



Report: Management of Ministry property for charter schools at conversion and during transition period

To:	Hon David Seymour, Associate Minister of Education		
Cc:	Hon Erica Stanford, Minister of Education		
Date:	25 September 2024	Deadline:	2 October 2024
Security Level:	In-Confidence	Priority:	Medium
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Position:	Senior Policy Manager, Infrastructure Policy	METIS No:	1334159

Why are we sending this to you?

- To outline how we intend to manage conversion of Ministry-owned and Ministry-leased property and seek agreement to some broad parameters within which to make decisions, on a case-by-case basis, during the conversion process, including contract negotiations.
- This report also provides requested advice on a potential transitional funding model for schools in Ministry-leased property that convert, including analysis of expected costs and potential issues for both ex-partnership schools and the Charter School | Kura Hourua MCA.

What action do we need, by when?

- We need your decisions on:
 - the approach to costs related to board-managed property projects which will transfer to the Ministry upon conversion.
 - the continuation of existing property arrangements at converted schools with other parties, including State schools.
 - the approach to property related funding and responsibilities for any Public Private Partnership school that converts.
 - the transfer of responsibility for Ministry-leased property to sponsors.
 - whether, and on what basis, a transition approach to property funding for Ministry-leased should be available.
- Please return the signed paper by 2 October 2024.

Alignment with Government priorities

- 1 The establishment of charter schools is a commitment under the National-ACT coalition agreement.

Property will be provided in its current state, with prospective sponsors needing to undertake their own due diligence

- 2 We will provide Ministry-owned property in its current state, with no additional funding to address known issues or make alterations that sponsors want before the point of conversion.
- 3 We will provide any information we have to sponsors during the contract process. However, they will need to undertake their own due diligence, before signing the contract. This includes seeking information from school boards. As the day-to-day operator, boards hold much more detailed information about the nature of the property and history of maintenance. It is likely that boards and prospective sponsors will already have a close relationship and gaining access to information should be relatively easy.

Existing projects and property plans will be addressed on a case-by-case basis

Projects in construction will continue, but this may require passing through some costs to the sponsor to avoid double-funding

- 4 We will continue capital works projects that are in construction. This includes projects where contracts have been signed. However, you have already agreed that projects in the existing capital works pipeline, that are not in construction, will be placed on hold and re-evaluated to determine if there are different property needs due to conversion (METIS 1321393 refers).
- 5 Any unspent capital funding in the form of five-year agreement (5YA) funding will return to the Ministry and be replaced by the sponsors property funding stream. 9(2)(j)

Existing property plans may be replaced by an updated plan covering the transition funding period

- 6 To support a smooth transition of responsibility for Ministry-owned property, clear expectations need to be set up-front for the transition period, when the sponsor will have further recourse to the Ministry. To do this, we will work with a sponsor on a property plan that covers the transition period. The property plan will either be based on the school's existing 10-year property plan (10YPP), or a new plan will be developed depending on where the school is in the 10YPP cycle. If a new plan is needed, there will be an additional cost to the Ministry to develop this plan.

- 7 The plan will cover the sequencing of Priority 1 (Health and Safety) and Priority 2 (Essential Infrastructure) projects, as well as any potential top-up funding during the four-year period, when the sponsor still has further recourse to the Ministry. As with State school property plans, the transition plan will work within the available funding and asset management parameters (e.g. it will not bring forward the replacement of essential infrastructure assets into the transition period). 9(2)(j)
- 8 If, as part of this transition plan or subsequent property plans, a sponsor spends money, either provided to them by the Crown or their own funds, on improvements to a Ministry-owned building, they will not automatically get an ownership interest in the building or land.

Existing ongoing property arrangements will be worked through on a case-by-case basis

- 9 There are a variety of property arrangements across the school property portfolio, at both a Ministry and school level. These will need to be addressed on a case-by-case basis as they will be specific to the school, buildings and parties involved. Given that not all arrangements will occur in the current round of charter school applications, the Ministry will prioritise working with the Charter School Agency (CSA) on the specific arrangements covered by current applications.
- 10 We recommend that as far as possible, current arrangements should continue. While this may be viewed as restricting the sponsors' use of the site, it will align with the operational arrangements at a State school, and therefore would not be a surprise to a prospective sponsor. It also takes into account the Authorisation Board's considerations for every conversion application. In particular, the financial and network implications to the Crown, as well as the level of support from the community.

Different building ownership arrangements

- 11 While most buildings are wholly Ministry-owned, there are many instances of board- or community-owned buildings on Ministry-owned sites, as well as shared ownership arrangements between the Ministry and the board and/or the community.
- 12 Under shared ownership arrangements, each party is responsible for meeting their proportion of the ongoing property costs, including any unforeseen work that is required. These arrangements are often decades old. As part of the conversion, we will undertake due diligence to confirm ownership arrangements.
- 13 Cabinet has agreed that boards' assets, liabilities and obligations transfer to the Crown upon conversion with subsequent use negotiated in good faith with sponsors [CAB-24-MIN-0107.01]. This included that where relevant, these negotiations would also enable continued access and use rights for the community. Cabinet also agreed that for this transition and transfer, the Crown's interest will be protected.
- 14 This may be a significant financial commitment for the Crown, depending on the condition of board assets. 9(2)(j)

15 9(2)(j) [Redacted]
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[Redacted]
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Public-private partnership (PPP) Schools

- 16 There are 11 schools that are currently subject to a PPP agreement between the Ministry and a consortium of private companies. Under a PPP, the Ministry still owns land and buildings, and boards are responsible for all education matters. However, agreements with private companies include ongoing property maintenance.
- 17 If a PPP school is proposed to convert, we will need to determine what this means for the existing PPP agreement, ongoing property responsibilities, and property related funding.

Hosting services for other State schools

- 18 Across the State school network, certain schools host facilities to support services for other State schools' students and supporting staff to use. The host school is responsible for maintaining the property which the Ministry provides funding for. The Ministry is not staffed or funded to maintain this property directly. 9(2)(j) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Some examples of hosting property for services that we expect to arise in conversions are outlined below.

- a. **Specialist school satellite units.** While specialist schools are unable to convert [LEG-24-MIN-0121], a converting school may host a satellite unit of a specialist school.
- b. **Technology provision.** A converting school may be a host year 7 and 8 technology instruction for a number of schools in an area.
- c. **Resource Teacher: Learning Behaviour (RTLB).** You have agreed that charter schools will retain access to RTLB services within existing clusters, but removed the option of them being a lead school (METIS 1329280 refers). However, being a host school for RTLBs does not require being the lead school.

Access or use agreements: current and future

- 19 Most schools have existing lease or licence agreements with external parties to use school property (e.g. ECEs, swimming pool operators, and after school care programmes). The agreements must meet the requirements of either section 162 or 163 of the Education and Training Act 2020, including that they must have an educational benefit or community purpose, and bring no educational disadvantage. We propose that, through subletting clauses in the property occupancy contract for Ministry-owned property, sponsors will have the ability to sublet within the same parameters as existing State schools, and that they must continue these agreements on current terms.
- 20 Cabinet has already agreed that when a board's assets transfer to the Crown upon conversion, existing access and use right for community will continue [CAB-24-MIN-0107.01]. This will require sponsors to enter agreements with the Crown and external parties to formalise the operational arrangements as part of the establishment process.

Responsibility for property currently leased by the Ministry will be transferred to sponsors at the earliest possible point

21 There will be State schools that are in property leased by the Ministry that will seek to convert. These will predominately be ex-partnership schools, whose leases the Ministry took assignment of when they were brought into the State system. We have provided separate advice on school sites leased by the Ministry as part of Sale-and-Leaseback arrangements due to the Crown's Treaty settlement process (METIS 1334158 refers).

22 Each lease is specific to its circumstances and involves varying levels of Crown investment.

23 9(2)(j)

24 9(2)(j)

Transitional Funding Model for converted charter schools on Ministry-leased property

25 You have asked for advice on a transitional funding model for converted charter schools on Ministry-leased property.

26 Converted charter schools, including those in leased property, will be funded from the start based on actual roll. There is a risk that schools in Ministry-leased property are disincentivised from converting due to potential immediate financial challenges. These challenges may be current lease costs, current roll, and expected level of property funding.

27 Under decisions to date, if these schools convert, they will need to increase their rolls to increase funding (as the model intends), or find efficiencies elsewhere in their operations to cover the difference between their lease funding and lease cost.

28 This is primarily an issue for some ex-partnership schools, which have significantly more area per student than they would be entitled to in Ministry-owned buildings. 9(2)(j)

29 In METIS 1335687, we are asking Joint Ministers to agree that if any State school in Ministry-leased property converts, that the school's baseline lease funding at the date of conversion should transfer from the School Property Portfolio Management appropriation to the Charter Schools | Kura Hourua MCA.

30 This will mean that the transfer is fiscally neutral, in line with the property funding decisions by Joint Ministers. Transferring a higher amount would not be fiscally neutral as these lease costs are managed alongside other departmental output expenses for the school property portfolio.

31 9(2)(j) [Redacted]
 [Redacted]
 [Redacted] 9(2)(j)
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32 9(2)(j) [Redacted]
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33 9(2)(j) [Redacted]
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34 9(2)(j) [Redacted]
 [Redacted]

35 9(2)(j) [Redacted]
 [Redacted]
 [Redacted]

Recommended Actions

The Ministry of Education recommends you:

- a. **note** that Ministry-owned property will be provided in its current state, with the Ministry providing any information it has, but sponsors will need to undertake their own due diligence.

Noted

Existing projects and property plans

- b. **note** that board-managed property projects under contract, including those funded by the Ministry, will become the responsibility of the Ministry upon conversion.

Noted

- c. **agree** that some responsibility for costs related to board-managed property projects that transfer to the Ministry upon conversion may be passed through to the sponsor as part of the contract, so as to not double fund sponsors by providing them with at least their equivalent of State school property funding while also funding in progress projects for them.

Agree / Disagree

- d. **note** that to support a smooth transition of responsibility for Ministry-owned property, the Ministry will work with sponsors on a property plan that covers the transition period during which the sponsor has further recourse to the Ministry.

Noted

- e. **note** that if a sponsor spends money, either provided to them by the Crown or their own funds, on improvements to a Ministry-owned building, they will not automatically get an ownership interest in the building.

Noted

Existing ongoing property arrangements

- f. **note** that there a variety of property arrangements across the school property portfolio that will need to be addressed on a case-by-case basis, including:

- i. different building ownership arrangements;
- ii. schools hosting services for other State schools (e.g. specialist school satellite units, technology provision, RTLB property); and
- iii. existing access or use arrangements.

Noted

- g. **note** that the Ministry will prioritise working with the Charter School Agency on the specific details for those arrangements needed for the current round of charter school applications.

Noted

- h. **agree** that as far as possible that existing property arrangements with other parties, including other State schools, should continue as they are, including relevant school-level responsibilities passing to sponsors through the contract.

Agree / Disagree

- i. **note** that the continuing of some existing property arrangements may require the allocation of additional capital funding to sponsors to cover the associated property responsibilities.

Noted

- j. **note** the Ministry may choose to dispose of some formerly school board owned property (not land) by selling it to Sponsors, instead of leasing it to Sponsors.

Noted

- k. **note** that the arrangements for any Public Private Partnership (PPP) schools that convert will likely need to differ from other conversions of Ministry-owned sites due to the existing PPP agreement between the Ministry and a private company that includes the ongoing maintenance of the property for the term of the PPP agreement.

Noted

Conversion of schools on Ministry-leased property

- l. **note** that State schools that are on Ministry-leased property that seek to convert will predominately be ex-partnership schools, whose leases the Ministry took assignment of when they were brought into the State system.

Noted

- m. 9(2)(j) [Redacted]

Agree / Disagree

- n. **note** that recommendation m does not include leases relating to Sale-and-Leaseback arrangements entered into as part of the Crown's Treaty settlement process, which is addressed in separate advice (METIS 1334158 refers).

Noted

Transitional funding model for converted schools on Ministry-leased property

- o. **note** that you asked for advice on a transitional funding model for converted charter schools on Ministry-leased property (primarily applies to ex-partnership schools).

Noted

- p. 9(2)(j) [Redacted]

Noted

- q. 9(2)(j) [Redacted]

Noted

- r. **note** that in METIS 1335687, Joint Ministers are being asked to agree that, if any State school in Ministry-leased property converts, the school's baseline lease funding at the conversion date in the School Property Portfolio Management appropriation will be transferred to the Charter Schools | Kura Hourua MCA, so as to be fiscally neutral.

Noted

- s. 9(2)(j) [Redacted]

Agree / Disagree

t. 9(2)(j) [Redacted]
[Redacted]
Agree / Disagree

u. 9(2)(j) [Redacted]
[Redacted]
[Redacted]
Agree / Disagree

v. 9(2)(j) [Redacted]
[Redacted]
[Redacted]
Agree / Disagree

w. 9(2)(f)(iv) [Redacted]
[Redacted]
[Redacted]
Noted

x. 9(2)(j) [Redacted]
[Redacted]
[Redacted]
Noted

Proactive Release:

y. **agree** that the Ministry of Education release this paper once it has been considered by you with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.
Agree / Disagree



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Hon David Seymour
Associate Minister of Education

25/09/2024

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