62	65
	82	101	105	102	122	152	168	178	173	134	181	171	122	124
	353	354	359	357	354	359	357	350	355	354	357	355	352	352
	95	92	85	80	85	87	77	77	83	83	77	86	70	65
	151	152	152	153	146	133	133	125	132	138	143	139	132	132
	116	101	84	80	80	89	89	116	126	129	146	154	162	161
	222	233	245	244	231	218	213	218	235	213	182	167	165	147
	44	40	40	50	62	70	80	61	95	97	83	99	92	90
	81	81	80	84	84	107	110	123	96	112	116	109	93	71
	86	84	84	80	79	84	82	78	85	80	78	85	83	88
	182	176	167	163	182	195	189	191	171	172	182	180	164	166
	155	159	163	158	158	159	159	154	202	192	174	201	174	176
	72	61	64	55	53	73	63	53	56	45	37	37	23	30

## Appendix 2: Overview of Legal Opinion

1. The obligation of the Boards and Ministry under a "reorganisation", as this has been stipulated to be, is to protect as many jobs as is possible. A closure of both schools is at odds with this obligation.
2. Although St Paul's staff may see the closure of Our Lady of Fatima as a means to access a greater share of the potential job pool, that only looks at the number of jobs available and ignores the significantly enlarged pool of applicants a national market implies. It does not answer the obligation that falls upon the Boards and the Ministry; failure to retain any jobs and for open market conditions to apply does not meet this obligation. The simple truth is that to save any jobs at St Paul's, Our Lady of Fatima School must be retained.
3. It is the Minister's duty to make her own assessment of the situation and to have particular regard for issues around teaching and learning. Although the Bishop says his concern is to set an education pathway for the next 50 years, not just for now, education in the parish in even 10 years will look the same whether he creates St Francis of Assisi School as his recommendation proposes or whether Our Lady of Fatima School is confirmed as the remaining school. The difference will be the effect on the learning of the children currently at the school.

4. The Bishop is not legally entitled to propose the outcome he is recommending.
5. The Bishop's power to cancel the Our Lady of Fatima School integration agreement is fettered by clause 6(c) of the integration agreement which stipulates that he "may invoke the powers conferred" by the Private Schools Conditional Integrations Act 1975 to close the school only where the special character of the school has been or is likely to be jeopardised. The mutual agreement provision in s11C is one of his "powers" and thus is to be read subject to the agreement he entered. The Bishop therefore cannot invoke s11C unless there is some threat to the special character of the school, which is not the case here.
6. Even if the Bishop could invoke s11C, and the Minister agrees with his recommendation, this only causes the school to revert to provisionally registered private school status. It does not close the school.
7. The Bishop may not close the school as to do so, having relied upon s11C, is an unlawful attempt to circumvent the Minister's powers. The Act has conferred closure rights only on the Minister under s12. Section 11C was not intended to be used to provide the Proprietor with an incidental power of closure. Neither the original Act nor the 1998 amendments provide the Proprietor with any right to unilaterally close an integrated school. That power was restricted to the Minister.
8. In any event, the Bishop is not actually intending to achieve this end. He is using cancellation of the integration agreement as a stepping stone in his intention to rearrange the staffing at the Our Lady of Fatima School, without having to consider the employment rights of the staff there. He is using s11C for an ulterior or improper purpose. Any purported closure would thus expose the Bishop (and the Board) to serious liability for employment law breaches, particularly as the Bishop has an alternative option to closure. There is no real or genuine redundancy of the Our Lady of Fatima staff.