

### **Consultation with the Schools about Proposed Staffing Process**

25. The consultation process also invited feedback from the Boards of the two affected schools about proposed staffing protocol for the new school,<sup>9</sup> should you agree to cancel the integration agreements. The protocols (flow diagrams) were sent to the Principals and Boards of St Paul's and Our Lady of Fatima Schools. Earlier iterations of this protocol diagram had been discussed with the Boards and comment received at that time. The Board of Our Lady of Fatima School provided feedback on the staffing proposal through Wynn Williams Lawyers in a letter dated 29 October 2014.<sup>10</sup>
26. In summary the feedback from the Board of Our Lady of Fatima School indicates:
- that should any decision to cancel the integration agreement for the school be made, then legal action would be taken;
  - that the Board oppose the cancellation of the integration agreement and closure of the school as it considers there is no legal basis for it, there have been flaws in the consultation (ie the Bishop's consultation), and construction work has already commenced on site for the new school which demonstrates the pre-determination of the Bishop; and,
  - that in opposing the closure, the Board also opposes the proposed staffing plan for the proposed new school.
27. No response was received from the Board of St Paul's School about the final version of the proposed staffing model. Earlier responses indicated that the Board supports staffing of the new school in a way that provides choice to staff from both school to win appropriate positions.

### **Ministry's Response to Issues Raised**

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28. In its initial feedback to the Ministry about the Bishop's proposal, the Board of Our Lady of Fatima School raised concerns about the implementation of the proposal, should it be approved.

### **Clarification of the responsibilities under the Private Schools Conditional Integration Act 1975**

29. Clarification was sought about:
- whether these schools can merge?
  - the roles of Proprietor and Ministry in making a final decision?
  - can the Minister decide against the Proprietor's request to cancel the Integration Agreement?

### **Ministry Comment**

30. Neither the Education Act 1989, nor the Private Schools Conditional Integration Act 1975, provide for the merger of state integrated schools.

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<sup>9</sup> The protocols and a copy letter sent to boards and principals are attached as Appendix 8.

<sup>10</sup> Refer to the letter attached as Appendix 3B.

31. The Private Schools Conditional Integration Act (PSCI Act) allows for the Proprietor of the School (in this case the Bishop) and the Crown (the Minister) to make decisions about a state integrated school. The Proprietor and the Crown are parties to the school's integration agreement, and to any subsequent variations.
32. There is no requirement under the PSCI Act that the Board of Trustees of a state integrated school agree to a change that is initiated by the Proprietor.
33. Sections 11A, 11B and 11C allow for the cancellation of an integration agreement and closure of the school. It can be initiated by the Proprietor, the Minister or jointly. In recent years the cancellation and closure of state integrated schools has been under section 11C, which is by mutual agreement.

#### **Costs**

34. Several submissions indicated that the proposal for the cancellation and closure of both schools would carry a high cost for redundancies.

#### **Ministry Comment**

35. As detailed in METIS 855021, two costing models for this proposed change have been undertaken. The high cost model presupposes that all staff are made redundant, the lower cost model is based on fewer redundancies, and is seen as a more likely scenario. The estimated operational costs in the first year of implementation are between \$0.411m (low cost model) and \$1.124m (high cost model). After the first 10 years the highest cost model indicates that there would still be a cost of \$0.581m for the Ministry to carry and the low cost model is that there would be operational savings of \$0.422m generated per year.
36. The use of the staffing model proposed for the new school allows staff from both schools to be considered for equivalent positions at the new school, before vacant positions are advertised nationally. This process also allows staff to choose not to apply for a position at the new school. This could result in them being eligible for surplus staffing options, under the applicable Collective Agreements. It is noted that the principal's role at the new school would be advertised nationally. If this staffing model is used the Ministry considers that the low cost model is more likely to be representative of the actual costs.
37. It is also considered that this model is best suited to support the aim of the Bishop in requesting this change. The Bishop's proposal to change the schooling provision in his Mairehau parish was to establish a single primary school that aligns with the parish boundaries. The Bishop wished to achieve this in a collaborative, mutual way where both schools contributed to the new entity.

#### **Financial Implications**

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38. The estimated financial costs to the Crown are detailed in paragraph 36 above.



39. If you agree to cancel the integration agreements and the schools close, the Ministry will negotiate an Education Development Initiative Memorandum of Agreements with the two Boards of Trustees. This will specify how the Crown's assets and the Education Development Initiative funding will be distributed following the closures.
40. The Proprietor's assets that are at both schools will be made available to the new school.
41. If the schools close the Education Development Initiative cash grant generated will be \$792,000. In line with the policy, this is based on the St Paul's School 1 March 2014 roll.
42. The Proprietor has indicated that no Crown funding will be sought as part of the building programme for the new school.
43. At present the Ministry is funding buses to take students to and from the St Paul's School site in Dallington to the school's Champion Street site. Should you agree that the reorganisation will be implemented from 27 January 2016, this support would finish at the end of Term 4, 2015. Public transport is now fully operational in the area and students could use this to get to school if they wish and normal School Transport entitlement policies would apply.

#### **Suspensory Loan**

44. There are outstanding suspensory loans associated with both schools totalling \$186,824.42. The Bishop has asked that they be transferred to the new school, which is usual practice.

#### **Risks**

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##### **Lack of Consensus**

45. The consultation process has not resulted in a consensus about the best way to implement change to schooling in the new St Francis of Assisi Mairehau Parish.
46. St Paul's supports any proposal that means that they would have an equal partnership in the beginnings of the new school. Conversely, the Board and staff of Our Lady of Fatima are opposed to any proposal which entails the closure of that school.

##### **Potential Legal Challenge**

47. The Board of Our Lady of Fatima has obtained legal advice from Wynn Williams Lawyers (Christchurch),<sup>11</sup> which has indicated that the Board will take legal action if a decision is made to cancel the integration agreements for both schools. In its letter of 8 August to you,<sup>12</sup> Wynn Williams Lawyers asserted on behalf of the Board:
  - that it would be unlawful to cancel the integration agreements under section 11C unless the special character of the school has been jeopardised

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<sup>11</sup> The Proprietor has indicated that there has been no mandate (or minute) from BOT meetings that show the Board as a whole supported the engagement of Wynn Williams Lawyers to provide their legal advice.

<sup>12</sup> Attached as Appendix 4.

- that even if the agreement was cancelled the schools would become provisionally registered private schools under the control of the board of trustees. Under Canon Law, the proprietor would have no authority to close the schools
- that cancellation and closure of both schools is unreasonable to the extent that it affects the employees at both schools.

#### **Ministry Comment**

48. The Ministry considers that the technical legal arguments about the application of section 11C and the limitations on the power of the proprietor to close the schools put forward by the Board's solicitors are based on a misinterpretation of the law and therefore unlikely to succeed.
49. There is a risk that any redundancies arising from the application of the staffing protocol and the protocol itself could be challenged by aggrieved individual employees. The Ministry considers that the staffing process, which has the support of the union and the Proprietor, is aimed at minimising redundancies. In these circumstances, any redundancies would be both genuine and defensible.
50. The Catholic Bishop of Christchurch has also engaged solicitors (Simpson Grierson Lawyers). In the event of legal proceedings by the Board of Trustees (most likely by way of judicial review of the proposed cancellation of integration agreements) or by one or more employees at Our Lady of Fatima School (as a personal grievance or dispute under the collective agreement) then the Proprietor would wish to be a party to any such proceedings.

#### **Implementations Risks – Further Delay**

51. There are risks associated with further delay of a decision and implementation. The staff, students and communities of both schools have been facing uncertainty for many months and this is not conducive to providing effective teaching and learning to students at the schools.
52. Both schools have agreed that implementation of the change from the beginning of Term 1, 2016 is preferable. This will give enough time to develop the integration documents for the new school, appoint the Establishment Board of Trustees and for them to run their processes for appointing staff, before the end of the 2015 school year.

#### **Next Steps**

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53. If you agree to the cancellation of the integration agreements for both schools, this completes the first stage of the change process which the Bishop has proposed for Catholic schooling in Mairehau.
54. The Ministry will work with the Boards of both schools to support them through the change process. The Board of Our Lady of Fatima School has provided details of how it and St Paul's Schools would prefer to be told of your decision. This is:
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|--------|---|
| 1.00pm | Board and Principal told and they then tell staff |
| 2.00pm | wider community told                              |
| 3.00pm | media release made.                               |

The Ministry will discuss this with the Proprietor. Information material, similar to that provided for the announcements of the other school changes, will be made available to the schools and staff.

55. Ministry staff will also meet with the Proprietor to discuss the next steps about the establishment and proposal to integrate a proposed new school to be located on the current Our Lady of Fatima School site. It is recognised that this process should begin without further delay.<sup>13</sup>
56. The Ministry does not see any foreseeable impediment to the integration of the proposed new Catholic primary school to be established on the Our Lady of Fatima site. It would serve the Catholic parish of Mairehau and primary aged students from the parish would be able to enrol.
57. Once the application is received a report will be prepared for your consideration seeking approval to enter into negotiations to integrate and establish the proposed new school.

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<sup>13</sup> It is understood that the Proprietor has begun a building programme to develop additional schooling provision on the Our Lady of Fatima School site. The Proprietor has confirmed that the building project has been undertaken independently from the proposed changes considered in this report. As the lease on the Dallington site finishes in early 2016, additional schooling provision in the parish will be required whatever decision is made about the current proposal.



## **Appendices to the Report**

Appendix 1	Letter from Bishop Barry Jones (5 March 2014) and attached consultation report (Jan 2014).
Appendix 2	Consultation feedback from the Board of St Paul's School (1 July 2014)
Appendix 3A	Consultation feedback from the Board of Our Lady of Fatima School (17 July 2014)
Appendix 3B	Consultation feedback from Wynn Williams Lawyers on behalf of the Board of Trustees of Our Lady of Fatima School in response to feedback on the proposed staffing proposal if the new school is established and integrated (29 October 2014).
Appendix 4	Letter from Wynn Williams Lawyers informing you that they are acting for the Board of Trustees of Our Lady of Fatima School. The letter includes details of the issues that it sees with the proposed cancellation and closure of the school. Also included in the Appendix is the 23 July letter from NZEI to the Board of Our Lady of Fatima School which is referred to in the Wynn Williams letter.
Appendix 5	Letters of feedback from Mairehau School, Parkview Primary School and Waitakiri School. It is noted that Banks Avenue School provided oral feedback.
Appendix 6	15 emails and letters received about the Bishop's proposed change.
Appendix 7	Letter from NZEI (11 June 2014) concerning the Bishop's consultation report.
Appendix 8	Proposed staffing protocols for staffing the new school (agreed between the Ministry and NZEI).