MINISTRY OF EDUCATION
TE TĀHUHU O TE MĀTAURANGA

ORIGINAL SENT TO
27 MAR 2018
MINISTERS OFFICE

Education Report: Alternative Constitution for the Papatoetoe Intermediate School (1428) Board of Trustees

To:	Hon Chris Hipkins, Minister of Education		
Date:	27 March 2018	**Priority:**	High
Security Level:	In Confidence	**METIS No:**	1108076
Drafter:	Deborah Tennet	**DDI:**	[redacted]
Key Contact:	Isabel Evans, Director of Education Auckland	**DDI:**	
Messaging seen by Communications team:	No	**Round Robin:**	No

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Purpose of Report

The purpose of this paper is for you to:

Approve an alternative constitution for the Papatoetoe Intermediate School Board of Trustees;

Agree that this Education Report is proactively released as part of the next publication; and

Sign the attached notice for publication in the *New Zealand Gazette* and the attached letters to the Commissioner and local members of Parliament notifying them of your decision.

The report provides background information about ending the Commissioner's appointment to the Papatoetoe Intermediate School Board of Trustees (Board) and returning the Board to self-governance. It also seeks your agreement to the Commissioner's request to approve an alternative constitution for the Board as a transition from statutory intervention to self-governance.

Summary

1 Papatoetoe Intermediate School, in Auckland, is currently governed by a Commissioner. The statutory intervention is ready to end and the school returned to self-governance.

2 Following consultation with the Ministry of Education (Ministry), the Commissioner has reviewed the school's governance and intervention history with a view to support a cautious degree of elected community participation. The aim is to strengthen elected representation with strong governance modelling from a majority of experienced appointees. The proposal is to limit the number of parent elected trustees to three, introduce a requirement to have four members appointed by the Director of Education for Auckland, whilst retaining a staff representative and the Principal on the Board.

3 The Commissioner has established an advisory group which meets twice a term and is open to all parents and members of the community. A committee has also been appointed by the Commissioner and meets monthly to assist him with school governance matters. Consultation about an alternative constitution as part of the exit strategy from the current statutory intervention, has been undertaken with these groups by and through the Commissioner. These groups and the Ministry of Education, are supportive of the alternative constitution proposal as a transition back to self-governance.

4 The alternative constitution decision will take effect immediately your signed notice is published in the *New Zealand Gazette*. A new Board will not take office until the Commissioner's appointment ends (seven days after the date he sets for an election of trustees).

Recommended Actions

The Ministry of Education recommends you:

a. **approve** an alternative constitution for the Papatoetoe Intermediate School Board of Trustees under section 98A of the Education Act 1989;

Agree / Disagree

b. **sign** the attached notice for publication in the *New Zealand Gazette*; and

c. **sign** the attached letters to the Commissioner, and the school's local Members of Parliament, Hon Jenny Salesa and Hon Peeni Henare, advising them of the alternative constitution;

d. **Proactively release** this Education Report as part of the next publication.

Release / Not release

Katrina Casey
Deputy Secretary
Sector Enablement and Support

27/3/2018

Hon Chris Hipkins
Minister of Education

5/4/18

Background

1 Papatoetoe Intermediate School is a decile 2, urban, state intermediate school in the Manukau East and Tāmaki Makaurau electorates. It has a confirmed staffing entitlement of 32.30 FTE. The school's July 2017 roll was 731, comprising 363 (49%) students who identify as Pasifika, 209 (28.6%) as Asian, 116 (15.9%) as Māori, 25 (3.4%) as European/Pākehā, 15 (2.1%) as other ethnicities and 3 (0.4%) international fee paying students. The roll was 806 in 2013 but saw a significant drop in 2014 to 732 students. The roll has remained stable since 2014.

2 The school's special features include leading a Resource Teachers: Learning and Behaviour Cluster, hosting Mt Richmond Special School satellite classrooms, and participating in the Social Workers in Schools initiative.

3 The school is part of the Papatoetoe Community of Learning | Kāhui Ako.

Statutory interventions and alternative constitution

4 Between September 2013 and December 2016, significant issues with finance, personnel, communications and governance resulted in the school receiving support from the Ministry of Education through a limited statutory manager (LSM). On 8 December 2016, following ongoing concerns that governance issues and a deterioration in the relationship between the Board and its Principal were impacting on the operation of the school, the Board was dissolved. The Commissioner was appointed the next day to replace the Board's membership.

5 The expected intervention outcomes are that an incoming Board will be able to:

a. develop and maintain relationships with professional leaders and/or other staff based on trust, integrity, openness, clarity about roles and responsibilities, transparency and shared knowledge, in the interests of improving valued outcomes

b. have a shared understanding of individual roles and responsibilities and distribution of tasks

c. build relational trust and develop culturally responsive relationships with the school community to ensure active participation in the life of the school and reciprocal communication about the school's activities, and support school leaders to do the same

d. proactively develop networks that strengthen school capacity to extend and enrich the curriculum, learning opportunities and pathways for students, and will contribute to other schools' capacity to do so.

6 The Education Review Office (ERO), in its September 2017 report, states that

The school is significantly better placed to sustain and continue to improve and review its performance. Improved educational leadership, effective teaching and coherent systems now support a school culture focused on improving outcomes for students. Decision making is well considered and informed by different sources of evidence. This is resulting in good strategic decision making and efficient resourcing at all levels of the school.

The Commissioner is providing effective governance. He has implemented a range of strategies to engage with the school community. An advisory group, representative of

the community has been established to contribute to school decision making. The Commissioner has planned a well-considered path to reinstating a board of trustees.

7 The Ministry considers that sufficient progress has been made towards the intervention outcomes, and that a Commissioner is no longer required. The Ministry is preparing to ask the Commissioner to set a date for an election of parent representatives for an incoming board. As part of these preparations, the Commissioner has requested that consideration be given to approving an alternative constitution as a transition from the intervention to a self-governing Board.

Proposed alternative constitution for the Papatoetoe Intermediate School Board of Trustees

8 The standard constitution of an intermediate school Board of Trustees is:

- no more than 7 and no fewer than 3 parent representatives (the usual number is 5); and
- the Principal; and
- a Staff representative (except where the Principal is the only member of the school staff); and
- a limited number of trustees either:
  - i. co-opted by the Board; or
  - ii. appointed by bodies corporate approved by the Board for the purpose.

9 The alternative constitution proposed by the Commissioner is:

- three parent representatives
- the Principal
- a Staff representative
- four trustees appointed by the Director of Education for Auckland.

10 We believe that this structure will provide a workable mix of parent-elected community trustees and appointed members with the necessary skills, knowledge and expertise to govern the school. Further details about the rationale for proposing the alternative membership is provided in paragraphs 12 to 15.

11 If you approve the alternative constitution it will take effect immediately on publication of your signed notice in the *New Zealand Gazette*. Once your notice has been published the Ministry will ask the Commissioner to set an election date and will also start an appointment process to complement the Commissioner's election timeframe. A new Board will take office in late June or early July, when we anticipate the Commissioner's appointment will end.

Rationale for an alternative constitution

12 The issues at Papatoetoe Intermediate School are community and governance related. At the time the Board was dissolved, any progress the LSM and staff made towards improving teaching, learning and management of the school was being undermined by the Board. There were deteriorating relationships between the Board and Principal/staff, long standing opposition to the Principal from some Board members, Board challenges to the employment role of the LSM and its refusal to co-operate with the LSM, and the Board overstepping its role into the day-to-day operation of the school.

13 The intention of the alternative constitution is to support a cautious degree of elected community participation alongside strong governance modelling from a majority of experienced appointees. The local Ministry office will convene and facilitate a selection panel for the Director of Education for Auckland (Director) appointed representatives. The panel will recommend candidates to the Director based on a skills and experience matrix agreed between the Director, the Commissioner and the selection panel members.

14 Board members appointed by the Director would aim to ensure the best possible support to newly elected trustees.

15 The appointees' first term of office will end at the 2019 triennial elections. Successive appointments would be for a three year term and align with future triennial Board elections.

Legislative requirements for an alternative constitution

16 Under section 98A of the Act you have the authority to approve an alternative constitution if:

- you have reasonable cause to believe that an alternative constitution is in the best interests of the school (section 98A(2)), and
- the Board or Commissioner has requested an alternative constitution (section 98A(3)(a)(iii)), and
- consultation with such people or organisations as you consider appropriate has occurred (section 98A(3)(b)).

17 The Commissioner has requested an alternative constitution. He has consulted with the school community through his community advisory group and governance committee and has found strong support. The Ministry has consulted with the Commissioner, ERO and the New Zealand School Trustees Association.

18 The Ministry considers that supporting parent representation with strong governance modelling and direction from Directorial appointees will provide a smooth transition back from intervention.

The Requirements for Gazette notices

19 Sections 98A(1) and 98B(1) of the Act require that your decision for an alternative constitution is published in the *New Zealand Gazette*. The notice must establish a Board comprising one or more persons who are to be elected or appointed as trustees in the manner specified in the notice, and the notice may (without limitation):

- set out a procedure for any election, appointment, or co-option of trustees;
- set out the manner in which vacancies are to be filled;
- provide for the appointment of returning officers and set out their functions; and
- set out other formal and procedural provisions for the purposes of any election, appointment, or co-option of trustees.

20 A notice for the *New Zealand Gazette* addressing these matters is attached for your signature. Where an alternative constitution is in force, section 98B(2) provides that a number of listed sections of the Act will not apply to the Board or the School. However the attached notice reapplies some of those sections and requires that the constitution will operate as if the following sections apply where relevant:

- s96 (Parent representative criteria)
- s97 (Staff and student representative criteria)
- s99 (Criteria for selecting co-opted and appointed trustees)
- s101 (Elections of Trustees)
- s102 (Term of office)
- s104 (When casual vacancies arise), and
- s105 (Filing casual vacancies of elected trustees).

Other Relevant Information

21 The Ministry and Commissioner have discussed returning the school to self-governance as soon as possible, ideally before the end of term two, i.e. before 6 July 2018. In order to achieve this the Commissioner would need to set an election date of 29 June 2018 to avoid the election processes taking place over the Easter and school holiday breaks[1]. However, an election cannot be held until the number of parent representatives required is confirmed either under the standard constitution (five trustees) or an alternative constitution (three trustees).

22 For the new Board to take office before the end of term two, the Commissioner must start the election process off by selecting a returning officer by 23 May 2018 at the latest and the returning officer must call for nominations by 1 June 2018. The closing date for nominations to be received by the returning officer will be 15 June 2018. Any amendment to the Board's constitution should ideally be published in the *New Zealand Gazette* before the end of term one (13 April 2018), or by 14 May 2018 at the latest.

23 If you do not agree to amend the constitution the Ministry will still ask the Commissioner to set an election date under the Board's pre-intervention constitution. An incoming Board will be supported with governance training from the New Zealand School Trustees Association.

24 If you do agree the alternative constitution then towards the end of 2021 the Ministry will work with the Board and community to consider whether to return the school to a standard constitution before the 2022 triennial Board of Trustee elections or continue with the alternative governance model.

[1] 2018 Easter break is Friday 30 March – Tuesday 3 April 2018, inclusive. School holidays are Saturday 14 April to Sunday 29 April 2018.

Risks

25 There is a risk that a section of the school community, and in particular some former Board members, may complain about the reduced number of parent elected representatives and lack of provision to co-opt members. Although the Board may not alter its alternative constitution during the transition from intervention, the risk is mitigated by the Ministry's planned consultation in 2021 about the future governance model for the school.

Proactive Release

26 It is intended that this Education Report is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Hon Chris Hipkins

MP for Rimutaka

Minister of Education
Minister of State Services
Leader of the House
Minister Responsible for Ministerial Services

NEW ZEALAND GAZETTE NOTICE

Alternative Constitution for the Papatoetoe Intermediate School (1428) Board of Trustees

Under section 98A of the Education Act 1989, I hereby approve the following constitution for the **Papatoetoe Intermediate School** (1428) Board of Trustees ("board"):

1. The board will be made up of the following members:
   a. three parent representatives;
   b. four trustees appointed by the Director of Education for Auckland;
   c. the Principal; and
   d. one Staff representative.

2. Notwithstanding section 98B of the Education Act 1989 the following sections of the Education Act will apply to the Board: sections 96, 97, 99, 101, 102, 104 and 105.

3. For the first elections of parent representatives and the staff representative a returning officer will be appointed by the commissioner and will carry out the duties in accordance with the Education (School Trustees Elections) Regulations 2000.

4. All trustees for the first board under this constitution will take office when the current commissioner's appointment ends.

5. The first term of office for trustees elected and appointed under this constitution will end seven days after the next triennial election for boards of trustees in 2019.

6. Changes to the constitution of the board will be subject to the approval of the Minister of Education and must be notified in the *New Zealand Gazette*.

This notice shall come into effect on the date of publication in the *New Zealand Gazette*.

Dated at Wellington this 5th day of April 2018.

Chris Hipkins
Minister of Education

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Hon Chris Hipkins

MP for Rimutaka

Minister of Education
Minister of State Services
Leader of the House
Minister Responsible for Ministerial Services

Chris Saunders
Commissioner, Papatoetoe Intermediate School
P O Box 23582
Hunters Corner
AUCKLAND 2155

Dear Chris

Thank you for your request seeking my approval for an alternative constitution for the Papatoetoe Intermediate School Board of Trustees.

I am pleased to be able to tell you that, after considering all the information available to me, I have approved the Board's alternative constitution. Once the approval notice is published in the *New Zealand Gazette* the alternative constitution will take immediate effect but a new Board of Trustees will not take office until seven days after your appointment as Commissioner ends.

The membership of the Board will be:

- three parent representatives;
- four trustees appointed by the Director of Education for Auckland;
- the Principal; and
- one Staff representative.

I understand that the Director of Education for the Auckland region, Isabel Evans, has discussed an appropriate timeframe for your appointment to end and an election of trustees to take place. The Ministry will also notify you when it intends to establish a panel and seek expressions of interest from the community for the Director of Education appointments to the Board.

The processes for addressing the election of trustees following your term of appointment, and other formal and procedural provisions are included in the attached *New Zealand Gazette* notice and laid out in the Education Act 1989 and the Education (School Trustee Elections) Regulations 2000. Once Isabel formally asks you to set an election date you should work towards appointing a returning officer who will have the responsibility for arranging the election. The community will also need to be advised of any concurrent process if the Director's appointments will not be achieved before the date you set for the Board election.

I encourage you to use the resources and support available from the New Zealand School Trustees Association (NZSTA) (http://www.trustee-election.co.nz or call 0800 353 284) for the election of the three parent trustees and getting the school and community ready to participate in the elections.

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I would like to congratulate you and the school for the progress made since your appointment as the Commissioner in 2016 and the work that has been done to encourage and support the community's interest in the governance of the school. I thank you for your commitment to the school and wish you and the Papatoetoe Intermediate School community well for the future.

Yours sincerely

Chris Hipkins
Minister of Education

Hon Chris Hipkins

MP for Rimutaka

Minister of Education
Minister of State Services
Leader of the House
Minister Responsible for Ministerial Services

Hon Jenny Salesa
Member for Manukau East
Parliament Buildings
WELLINGTON

Dear Jenny

I am pleased to tell you that I have approved an alternative constitution for the Papatoetoe Intermediate School Board of Trustees, Manukau East. My approval is pursuant to section 98A of the Education Act 1989 and is in response to an application from the School's current Commissioner.

The membership of the Board will be:

- three parent representatives;
- four trustees appointed by the Director of Education for Auckland;
- the Principal; and
- one Staff representative.

The alternative constitution of the Board will take effect from a date to be notified in the *New Zealand Gazette.*

Yours sincerely

Chris Hipkins
Minister of Education

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Hon Chris Hipkins

MP for Rimutaka

Minister of Education
Minister of State Services
Leader of the House
Minister Responsible for Ministerial Services

Hon Peeni Henare
Member for Tāmaki Makaurau
Parliament Buildings
WELLINGTON

Dear Peeni

I am pleased to tell you that I have approved an alternative constitution for the Papatoetoe Intermediate School Board of Trustees, Manukau East. My approval is pursuant to section 98A of the Education Act 1989 and is in response to an application from the School's current Commissioner.

The membership of the Board will be:

- three parent representatives;
- four trustees appointed by the Director of Education for Auckland;
- the Principal; and
- one Staff representative.

The alternative constitution of the Board will take effect from a date to be notified in the *New Zealand Gazette*.

Yours sincerely

Chris Hipkins
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