

INVESTIGATION REPORT

Disclosure

An investigation into the
Ministry of Education's
engagement processes for
school closures and mergers

June 2017

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Contents

Synopsis	1
Scope of the report	2
Evolution of school management	2
Canterbury reorganisation	6
Conclusion	14
The present position	16
Recommendations	17

Introduction	20
General commentary	20
The shape of the report	22
Findings and recommendations	22
Jurisdiction and parameters	23
Terms of reference	23

Background	25
Thursday, 13 September 2012	25

Part 1 — History and principles	26
Evolution of the school system in New Zealand	26
Effecting change in the schooling network under Tomorrow's Schools	33
Closure/merger process under Tomorrow's Schools	34

Part 2 — Policy and practice: before the Canterbury reorganisation	44
Single school processes	44
Multi-school processes — ‘school reorganisations’	51
The movement towards the Strengthening Education approach	72
General analysis and conclusions	91
Part 3 — Policy and practice: the Canterbury reorganisation	94
Earthquakes and immediate aftermath	94
Longer-term planning: ‘From Recovery to Renewal’	97
The statutory consultation process	135
Christchurch case studies	164
Summary of findings — Canterbury	179
Part 4 — The way forward	184
Consolidated conclusions	184
Since the quakes — the Ministry’s perspective	186
A Canterbury update	198
The present position	204
The Review of the Education Act 1989	205
Recommendations	208
The Ministry’s response	209
Glossary	210
Appendix	216
1. Better Business Cases quick reference guide	216
2. Detailed Network Assessment example (Linwood Cluster)	220
3. Decision chart for Canterbury schools	224

Synopsis

This synopsis is a high-level summary of the structure and content of the report. It is designed to provide a quick overview so the reader can easily navigate the sections of the report itself.

Scope of the report

The terms of reference for this report were to investigate the policy and practice of the Ministry of Education when conducting engagement and consultation processes for school closures and mergers. The investigation was conducted with a particular focus on the restructure of the Canterbury school network in the aftermath of the 2010–2011 earthquakes.

In particular, I have examined the actions of the Ministry in the context of good practice requirements, to assess whether there were:

- clear decision-making criteria;
- a clear and transparent process where those criteria were applied to the situation at hand;
- effective engagement;
- clear and well-reasoned advice to the decision-maker;
- good support for those who were required to implement the decision.

The results of the investigation have led me to the opinion that the Ministry's process in the reorganisation of education provision in Canterbury fell short of good administrative practice requirements.

In forming this opinion, I am acutely conscious of the disaster recovery context whereby the Ministry faced enormous challenges that took it well outside 'business as usual', and yet the importance of intervening in a supportive and inclusive manner was heightened by what the affected community was going through.

Evolution of school management

Prior to enactment of the Education Act 1989, the then Department of Education and Education Board were closely involved with the day-to-day running of schools. The system was set up with little autonomy, except for a degree of freedom over curriculum and teaching.

The Education Act 1989 saw the beginning of self-management of schools by means of individual boards of trustees. The policy document outlining the new systems was *Tomorrow's Schools: the Reform of Education Administration in New Zealand* (*Tomorrow's Schools*).

The *Tomorrow's Schools* policy altered governance processes for education, imbuing the school boards of trustees with responsibility for primary governance, as well as acting as the link between schools and their communities. By 1991, schools had become self-managing, both in terms of their own boards, charters and funding, as well as almost all matters of day-to-day administration.

The Department of Education itself was split into a number of smaller organisations, including the Ministry of Education, the Education Review Office (ERO) and the Qualifications Authority (NZQA). The Ministry of Education was in charge of strategic

matters such as funding, teachers' salaries, property expenditure, curriculum and major policy matters.

There are a number of viability categories which are examined when considering the closure or merger of schools. These have been articulated by the Ministry in more recent years as follows, but it can be extrapolated that viability has always been assessed largely within the same categories.

School viability assessment criteria

Network — demographic factors, such as the local school-age population and distribution and capacity of schools within the surrounding area

Governance — the ability of the school community to maintain a board of trustees

Finance — whether the school is able to operate with its current access to funds

Property — condition and occupation of school buildings and property resources

Staffing — ability of the school to attract and retain qualified staff

Student engagement and achievement — whether the school is achieving in terms of effective learning, behaviour and attendance management, NCEA accreditation and National Standards achievement

Community support — the support for the school from local community members and businesses

School leadership and management — analysis of the school charter, financial trends and level of past intervention required

ERO report — any concerns raised by ERO

Other considerations

A review undertaken by the Ministry in 1991 recognised the importance of the involvement of school communities in any rationalisation of the school network, finding that a climate of cooperation is more likely to emerge if schools are 'fully involved and consulted' at the earliest possible juncture.

The result of this review was the introduction of the Education Development Initiative (EDI) policy, in place from 1991–1999, which put redesigning education provision into the hands of the school communities, within the constraints of existing resources. This essentially voluntary process could be triggered by the Ministry or by school boards but, if it was Ministry-initiated, the boards had to agree to enter into the process before it could go ahead. The focus of the process was on compromise and negotiation and, as one might expect, in the period EDI was in operation, changes to school networks were relatively slow to emerge.

The slow pace of EDI led to it being phased out in favour of the network review process, which was in place from 2001 until 2004. The decision to undertake a

network review originated with the Minister, not the school community, although it allowed for several rounds of consultation and the process included various levels of engagement. It is important to distinguish the network review requirement for consultation as distinct from the concept of negotiation (that is, while engagement was a requirement, agreement was not).

While network reviews were certainly effective in expediting school reorganisation, and they involved the community by means of a reference group which consulted with the Ministry, the process met with opposition and resistance from the affected schools, which felt alienated from the decision making.

This feedback prompted a moratorium on network reviews from 2004–2009. An independent analysis of the process found it wanting, due to lack of clarity among schools around reasons for change and a generally adversarial atmosphere. A fundamental problem with the network review strategy was that schools saw the process as initiated by the Ministry in a 'top-down' approach that was imposed on them.¹

During the moratorium, from December 2006, the Ministry developed a new, community-focused process: Community Initiated Education Planning (CIEP). This saw a swing back to negotiation without obligation. It was a voluntary process and, at all stages, if agreement was not reached, the matter was back-tracked and essentially started again, if not abandoned. The CIEP process continued with the system of EDI incentives, and it allowed for negotiated decision-making during a period when no compulsory mergers or closures were being undertaken by government.

Once the moratorium was lifted in 2009, a new approach was developed by the Ministry, loosely termed *Strengthening Education*. Once again, the impetus for change in schools and school networks was to come from the Ministry. Within a background of engagement seeding the reorganisation, the proposals for change were developed by the Ministry, not by the school communities, although several rounds of consultation were envisaged. There was a firm focus on expedition of school reorganisation within the Ministry after the perceived doldrums of the CIEP process.

1 Conner L, Pearce D, MacGibbon L, Hickey S. *Evaluation of the school network review strategy*. Canterbury: University of Canterbury, 2006.

Strengthening Education case studies	
Miramar South School and Strathmore Community School (2011)	These two schools underwent a merger, which was perceived as a highly successful consultation process, featuring high levels of transparency, communication and information-sharing.
Health Camp schools (2011)	The Health Camp schools were closed and restructured under a single provider. There was little background information provided, no engagement prior to consultation and a limited time for submissions, so the affected schools felt Ministry consultation was imposed on them, with the outcome largely predetermined.
Salisbury and McKenzie residential schools (2011–ongoing)	The Minister made the decision to close the schools following consultation, although the High Court ruled the decision unlawful in the case of Salisbury, which subsequently remained open.
South Dunedin area reorganisation (2008–2011)	Reorganisation of the network was discussed by the Ministry at the time the CIEP process was in place but the schools did not agree to proceed. Consultation subsequently resulted in strident opposition from Forbury School, which was ultimately not regarded to be persuasive. The Minister reviewed the process and found it robust, emphasising the statutory requirement for consultation, as opposed to negotiation.
Kawerau reorganisation (2010–2011)	The Ministry proposed options for reorganisation and undertook five rounds of consultation. It seems likely that the lack of initial engagement on the proposed changes contributed to the need for so many rounds of consultation and accompanying revisions.

The history of school reorganisation processes in the years leading up to the large-scale reworking of the Canterbury school network shows that there was a fairly dramatic see-sawing in approach — from autonomy and investment on the part of school communities, to a more government-led process with a focus on efficiency and expediency. As the system wavered between the two extremes, the affected schools were unable to obtain certainty about the policy and processes for reorganisations.

There was clearly a need for a school reorganisation process that allowed the Ministry to address imbalances in the schooling network effectively, while ensuring schools were fully involved, informed and consulted about decisions affecting them. By late 2010, such a process remained elusive, with school reorganisation policy as unsettled and unclear as ever.

Canterbury reorganisation

Canterbury's magnitude 7.1 earthquake on 4 September 2010 prompted the Ministry to convene the Emergency Management Overview Group (EMOG), which provided a structure for an assessment of and response to the damage done to schools in the area. The focus was firmly on property, and 'business as usual' was announced after around a month.

The 6.3 earthquake that hit on 22 February 2011 knocked the school system (and, indeed, the entire region) off its feet, resulting in the closure of all schools for two to three weeks. Upon reopening, a number of schools were left scrambling — establishing temporary locations or adopting a split day in order to share facilities. These logistical wranglings were also taking place within an atmosphere of shock and grief in the wider community, as the earthquake had resulted in 185 fatalities.

The government immediately established the Canterbury Earthquake Recovery Authority (CERA), in order to develop and manage the recovery strategy for the entire region. The Ministry of Education, in turn, created the Christchurch Education Renewal Team to focus on the recovery of the school network.

The visible process

Throughout 2011, the Ministry arranged for inspection of all state schools in Christchurch, Kaiapoi and Rangiora, focusing on property assessment. This Christchurch Schools Condition Assessment Project showed that school property in general had held up well in the disaster, in that no buildings had collapsed and no irreparable damage had occurred.

As it transpired, quite apart from the impact of the earthquakes, the Canterbury school network was, in the view of the Ministry, already in need of an overhaul. This was due to an oversupply of schools (which was then exacerbated by the post-earthquake exodus from Christchurch), as well as areas of underperformance in terms of education delivery. The Ministry considered that the need to repair extensive physical damage to the school network provided a suitable context within which to develop a vision and a plan for the future of education in Christchurch. Cabinet agreed, after the Minister presented a paper in April 2012 that outlined the proposed programme:

The programme provides a comprehensive programme of work focused on the recovery of education and improving the performance of the system. In particular, it has a focus on transitions and overlaps between sectors.

The programme includes:

- *goals for education in greater Christchurch including overall goals and sector-specific goals*
- *current context, challenges and vision for the future in each sector*
- *proposals to achieve this vision for each sector*
- *consultation questions on the proposals we are seeking feedback on.*

But it does not include a detailed network plan or details of how we will deal with individual schools, tertiary providers or early childhood services. Once the plan is finalised, we will develop an implementation plan that will include the network plan for the compulsory sector.²

In particular, the terms of reference for the Canterbury Education Renewal Project identified 13 sub-projects which formed the basis for the Education Renewal Plan.

- Early childhood education
- Schooling network stabilisation
- Network design
- School design
- ICT futures
- Modern school environment
- Teaching and learning
- Workforce planning
- Governance and accountability
- Education and urban renewal
- Tertiary renewal
- Financing
- Consultation and engagement.

In August 2012, after a period of consultation, the final *Directions* was published for what was now termed the Canterbury Education Renewal Recovery Programme (CERRP). It is important to note that the consultation for the CERRP was not focused on specific solutions for individual schools — instead addressing only generic issues. Participants in the consultation process made it clear to the Ministry that, while they agreed that renewal provided an opportunity to revamp Canterbury’s educational environment, they had a strong desire for continued community engagement throughout the process.

However, at the time school communities were engaged in contributing to visible development of the CERRP, there was a concurrent ‘invisible’ process being conducted on a different administrative level.

² Education Report Cabinet Paper: *Canterbury Education Renewal Recovery Programme*, 18 April 2012, IM60/104/53/3.

The invisible process

In September 2011, the Ministry had commissioned the drafting of the Greater Christchurch Education Renewal Business Case, in accordance with Treasury guidelines for large-scale and/or high-risk processes. The need for this, as well as the need for Cabinet involvement in the process, was prompted by the breadth of the proposed reorganisation, which was likely to require significant capital investment. Although the business case went through a number of iterations and a variety of names, for the purposes of this summary, it will be referred to as the *Indicative Business Case (IBC)*.

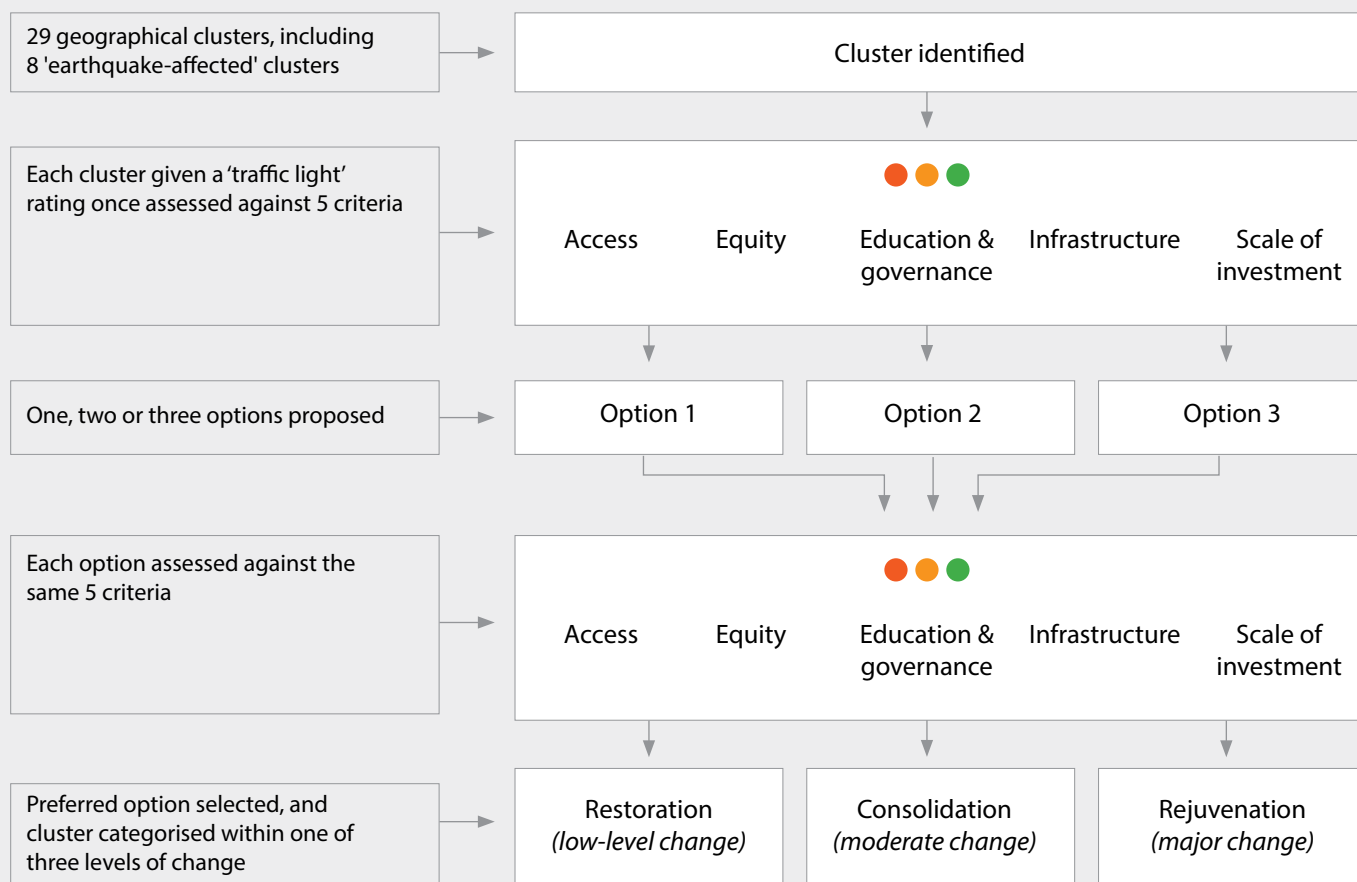
The *IBC* initially identified three interventions to consider — namely, to:

- rationalise and design a school network optimised to meet education provision;
- better integrate schools to use shared facilities provision across Christchurch; and
- improve the standard of school infrastructure.

The implementation of any particular option proposed for a school would be assessed within the intervention framework above, as well as being assessed against four 'critical success factors':

- Value for money
- Flexibility and responsiveness to changing requirements
- Market capability and capacity
- Future proofing and delivery of quality in design.

By late 2011, the draft *IBC* included options (including closure) for 26 specific schools and, by May 2012, it contained detailed proposals, in the form of one to three rated options, for 123 earthquake-affected schools, divided into 29 geographical 'clusters'. At the time of the announcement of closures and mergers on 13 September 2012, the plan involved 140 schools, split into 39 geographical clusters, with 38 schools subject to proposals to close or merge. The diagram below illustrates the method of identifying options for each individual cluster.



The 'consolidation' and 'rejuvenation' options envisaged individual school closures and mergers.

Throughout May and June 2012, the *IBC* was discussed amongst central government stakeholders, without any engagement with affected schools. On 20 August 2012, the *IBC*, in the context of the CERRP as a whole, was presented to Cabinet.

Along with the presentation of the *IBC*, the Ministry recommended a round of facilitated discussion with the relevant school communities around the proposals for their closure or merger. Instead, Cabinet directed that statutory consultation should be commenced, on one option only for each school, with no such discussion.

An examination of the timelines involved in the dual processes of ('visible') consultation on the broader *Directions* document and ('invisible') development of the specific *IBC* reveals that they were undertaken in parallel. The table below illustrates this.

IBC milestones	Directions milestones
	In July 2011 , the Minister of Education Anne Tolley (and the Minister for Tertiary Education Steven Joyce) agreed on five principles to guide decision making in Christchurch, which included the importance of engagement and genuine consultation.
	On 29 August 2011 , Cabinet approved the development of the CERRP. The first step was to work with schools to develop to develop a vision for the future of education in Christchurch through a process of engagement with the community.
On 1 September 2011 , Aurecon was commissioned to draft stage one of the <i>IBC</i> under the guidance of the Ministry's property group.	
	In October 2011 , Christchurch educators and community were given the opportunity to comment on the draft CERRP — by responding to broad questions concerning the future of education in Christchurch.
In December 2011 , an early draft of the <i>IBC</i> identified the preferred way forward was ' <i>major investment and rationalisation</i> '. A group of 26 schools was identified with high damage and low rolls.	
In March 2012 , the Ministry reported (to the Minister) that the preferred way forward was to rebuild the network and rationalise the number of schools.	
	In April 2012 , Cabinet agreed to release the draft <i>Directions</i> document for a four-week period of consultation, including a proposal to establish three advisory bodies to provide a local voice on renewal issues.
By May 2012 , a draft of the <i>IBC</i> was completed, incorporating specific proposals for school closures and mergers. The part of the Christchurch school network which required major rationalisation and investment was divided into nine school clusters, delineated by rivers, roads, and CERA land zones. The main criteria for developing the options for individual schools in Christchurch were roll, investment and network demand.	In May 2012 , the draft <i>Directions</i> document was released for further public consultation under the title <i>Directions for Education Renewal in Greater Christchurch</i> . The draft document signalled that the process of network renewal would fall somewhere in a continuum from ' <i>restore the network to its pre-earthquake state</i> ', at one end, to ' <i>renew the network and transform how we deliver education</i> ', at the other.
In June/July 2012 , the <i>IBC</i> was finalised — the proposals for individual school closures and mergers essentially unchanged from those in the May 2012 draft.	
In August 2012 , Cabinet approves the <i>IBC</i> .	In August 2012 , the final <i>Directions</i> document was released.

Announcement of proposed closures and mergers

At the Lincoln Event Centre, on 13 September 2012, school principals and board chairs met with the Minister and representatives from the Ministry of Education. A pre-meeting gathering, at which the Minister and senior officials addressed the 40 most-affected schools, was the only allowance made for the abruptness of the announcement of specific, individualised plans.

The announcements themselves came in the form of a general information pack, which was very much focused on 'cluster planning'. There were a number of drawbacks to the material provided to the schools at the announcement meeting.

- The information provided was mostly generic, requiring schools to sift through to find their specific proposals.
- Many school representatives expressed dissatisfaction with the level of material provided about the information used for assessment of their school.³
- Much of the information about property and costs was incorrect, according to school self-assessment.⁴
- The material incorrectly stated that formal consultation would not begin until the New Year.⁵
- The indication was that the first step would be to develop the Learning Community Cluster Plan.⁶ This was highly problematic for schools that were proposed to close or merge, as participating in cluster development discussions were hardly a priority while they were fighting for their very survival.
- The rationale for the proposals was unclear to many schools, and it seemed that no consideration had been given to individual circumstances and special characteristics.

The Ministry has acknowledged that the delivery of the announcements was mishandled, but it has explained that it was aiming to deliver certainty to a disaster-traumatised community looking to rebuild. It also considered that the potential for improved educational outcomes was a silver lining to the disarray in the region, and was looking to capitalise on that. The school community, on the other hand, was rocked by what it considered a severe breach of trust, and felt totally blindsided by the announcements, when their expectation had been for further engagement before specific plans entered the consultation phase.

3 The dearth of information provided at this stage, and throughout the consultation process, prompted a flurry of Official Information Act requests. The result was an overloaded Ministry needing to work out how best to respond to the avalanche of requests —necessitating the establishment of the Greater Christchurch Education Renewal Call Centre — as well as schools racing to meet their deadlines for submissions, once the information was released.

4 This was subsequently found to be a mixture of errors and what amounted to misunderstandings between the assessments carried out by a variety of parties. The Ministry did not consider the actual errors to be egregious enough to affect the outcomes, although conceded they were less than ideal.

5 This error resulted in the failure of the Ministry to amend the material to reflect the Cabinet direction to expedite the process.

6 The Learning Community Cluster Plan was to be a collaborative design of the future shape for education provision in Christchurch.

Statutory consultation process

On 28 September 2012, with no further information provided, the Minister of Education wrote to the boards of trustees of the schools subject to closure or merger proposals, initiating the statutory consultation process. The boards were given until 7 December 2012 to provide submissions in response to the proposals for their schools.

On 10 October 2012, the Ministry released a booklet entitled *Building Effective Schooling Networks*, as a general guide to the process of school reorganisation as it stood at the time (that is, from the *Strengthening Education* era). The key steps are outlined in the table below.

The Ministry recommends to the Minister that a review of schooling provision be initiated (**Education Report One**). If the Minister agrees, the review is announced, as are the options the community will be consulted on. If the review is particularly broad or complex, there may be a preliminary engagement with the community to develop a vision for education in the area.

Statutory consultation is undertaken with the community on the specific options proposed. The Ministry reports the views of the community and other relevant information to the Minister (**Education Report Two**), and makes recommendations.

The Minister considers the report and makes a preliminary decision. If that decision involves closure, boards of the schools subject to closure are allowed 28 days to make submissions on why their schools should remain open. The Ministry analyses those submissions and reports to the Minister (**Education Report Three**). The Minister makes a final decision.

On 12 October 2012, the Ministry provided *Rationale for Change* documents to affected schools to help principals and boards understand the reasons behind the Ministry's proposals. On 22 November 2012, the Ministry released the *IBC*, Cabinet Papers and relevant minutes, which included detailed property information, to provide further background.

The *Rationale* documents received a decidedly mixed reception from the schools. There was a perceived lack of detailed information of the aspects considered by the Ministry in making the proposals. This led to schools needing to request further information from the Ministry to support their submissions. Where relevant information was provided in the *Rationale* documents, particularly in respect of property, it was impenetrable to the layperson and extremely difficult for the schools to comment on. It should also be noted that the documents were not provided at the outset of the statutory consultation process, and the acrimonious atmosphere that existed (due to the mishandled announcement of the proposals) meant the schools were predisposed to regard the *Rationale* documents with suspicion and defensiveness.

Over the course of December 2012, right through to April 2014, the Minister and the Ministry of Education undertook to:

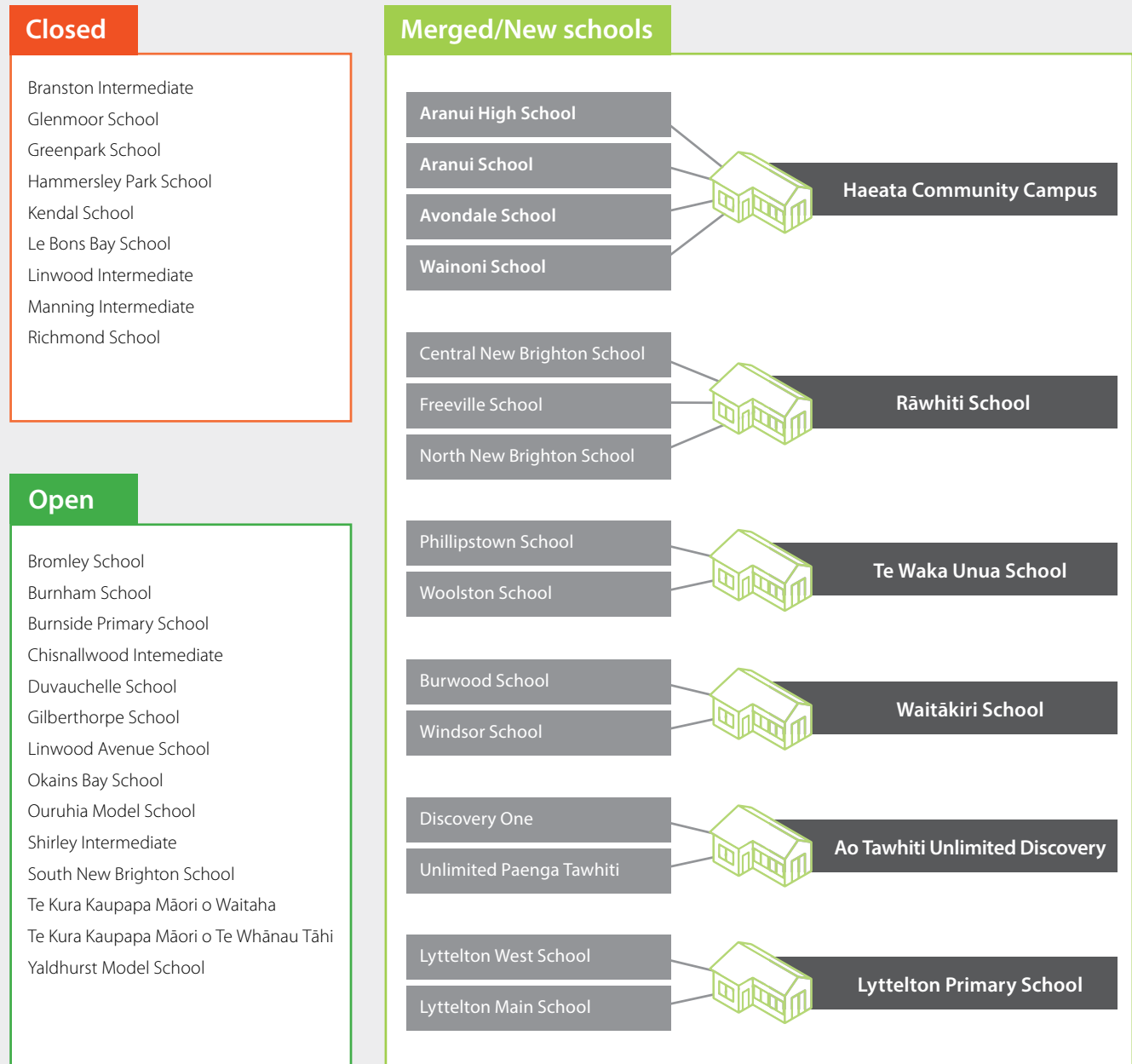
- collect and review submissions from affected schools;
- prepare education reports for each closure/merger proposal;
- prepare a main report on the reorganisation process;⁷
- provide independent facilitators to assist each school in making submissions and participating in consultation;
- establish the Greater Christchurch Education Renewal Call Centre to handle information enquiries;
- offer to meet with boards of affected schools to discuss the *Rationale* documents and the proposals in general;
- report to Cabinet Business Committee;
- make recommendations to Cabinet;
- announce interim decisions and invite further submissions;
- analyse those further submissions;
- participate in judicial review proceedings;⁸
- announce final decisions on closures/mergers and reorganisation of education provision in the Canterbury region.

While the process as outlined above certainly seemed to be thorough, many of the affected schools remained unconvinced that the Ministry adequately addressed the concerns raised in their submissions. In particular, student wellbeing and mental health was not regarded as a persuasive factor, as the Ministry considered support could be offered by any education provider. Most of the assessment was done on easily quantifiable data, with the focus on criteria such as property, cost, numbers, etc. When it came to schools' special character, community support, high standards of education or individualised programmes, the Ministry developed a standard response to submissions on those matters, largely along the lines that all schools are required to provide quality educational services. It is my view that the Ministry did not give sufficient weight to the submissions of the individual schools concerning their unique qualities, instead relying on more generic and quantifiable standards.

⁷ *Outcomes of Consultation on Proposed School Closures*, Ministry of Education, 18 January 2013.

⁸ *Board of Trustees of Phillipstown School v Minister of Education* [2013] NZHC 2641.

The end result of the closure and merger proposals is as follows.⁹



Conclusion

This investigation has revealed that the reorganisation of education provision in Canterbury following the devastation of the earthquakes was flawed, particularly the front-end of the process. The principal issues were:

- communicating that the education renewal process would be handled in an inclusive manner, when in fact the involvement of affected schools (prior to

⁹ See Appendix 3 for the more detailed Decision Chart outlining the processes and outcomes for affected schools.

statutory consultation by the Minister) was confined to the conceptual level and specific proposals for closures and mergers were developed without schools' knowledge or involvement;

- inadequate information provided — schools lacked clarity about the reasons behind the proposals, which naturally made it difficult for schools to appropriately address the proposed changes in their submissions;
- the analysis of submissions — including the inadequate consideration of unique local factors that were important to schools; and
- a fundamental lack of transparency from the Ministry, which led to affected schools feeling that consultation was a 'sham' and that the outcome was predetermined.

The statutory consultation process was mired from the outset in an atmosphere of mistrust and defensiveness, requiring a lot of work to repair relationships with the school communities — work that, to be fair, the Ministry has been prepared to do.

Any criticism of the Ministry must be tempered by an acknowledgement that it was faced with enormous, often unprecedented challenges, including the fact there was no proven, successful framework in place for school reorganisation, in spite of a number of attempts to establish one since the inception of *Tomorrow's Schools*. In addition, the Ministry was juggling:

- a fragile community that needed certainty about the future, including schools and individuals under disaster-related stress;
- extremely extensive work required to repair damage;
- a complex school network already in need of reorganisation, due to overcapacity;
- the need to work into the general Canterbury recovery plan; and
- the needs/visions/plans of Ministers.

It is clear that the absence of a clear policy framework to support best practice in school reorganisations was a real problem — in particular the lack of a sound process of engagement with schools and their communities. Going forward, it is vital that the Ministry goes beyond meeting the minimum statutory requirements for consultation and implements an inclusive process when supporting school reorganisations. It is only through such a good faith approach that schools will be inclined to reciprocate, and participate voluntarily. A school is also likely to have an increased level of buy-in to an outcome it has contributed to, as opposed to one it feels has been imposed on it.

The Ministry has produced an extensive response to issues raised around school network reorganisation, particularly in the Canterbury context. It is reproduced in total in the full report, but the pertinent part for the purposes of this summary is the proposed new six-stage process, entitled *Building Effective Schooling Networks*.¹⁰

¹⁰ Encapsulated in a draft flowchart dated July 2013.

Stage in process	Details
Trigger for change identified	Community initiates a schooling network change or Ministry identifies an issue through ongoing monitoring or sudden circumstances
Community's education fact file created	Ministry creates a fact file about education in the community based on all available information (including money) in order to guide the community to assess the past and inform the future through innovation and engagement
Community engagement with Ministry	Ministry presents the fact file to the community Discussions between community and Ministry facilitated by independent facilitator Formation of an education steering group for the community Steering group creates a community education profile Steering group works with Ministry and community to come up with ideas, options or possible outcomes that the Ministry can take to the Minister Report to the Minister to formally consult with the community on options
Consultations and Minister's decisions	Formal consultations undertaken by Ministry, assisted by steering group Consultation reports provided to the Minister for preliminary and final decisions Statutory timeframes followed for this process
Implementation	Appointment of establishment board of trustees and staff ERO readiness review undertaken Boards hold elections Schools built or school property modified
Evaluation/lessons learnt	Evaluate schooling network change and processes and incorporate lessons learnt into this guideline and other strategic documents that underpin schooling network changes

The present position

The outcomes in Greater Christchurch following the reorganisation, in terms of education provision, are viewed by a number of educators in the new schooling environment as positive. However, this is established primarily through anecdotal evidence, with limited empirical data available at present. In addition, the issue at hand in this investigation is the process that was undertaken, which clearly lingers as a 'bad taste' in the mouths of the affected schools, quite apart from any benefits obtained as a result of the Canterbury Education Renewal Recovery Programme.

While the Ministry has outlined plans to facilitate a more transparent and collaborative school closure process, the information available on the Ministry website does not, as yet, reflect these intentions.

The next opportunity for the Ministry to prove the effectiveness of its proposed new approach is already upon it — with consultation having begun in late 2016 on the future of schooling provision in North Porirua, due to roll growth pressures. The Ministry has publicly committed itself to a *'full and open'* consultation process, stating that it will invite parents, teachers and the community to provide input.

Recommendations

The ultimate purpose of this investigation is not to find fault with past processes. Rather, it is to analyse what has gone before, in order to make recommendations that will have a real positive impact on the present and the future.

Therefore, the focus of my recommendations is on plotting a path for improvement, while drawing lessons from the past and specifically acknowledging the damage to communities in Canterbury that poor process caused. The purpose is not to dwell on the past, but in order to move on, past harm must at least be properly acknowledged.

The second of my recommendations is explicitly future focused, and it looks to joint action to build a solid foundation for school reorganisation processes to come.

I recommend that:

- a. The Ministry publish a written apology in the Christchurch Press addressed to the 38 schools subject to closure or merger proposals on 13 September 2012. This should include an apology for the lack transparency concerning the process of school reorganisation and the manner of the announcements.
- b. The Ministry agree to convene a working group that liaises with education sector leaders to prepare external and internal guidelines for the process of closing and merging individual schools and groups of schools which incorporate the principles of good consultation as outlined in this report.
- c. The Ministry report back to this Office on the implementation of:
 - i. Recommendation (a) within a month.
 - i. Recommendation (b) within two months, and at subsequent times as necessary to be determined by the Ombudsmen.



Full Report Disclosure

Introduction

General commentary

The Canterbury earthquakes of 2010 and 2011 caused death, destruction and displacement on a scale not seen in New Zealand since the Napier earthquake of 1931, and sternly tested many parts of the public sector infrastructure. In the case of the education system, the February 2011 earthquake caused widespread damage to school property, forcing all schools to close for several weeks in the immediate aftermath. In the ensuing months and years, what was exposed was a much deeper flaw in the systems the Ministry of Education had developed for reorganising parts of the network through closures and mergers under the *Tomorrow's Schools* model. This flaw centred on the processes for engaging with and consulting school communities on possible closure and mergers. The lack of strong structures for engaging effectively with schools resulted in a sequence of events that shattered the trust between Canterbury schools and the Ministry of Education at a time when it was most needed.

Over a number of years, Ombudsmen have reviewed issues arising from school closure and merger processes, particularly complaints from school representatives that they have not been provided with adequate information during consultation. A review of this history, alongside the concerns that were being expressed in the Canterbury context, caused the then Chief Ombudsman to suspect that there may be a systemic problem with this aspect of Ministry practice. Therefore, in early 2013, my predecessor decided to commence this very wide-ranging investigation into the way the Ministry has managed consultation processes for school closures and mergers since the passing of the Education Act 1989 heralded the dawn of *Tomorrow's Schools*. This has been an immensely complex undertaking, but it has yielded insights, conclusions and recommendations that I am sure will be of enduring value in the Ministry's drive to strengthen its practices in this critical area.

In the 28 years since the passing of the Education Act 1989, there has been a succession of government initiatives aimed at facilitating school closures and mergers where they will improve the effectiveness of the schooling network as a whole. These have fluctuated between processes that are strongly led and driven by central government, and ones where control over much of the process is ceded to the school communities themselves.

The lack of strong structures for engaging effectively with schools resulted in a sequence of events that shattered the trust between Canterbury schools and the Ministry of Education at a time when it was most needed.

Whatever government policy framework is in place, effective engagement with affected schools (the management of which is generally the responsibility of the Ministry) is essential. Unfortunately, the Ministry has not progressively developed a coherent framework for engagement that adapts appropriately to the overarching government policy, draws on lessons from the past and is reliably improved. Rather, its processes and structures have developed haphazardly and, as such, have been over-reliant on the levels of engagement inherent in whatever happens to be the prevailing government policy. As policy has changed, so has the quality of engagement, without much discernible rhyme or reason.

In the lead-up to the Canterbury earthquakes, the policy framework for closures and mergers was particularly ill defined, as were the associated mechanisms for engagement with affected communities. This meant that when the earthquakes struck and forced an unplanned review of education in Canterbury, the Ministry was ill-equipped to manage a process that would effectively engage the disaster-affected schooling community. What followed was an exercise where schools were being consulted on preliminary conceptual issues at the same time that detailed proposals concerning individual schools were being developed in secret. It did not seem to occur to the Ministry that this would be perceived as a major breach of trust when full details were announced, seemingly out of nowhere, in September 2012.

What is needed, and what I now recommend, is for the Ministry to develop clear public guidelines on the circumstances under which school closures, mergers and reorganisations will be initiated; the criteria against which decisions will be made; and precisely what schools and communities may expect in terms of their involvement. These guidelines will change as government policy changes but, at all times, the policy and procedures should be clear, and Ministry practice should clearly reflect principles of good public engagement.

In this report, I have made strong criticisms of the manner in which the Ministry of Education managed the 'education renewal' in Canterbury on behalf of the Minister. In doing so, I am very conscious of the extraordinary complexity of the situation the Ministry faced, and I appreciate that many Ministry staff worked long hours in trying conditions to assist schools in the immediate aftermath of the main earthquakes, and in the longer-term recovery programme. However, I do not think that the Ministry staff were well served by the systems it then had in place for school reorganisation processes. In addition, the importance of engaging empathetically and effectively with disaster-affected communities, particularly when you are proposing closure of their school, is paramount, and any failure to achieve this must be highlighted to ensure against repetition.

I hope that my report helps ensure that an important lesson is learned from the Canterbury earthquake experience, and that this drives sustained improvement to the benefit of the entire education sector.

Peter Boshier
Chief Ombudsman

What is needed, and what I now recommend, is for the Ministry to develop clear public guidelines on the circumstances under which school closures, mergers and reorganisations will be initiated; the criteria against which decisions will be made; and precisely what schools and communities may expect in terms of their involvement. These guidelines will change as government policy changes but, at all times, the policy and procedures should be clear, and Ministry practice should clearly reflect principles of good public engagement.

The shape of the report

My report is divided into four parts.

1

Part One (History and principles) starts with a brief history of the schooling system of New Zealand, before discussing the inherent challenges of imposing change under the current model, and then outlining the legal and good practice requirements for community engagement when school closures or mergers are under consideration.

2

Part Two (Policy and practice: before the Canterbury reorganisation) reviews a succession of policies under which school reorganisations have been conducted in the period preceding the post-earthquake process in Canterbury.

3

Part Three (Policy and practice: the Canterbury reorganisation) takes a detailed look at the Canterbury reorganisation, distinguishing a public visible process from an essentially secret invisible process. It analyses the community engagement that did take place and the breakdown of coherence and communication that compromised the entire process.

4

Part Four (The way forward) contains my consolidated conclusions and recommendations, which are presented alongside an update of the Canterbury process, and an outline of changes that the Ministry has already made following its own review of its systems and approach.

Findings and recommendations

With respect to the period preceding the Canterbury earthquakes, I have formed only general conclusions rather than formal opinions in terms of the Ombudsmen Act 1975. My formal opinion relates solely to the Canterbury education renewal process, though the background of closure and merger processes back to 1989 has strongly informed the associated recommendations.

Recommendations

I recommend that:

- a. the Ministry publish a written apology in *The Press* addressed to the 38 schools subject to closure or merger proposals on 13 September 2012. This should include an apology for the lack of transparency concerning the process of school reorganisation and the manner of the announcements;
- b. the Ministry agree to convene a working group that liaises with education sector leaders to prepare external and internal guidelines for the process of closing and

- merging individual schools and groups of schools which incorporate the principles of good consultation as outlined in this report; and
- c. the Ministry report back to the Office of the Ombudsman on the implementation of:
 - i. recommendation (a) within a month; and
 - ii. recommendation (b) within two months, and at subsequent times as necessary, to be determined by the Ombudsmen.

Jurisdiction and parameters

- The Ombudsmen Act 1975 makes it the function of Ombudsmen to investigate the administrative conduct of agencies, such as the Ministry of Education, that affect any person or body of persons in their personal capacity. That function includes the power to investigate any recommendation made to a Minister.
- An Ombudsman has no authority to investigate the actions and decisions of Ministers, and this investigation was not concerned with any such action or decision.
- This investigation is into the consultation procedures followed by the Ministry when proposals for the closure or merger of schools are under consideration, and the purpose is to assess whether the process operates in a manner that adequately ensures fair and meaningful participation by affected parties. This includes how the information obtained and submissions made contribute to any decisions that are taken.
- An investigation may be made of an Ombudsman's own motion (rather than on the basis of a complaint), and that is the manner in which the former Chief Ombudsman, Dame Beverley Wakem, embarked on this investigation which I now complete with this report.

Terms of reference

Former Ombudsman, Dr David McGee, explained the rationale for commencing this investigation when he concluded a previous review of Ministry Official Information Act (OIA) practice.

School closures and mergers are decisions that have a major impact not just on the affected staff, pupils and parents, but on the whole communities in which the schools are based. Therefore, effective consultation is of utmost importance. I think that it is necessary to define what and when information should be released proactively to ensure that a proper, informed and fair consultation is held. Schools and parents should not have to ferret out information by making official information requests. They should be presented with the relevant information in a comprehensive and comprehensible form so that they can participate effectively in the consultation process.

This investigation is into the consultation procedures followed by the Ministry when proposals for the closure or merger of schools are under consideration, and the purpose is to assess whether the process operates in a manner that adequately ensures fair and meaningful participation by affected parties. This includes how the information obtained and submissions made contribute to any decisions that are taken.

In order to establish whether Ministry processes are adequate to ensure effective and sufficient consultation for school closures, it is my intention to undertake a general investigation into the policy and practice of the Ministry regarding such consultations.¹

The intention is that this investigation will contribute to an improved decision-making process for school closures and mergers. Part of this will involve identifying how, and how extensively, consultation should occur; what information should be made available to enable consultation to be meaningful; and how the information obtained and submissions made should contribute to any final determinations. The scope of my investigation is wider than simply assessing how much (and when) information should be proactively released to consulted parties. Against the broad context within which the consultation processes occur, it will also assess whether the processes have operated in a manner that adequately ensures fair and meaningful participation by affected parties and, if they have not, how they could be improved.

It is important to note that my investigation is not into the actions of the Minister of Education. My jurisdiction does not extend beyond the actions of the Ministry, and therefore the ultimate decision by the Minister to close or merge a school is not a matter that I can investigate. However, I am able to review the actions of the Ministry in undertaking a closure/merger process, including any advice provided to the Minister. The Ministry is responsible for the advice given to the Minister concerning the numerous closure/merger processes undertaken since the introduction of *Tomorrow's Schools*, including that of Canterbury.

A number of closure and merger processes over the years have been the subject of judicial review actions, but important questions still remain about the processes — such as whether lessons have been learned from the past, and whether school communities and the New Zealand public can have confidence that full and meaningful consultation will precede school closures and mergers in the future. Addressing these issues is the purpose of my investigation.

It is important to note that my investigation is not into the actions of the Minister of Education. My jurisdiction does not extend beyond the actions of the Ministry, and therefore the ultimate decision by the Minister to close or merge a school is not a matter that I can investigate.

¹ McGee, D. 'Investigation of Ministry of Education's management of OIA requests about proposed Christchurch school closures'. Office of the Ombudsman, December 2012: 17.

Background

Thursday, 13 September 2012

It was a crisp spring day in Lincoln, a small town 20 minutes' drive from Christchurch. Around 400 representatives from Canterbury schools had gathered at the local events centre to hear the Minister of Education brief them on the next steps for the 'renewal of education' in the region, almost 19 months after the devastation of the February 2011 earthquake.

By midday, the scene inside the convention centre provided a jarring contrast to the rural serenity of the setting. The principals and board chairs were shocked by the Minister's announcement that she proposed to close or merge 38 schools. No one had been forewarned. Representatives of the affected schools had been asked to arrive 45 minutes early to what they assumed was another routine discussion on ideas and aspirations for the future of school-level education in Canterbury. They had no means of knowing what was to ensue. On arrival, they were presented with a colour-coded information pack. Purple meant closure or merger. Orange meant significant change. Green meant no change.

How had things come to this? Via what path had the promise of the semi-autonomous, community-led *Tomorrow's Schools* arrived at a scene where the pervasive sense amongst disaster-affected schools was of re-victimisation by an out-of-touch Ministry?

This is the question that my predecessor as Chief Ombudsman, Dame Beverley Wakem set out to answer when she embarked on the investigation that I now complete with this report. The scope of the undertaking was always an ambitious one for an Ombudsman, and has demanded more time than I would prefer. However, I am confident that the value to be derived from this report will go some considerable way to showing that it was time well spent.

Via what path had the promise of the semi-autonomous, community-led *Tomorrow's Schools* arrived at a scene where the pervasive sense amongst disaster-affected schools was of re-victimisation by an out-of-touch Ministry?



Part One — History and principles

Evolution of the school system in New Zealand

1. The process of closing and merging schools over the last 25 years in New Zealand can only be fully understood in the context of the *Tomorrow's Schools* system of education introduced in 1989, which radically changed the way in which schools operated.

Before *Tomorrow's Schools*

2. Prior to *Tomorrow's Schools*, the structure of education in New Zealand was based on district governance with central regulation and funding. Following the abolition of the provinces, the Education Act 1877 established a system of education boards throughout New Zealand, which provided the link between primary schools and the Department of Education. The network of education boards made decisions about maintaining schools and hiring staff. School committees had responsibility for the management of schools, subject to the supervision of the boards. There were few secondary schools initially, and they remained outside the education board system. Under the Education Act 1914, secondary schools were controlled by a board of governors which dealt directly with the Department of Education. School inspectors became departmental employees rather than being employed by education boards. Intermediate schools were established from the 1920s, controlled by the education boards. There was a major growth in secondary

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school education after the First World War. The Education Act 1964 updated and expanded the Education Act 1914 and provided for technical institutes (controlled by a board of governors).

3. As the education system grew, the role of the Department of Education increased and three regional offices were established. The regional structure was initially established in response to the demands of secondary schools but was extended in 1970s across all areas of education. This meant that primary schools had an additional layer of administration that secondary schools did not have. By the 1980s, the Department of Education had 10 regional education boards, with responsibility for employing primary school staff and undertaking inspections. The system was highly centralised, with nearly all decisions concerning property, resourcing and staffing being made by the Department.
4. Schools had little autonomy and the Education Board or Department were closely involved in their day-to-day affairs. The school inspectorate played a significant role in maintaining the relationships and networks which existed between central government and individual schools. While schools enjoyed a degree of freedom over curriculum and teaching, the education system was seen by some as overly bureaucratic and slow to respond to the needs of school communities, particularly in the areas of property and resources for teaching. For example, it was necessary for school committees to obtain approval for expenditure through multiple layers of administration (education board, regional office, and national office). A further concern was that the performance of the sector needed to be lifted and the perception that schools needed to be accountable for their performance.

Tomorrow's Schools

5. The Education Act 1989 gave effect to the policy document '*Tomorrow's Schools: the Reform of Education Administration in New Zealand*' which introduced the self-management of schools through boards of trustees. *Tomorrow's Schools* was largely based on the recommendations of the May 1988 report of the Taskforce to Review Education Administration, entitled '*Administering for excellence – Effective administration in education*' (commonly known as the Picot Report, after the chairperson of the taskforce, Brian Picot). The Picot Report was commissioned by the Labour Government to make recommendations for the reform of the administration of schools. Rather than propose reform to the existing structures, the Picot Report recommended that the multi-layered administration of schools be replaced by elected boards of trustees, which would control most of the schools resources (including salaries and property maintenance), while operating within national guidelines set by the state. The Picot Report focused on administration and organisation, with the assumption that improvements in efficiency would naturally create better teaching and learning. There was

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also an emphasis on greater community involvement in education. The Picot Report stated:

Our investigations convinced us that the present administrative structure is over centralised and made overly complex by having too many decision-making points. Effective management practices are lacking and the information needed by people in all parts of the system to make choices is seldom available. The result is that almost everyone feels powerless to change the things they see need changing. To make progress, radical change is now required.²

6. The majority of the Picot Report recommendations were accepted by the Labour Government.
7. The policy framework for *Tomorrow's Schools* owed much to the New Zealand public service reforms, which were underpinned by contractual relationships and separation of functions typical of the free-market approach. The education system was seen as an important part of the public sector reforms. The changes of administration introduced by *Tomorrow's Schools* were designed to lead to improved learning opportunities through more immediate delivery of resources, more parental and community involvement and greater teacher responsibility.
8. The most obvious effect of the shift to *Tomorrow's Schools* was the devolution of the school system into around 2,600 self-managing schools (including 300 secondary schools) governed by elected boards of trustees (constituted as standalone Crown Entities) and managed by school principals. This gave parents a much more important role in school governance, including educational and financial matters. Schools would be accountable for meeting the objectives contained in their charters. Schools were required to operate within national curriculum guidelines. School principals now had three clear roles: chief executive (management role), teaching leader (professional role) and board member (governance role). The Picot Report proposal that community forums and a National Advocacy Council be established to promote community involvement in education did not come to fruition.³ This meant that it was incumbent on boards of trustees to provide the link between community and school, as well as undertaking their primary governance function. The separation of school operational funding from staffing remained intact although the Education Act 1989 made provision for the bulk funding of teachers' salaries.⁴

The changes of administration introduced by *Tomorrow's Schools* were designed to lead to improved learning opportunities through more immediate delivery of resources, more parental and community involvement and greater teacher responsibility.

² 'Administering for excellence – Effective administration in education: Report of the Taskforce to Review Education Administration'. Wellington, April 1988: xi.

³ Community Education Forums were provided for under s 157A of the Education Act but none have been convened. The Parent Advocacy Council was established under the 1989 Act but repealed by parliament in 1991.

⁴ A bulk funding trial was established in 1991 by Minister of Education Lockwood Smith, but the government did not make it mandatory. The end of bulk funding came in July 2000 with the election of Labour-led governments from 1999 to 2008.

9. The New Zealand education system has historically had a high proportion of small primary schools. In most other western education systems, the proportion of small schools has dropped more rapidly because of urbanisation and consolidation (merging schools to increase the age range of students). Although there was a policy of consolidation of rural schools in New Zealand from 1925 to 1950 (resulting in an overall reduction of schools from 2,600 to around 2,000),⁵ the number of rural schools in New Zealand remained fairly constant thereafter — until around 1990, when the possible rationalisation of the school network in New Zealand assumed greater prominence in education policy.⁶
10. By 1991, most of the major reforms were in place — schools had become self-managing with their own boards, charters and funding. The introduction of *Tomorrow's Schools* eliminated an entire layer of education administration. There was no regional or local educational authority as an intermediary between individual schools and the government, and schools were themselves responsible for almost all matters of day-to-day administration. The Department of Education was split into the policy-orientated Ministry of Education, the Education Review Office (ERO),⁷ the New Zealand Qualifications Authority (NZQA) and several other smaller agencies. The Picot Report recommendation of an overarching Council to coordinate policies from the central government education agencies was not adopted. The Ministry retained responsibility for strategic matters including funding and setting teacher salaries, property (major capital expenditure), curriculum and major policy initiatives. In essence, the Ministry was not mandated to intervene in individual schools unless serious issues arose. It is important to note that schools have never had autonomy over opening or closing, nor over the type of school they were. These are major fiscal decisions that have a wider impact beyond an individual school.
11. The changing demographic profile of New Zealand (resulting from factors such as families having fewer children and urbanisation) made some restructuring of the schooling network inevitable. The amount of funding a school receives is primarily driven by student numbers, and schools with falling rolls can struggle to balance the books. These schools find it difficult to appoint quality teaching staff and deliver quality education as an increasing proportion of school income is needed to maintain surplus buildings. As roll and staff size reduce, the range of curriculum options that can be offered decreases and the school becomes less attractive to parents. Therefore, roll decline can result in poorer quality learning and inefficiencies in the schooling network, and central government intervention may be required.

The changing demographic profile of New Zealand (resulting from factors such as families having fewer children and urbanisation) made some restructuring of the schooling network inevitable.

5 Parkyn, G. *The Consolidation of Rural Schools*. New Zealand Council for Educational Research, Series No.32, 1952.

6 Collins, G. 'Small New Zealand primary schools: current policy, its impact and some alternatives'. *New Zealand Annual Review of Education* 13 (2004): 63–78.

7 The ERO was initially known as the Review and Audit Agency.

12. The Ministry of Education's 1991 'Report of the economic and educational viability of small schools review'⁸ recommended that comprehensive guidelines be developed for the rationalisation of education provision, by the Ministry in conjunction with the New Zealand Trustees Association (NZSTA), teacher unions and community interests. The review team placed particular emphasis on the importance of involving communities in any rationalisation of the school network, stating:

The Review committee is unanimously of the opinion that communities should be involved in any decision making which will affect their schools. Such involvement must include the specific community of any school which is under direct consideration for change or assessment of its viability and the communities of any other schools likely to be affected by that change.

It can be argued that government is responsible for planning of school provision for the country as a whole, and that it is beyond the sphere of individuals or communities to carry this responsibility.

It is important to note, however, that the resource allocation tied up in schools is a significantly public resource which should be planned, in consultation with the community, to support the needs of all within the community.

Tomorrow's Schools endorsed and strengthened the notion of community involvement and partnership between a school and its community which already had a strong history in New Zealand. There is a clear expectation by parents in New Zealand that these two features, formalised and encouraged in recent administrative changes, will be recognised in any decisions, procedures or processes employed in relation to their school.

It is a common phenomenon for people to be threatened by change. Recent media reports have conveyed the extent to which communities have reacted to a perceived threat to their schools. The Review team have received two thousand responses from all parts of New Zealand, but particularly from rural communities which have schools with small numbers of pupils.

To minimise the threat of any changes to education in a region or district and to create a climate of co-operation in which changes are more likely to be accepted, the community or communities in which schools are located must be fully involved and consulted (in every sense of the word) as soon as possible after the region or district has been identified for possible school reorganisation.⁹

13. This led to the introduction of the Education Development Initiative (EDI) policy, to encourage groups of schools to amalgamate by releasing funding through the reorganisation process. The government subsequently adopted a more proactive approach to school reorganisations during the network review period from 2000 to 2004. This proved unpopular and there was a moratorium on school closures until around 2009, but no clear policy framework emerged after this date.

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⁸ 'Report of the economic and educational viability of small schools review'. Ministry of Education, Treasury, State Services Commission, 1991.

⁹ See fn 8, p. 45.

14. *Tomorrow's Schools* conceptualised parental choice as a lever for educational performance. The more popular schools which became oversubscribed were required to define a home zone with a ballot to fill out-of-zone places. This mostly occurred in larger towns and cities, where choices of school were available. If a school was undersubscribed, it had to take all students who wished to attend. The Education Amendment Act 1991 (enacted by the fourth National Government) abolished state school enrolment zones and the ballot process. In essence, schools could choose students on any criteria they liked without making their selection criteria public. This increased the level of choice for some students, but encouraged the growth of popular high-decile schools and the decline of less popular and often more low-decile schools.¹⁰
15. The *Tomorrow's Schools* system has been criticised as giving insufficient attention to supporting schools to achieve improved outcomes. It is said it did not fully take into account the need for schools to work collaboratively within a wider system. *Tomorrow's Schools* removed many of the interconnections which were regarded as integral to the previous school system, such as the school inspectorate and joint projects between the Ministry and teaching staff. There has been a marked variation in the capability of individual schools' boards and principals to deliver what is required nationally. Much of what happened at an individual school depended on the capabilities of its principal and the parents that comprised its elected board of trustees.
16. By the mid 1990s, the Ministry of Education recognised that school self-management was producing variable results. There were growing concerns about student achievement and a number of schools had required assistance from the Ministry. Self-management had meant that competition between schools had become more pronounced and collaboration between schools had reduced. The education system had become more hierarchical and little progress had been made in closing the gaps in educational achievement. These concerns led to a gradual rethink of the approach to education policy and the school system. The Ministry began to move beyond its core policy role by working more directly with a number of schools to improve educational outcomes (within the existing model of school self-management). For example, a more proactive system of monitoring school performance was developed, and literacy and numeracy strategies were implemented.
17. The return of a Labour Government in 1999 also saw the reintroduction of zoning. The Education Amendment Act 2000 created a new system for determining the roll of students for schools to avoid overcrowding. Oversubscribed schools operated enrolment zones with a geographically defined home zone, providing a right of entry for in-zone students to the

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¹⁰ A school's decile ranking is used to allocate around 15 percent of operational funding, with the highest amount of funding going to decile 1 schools. The decile ranking provides a socio-economic indicator based on census data.

‘reasonably convenient school’. Out-of-zone students gained entry under a priority or ballot system. Schools were required to consult with parents and the community over enrolment schemes, and obtain approval from the Ministry of Education.

18. There is an emerging consensus about the need for schools to be both supported by the Ministry and to work collaboratively. International research clearly shows the benefits of positioning individual schools within interconnected systems.¹¹ In her article, *‘Tomorrow’s Schools after 20 years: can a system of self-managing schools live up to its initial aims?’*, Chief Researcher at the New Zealand Council for Educational Research, Cathy Wylie, emphasised the importance of finding a way for schools to build capacity by working collaboratively within the existing structure. Ms Wylie stated:

The New Zealand experience illustrates the shortcomings of: taking school self-management too literally; not realising that local capability needs deliberate development from the start through such strategies as situating schools within a nexus of relationships with neighbouring schools, and in relationships of support and challenge within government agencies; and not paying heed to the need for system learning which ongoing working relationships between different actors in the system make possible.

...

Confident schools may create their own networks. But a strong education system needs everyone connected, respected and learning. As a country, we have yet to find ways to achieve this within the overarching self-managing schools model, and until we do, the aims of Tomorrow’s Schools policy will remain elusive.¹²

19. From around 2000, an increasing amount of support was provided to schools by the Ministry of Education. This included support for professional development, assessment and the development of the New Zealand curriculum.¹³ School improvement clusters were established to provide a forum for proximate groups of schools to discuss common issues, particularly in lower-decile areas. In 2002, the introduction of the National Certificate in Educational Achievement (NCEA) encouraged new approaches to teaching and learning and heralded a marked improvement in qualification rates. It provided a standards-based qualification which did not limit the number of students who could succeed.¹⁴ National standards — intended to enable all students to reach NCEA Level 2 and access a broad curriculum — were phased in from 2010. They provide reference points to describe achievements in the areas of reading, writing and mathematics under the New Zealand Curriculum.¹⁵

There is an emerging consensus about the need for schools to be both supported by the Ministry and to work collaboratively. International research clearly shows the benefits of positioning individual schools within interconnected systems.

11 As occurs in the Canadian school system.

12 Wylie, C. *‘Tomorrow’s Schools after 20 years: can a system of self-managing schools live up to its initial aims?’* *The New Zealand Annual Review of Education* 19 (2009): 6 & 24.

13 The review of the national curriculum had been placed on hold to allow for the introduction of *Tomorrow’s Schools*.

14 Some schools resisted the new national qualifications framework which gave equal status to vocational and academic subjects — leading to the Cambridge examinations being offered in some state-funded schools.

15 Further information about NCEA and national standards is available on the Ministry’s website.

Effecting change in the schooling network under *Tomorrow's Schools*

20. Schools are at the core of many communities in New Zealand. The introduction of *Tomorrow's Schools* in 1989 strengthened the ties between schools and communities by establishing the board of trustees system of administration. *Tomorrow's Schools* was a big shift from the Department of Education and Education Boards being responsible for schools, to the community having the primary governance role through an elected board of trustees. The sense of community ownership of schools grew very quickly.
21. The Ministry of Education's 1991 'Report of the economic and educational viability of small schools review'¹⁶ noted that schools were widely perceived as having a range of roles in the community, in addition to that of education provision. Schools were seen as performing vital social and integrative functions, especially in rural communities. Schools were often used for social, recreational and further educational purposes. There was some evidence that the removal of a school from a community had economic consequences (as schools are a source of employment and an important influence on property values). Schools also had an important symbolic function which was difficult to quantify. While the perception of schools as multi-functional was more often noted in relation to rural schools, there was no evidence to suggest it was any less true of urban schools. The reviewers received submissions from many small urban schools which attested to this. To this day, few would dispute that schools are an integral part of the social fabric of communities in New Zealand.
22. The self-managing *Tomorrow's Schools* model intensified the sense of identity and ownership that was already a feature of New Zealand's network of predominantly small schools. It also removed a number of avenues through which schools communicated and coordinated with each other and with central government. What it could not remove was the need for government to intervene in cases of ongoing instability or inefficiency in parts of the schooling system.
23. From the perspective of an individual school, instability can have internal or external causes. Internal causes include problems with management or governance, staffing issues and poor educational performance. External causes include inefficiencies within the local network of schools whereby the placement and type of schools no longer match the needs of the population they serve. When such instability can only be resolved by closing or merging schools, the Ministry must play a central part in this process. In the semi-autonomous era of *Tomorrow's Schools*, imposing change from central government on individual schools is particularly difficult. Therefore, great care must be taken to ensure that the process is as good as it can feasibly be.

The self-managing *Tomorrow's Schools* model intensified the sense of identity and ownership that was already a feature of New Zealand's network of predominantly small schools.

¹⁶ See fn 8.

Closure/merger process under *Tomorrow's Schools*

Minimum standards — what the law requires

24. The minimum requirements for school closure or merger are prescribed by legislation and clarified by judicial interpretation of that legislation. If the government fails to comply with these standards, then the closure or merger may be declared unlawful by the courts.

Legislation — Education Act 1989

25. The statutory requirements for the Minister to close a state school¹⁷ are set out in section 154 of the Education Act 1989. Sections 154 (1) and (2) provide:

154 Closure of schools

- (1) *Subject to section 157 of this Act...where, after consulting the Board of a state school, the Minister is satisfied that it should be closed, the Minister may, by written notice to the Board, ask the Board if it has any arguments in favour of the school's staying open.*
- (2) *The Minister may, after considering all arguments (if any) received from the Board within 28 days after it got notice under subsection (1) of this section, by notice in the Gazette specifying a day on which the school will close, close the school; and the school shall cease to be established on the day specified.*

26. An important point to note is that the Minister must consult on two separate occasions with the school's board of trustees: first, before forming any view that the school should close; and second, before confirming that view as a final determination. The Act prescribes no specific timeframe or process for the first consultation, whereas it requires that the board of trustees be given 28 days to respond to a formal notice from the Minister in respect of the second consultation.
27. Under section 157(3)(f) and (g) of the Education Act, the Minister shall not close or merge a school under the Act without first consulting the boards of all state schools whose rolls might, in the opinion of the Minister, be affected if the school closed. It follows that in the majority of cases, consultation by the Minister goes beyond the individual schools which are subject to the proposal.
28. The statutory requirements for a merger of two or more state schools¹⁸ are set out in 156A(1) of the Act, which states:

¹⁷ The closure of state integrated schools, special schools, designated character schools and kura kaupapa Māori is also considered under s 154 of the Education Act 1989 (subject to other relevant legislation). Private schools are in a different category — they may have their registration cancelled if they fail to meet the relevant criteria under s 35A of the Act.

¹⁸ Section 156A does not allow the Minister to merge state integrated schools. Section 156B sets out restrictions on the merger of kura kaupapa Māori and designated character schools, including that the schools have the same aims, purposes and objectives.

156A Minister may merge schools

- (1) *[Subject to sections 156B and 157, the Minister may, by notice in the Gazette, merge 1 or more State schools (merging schools) that are not integrated schools with another State school (the continuing school) that is not an integrated school, if the Minister is satisfied that—*
- (a) each board of a school concerned has made reasonable efforts to consult the parents of students (other than adult students) enrolled full-time at the school about the proposed merger; and*
 - (b) the consultation that has taken place has been adequate in all the circumstances; and*
 - (c) the creation of a single school by the proposed merger is appropriate in the circumstances.*

29. The combined effect of sections 154, 156A(1) and 157(3) is that, for closures, the Minister must consult with the board of trustees twice before finalising the decision. By contrast, for mergers, the Minister need only consult the board once, but must also be satisfied that the board, in turn, has properly consulted the students' parents.
30. Despite these distinctions, the process of closing/merging schools is similar in practice, and the 28-day final consultation period is generally provided for in both cases (if required).

Judicial interpretation — consultation defined

31. The legislation governing school closures and mergers clearly incorporates a requirement of consultation. The meaning of 'consultation' for legal purposes was considered in the leading case of *Wellington International Airport Ltd v Air New Zealand*.¹⁹ The process of consultation does not mean that the consulting body must reach agreement with those consulted. Rather, consultation is about providing affected parties with relevant information and with such further information as they have requested, embarking on the process of consultation with an open mind, and taking due notice of what was said (without being under an obligation to agree). The Court of Appeal stated:

The word 'consultation' did not require that there be agreement as to the charges nor did it necessarily involve negotiations towards an agreement, although this might occur particularly as the tendency in consultation was at least to seek consensus. It clearly required more than mere prior notification. If a party having the power to make a decision after consultation held meetings with the parties it was required to consult, provided those parties with relevant

¹⁹ *Wellington International Airport Ltd v Air New Zealand* [1993] 1 NZLR 671 (CA).

information and with such further information as they requested, entered the meetings with an open mind, took due notice of what was said and waited until they had had their say before making a decision: then the decision was properly described as having been made after consultation.²⁰

32. One of the grounds that the Parliamentary Regulations Review Committee relies on in deciding whether to draw the attention of the House to a regulation is that the regulation was not made in compliance with consultation procedures prescribed by statute.²¹ The Committee has adopted the common law definition of consultation as established in *Air New Zealand v Wellington International Airport*.²² The Committee has summarised the relevant considerations as follows.
- The essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice.
 - The effort made by those consulting should be genuine, not a formality; it should be a reality, not a charade.
 - Sufficient time should be allowed to enable the tendering of helpful advice and for that advice to be considered. The time need not be ample, but must be at least enough to enable the relevant purpose to be fulfilled.
 - It is implicit that the party consulted will be adequately informed to enable it to make an intelligent and useful response. The party obliged to consult, while quite entitled to have a working plan in mind, should listen, keep an open mind, and be willing to change and if necessary start the decision-making process afresh.
 - The parties may have quite different expectations about the extent of consultation.

Judicial review of school closures

33. In *Aorangi School Board of Trustees v Ministry of Education*,²³ the High Court dismissed an application for judicial review from Aorangi School in Christchurch (after the Minister gave notice she was closing the school in November 2009). The Court noted that consultation is not a negotiation; it does not require ultimate agreement, nor does it necessarily require or involve an ongoing dialogue over a protracted period. Justice French stated:

The essential ingredient is open-minded communication. The decision maker must genuinely provide a meaningful opportunity to those who are given the right to be heard to identify and advocate their arguments in support of

The Court noted that consultation is not a negotiation; it does not require ultimate agreement, nor does it necessarily require or involve an ongoing dialogue over a protracted period.

²⁰ *Wellington International Airport Ltd v Air New Zealand* (see fn 19) at 672.

²¹ The role of the Regulations Review Committee is to scrutinise all regulations to ensure that they are consistent with the principles of Standing Order 319(2), which includes that regulations are made in compliance with consultation procedures prescribed by statute.

²² *Air New Zealand v Wellington International Airport*, 6 January 1992, McGechan J, High Court Wellington, CP 403/91.

²³ *Aorangi School Board of Trustees v Ministry of Education* [2010] NZAR 132 (HC).

*the proposal. The consultees must be sufficiently informed as to the material facts and issues so as to be able to make an intelligent and useful response, in fulfilment of the statutory right given to them. The extent and nature of the consultation should be proportionate to the significance of the proposal.*²⁴

34. The High Court in *Heke v Attorney-General*²⁵ provided the following comment about the purpose of section 154 of the Education Act 1989 (in the context of the proposed closure of Awarua State Primary School gazetted on 27 January 1995).

*It is quite plain to my mind that the statutory purpose of consultation is two-fold ... The board of a school which might be seriously affected is accorded the opportunity of making known to the Minister all such matters, whether for or against closure but plainly related to the interests of the school and its children, as may properly be made. Second, and no less importantly, I think the Act envisages that the Minister charged with such an important responsibility, in terms of our social and cultural standards, of closing down a school should have the benefit of all relevant advice which ought reasonably be placed before him. Thus the scheme is for fairness to be accorded to a school board and for relevant information to be placed before a Minister for the Minister's benefit. The quality of the executive decision is as much in mind as issues of fairness to school boards.*²⁶

35. More specifically, Justice French in *Aorangi*²⁷ noted that section 154 of the Act sets out a four-step process, as follows.

- The Minister must consult that school about the possibility of closure.
- Having consulted, the Minister must decide if she is satisfied that the school should close.
- The Minister may provide 28 days' notice for the school to provide arguments against closure.
- The Minister must consider all arguments received.

36. In *Board of Trustees of Phillipstown School v Minister of Education*,²⁸ Justice Fogarty noted the connection between consultation and common law principle of natural justice. Justice Fogarty stated:

The core concept is that for consultation to be an effective and fair process it is necessary for the consultees to be adequately informed, so that the responses they make will be relevant to the considerations of the decision-makers. Advice as to these considerations, or criteria, can only come from the decision-makers, who must, for that reason explain them clearly. Or, if the situation is that they have not decided on their criteria, to explain that.

²⁴ *Aorangi School Board of Trustees v Ministry of Education* (see fn 23) at 132.

²⁵ *Heke v Attorney-General*, 8 February 1995, Anderson J, High Court Whangarei, M9/95.

²⁶ *Heke v Attorney-General* (see fn 25) at 3.

²⁷ *Aorangi School Board of Trustees v Ministry of Education* (see fn 23).

²⁸ *Board of Trustees of Phillipstown School v Minister of Education*, 9 October 2013, Fogarty J, High Court Christchurch, CIV 2013-409-1266 at [55].

This concept of knowing the relevant considerations is linked to and drawn from the ancient concept of natural justice, which is that you are entitled to know the case against you.²⁹

37. The High Court in *Aorangi* made it clear that there were limits on the requirements of providing relevant information in the context of consultation. Justice French stated:

The second and more fundamental reason why I do not accept the Board's submission on this issue is that in my view it takes consultation too far. While consultation undoubtedly requires the provision of relevant information, it does not require chapter and verse. Consultation is not litigation, nor is it a process akin to that of discovery (R v North and East Devon Health Authority, ex parte Coughlan [2001] QB 213 (CA)):

[112] ... It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.³⁰

Beyond the minimum — good practice requirements

38. When an Ombudsman reviews actions of a government agency, the Ombudsman is not simply looking at whether they have complied with the law, but whether they met an adequate standard of administrative practice. There are many instances where an agency has complied with the law but has still acted in an administratively unsound manner. Therefore, it is necessary to establish the standards of sound administrative practice in respect of school closures and mergers.
39. For any major decision, the following characteristics are essential.
- Clear decision-making criteria
 - A clear and transparent process where those criteria are applied to the situation at hand
 - Effective engagement
 - A clear and well-reasoned decision
 - Good support for those who have to implement the decision.

Two of these factors deserve particular attention: **clear decision-making criteria** and **effective engagement**.

When an Ombudsman reviews actions of a government agency, the Ombudsman is not simply looking at whether they have complied with the law, but whether they met an adequate standard of administrative practice.

²⁹ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28) at [55].

³⁰ *Aorangi School Board of Trustees v Ministry of Education* (see fn 23) at [60].

Clear decision-making criteria

40. The need for clear decision-making criteria is critical but easily overlooked.
41. In the case of school closures and mergers, single school closures require a set of criteria to determine the ongoing viability of the individual school. Such criteria may be relatively straightforward and remain stable over time.
42. Often, however, the government's concern will not simply be the viability of an individual school, but whether the network of schools in a particular area is suitable for the population of the same area. It may be that each school in the network under consideration is perfectly viable in its own right, but it is considered that the grouping of schools as a whole could be made much more efficient (for example, by having fewer larger schools, or by moving schools to match the current and projected demographics of an area). The variables factoring into any judgement of this nature are much more numerous and complex than assessing the viability of an individual school. To ensure that decisions of this nature are made in a consistent and robust manner, they need to be made within a comprehensive policy framework that determines:
- how and by whom a wide range of relevant factors will be assessed; and
 - the process by which a final decision is to be reached.
43. The policy framework that applies for reorganisations of groups of schools is likely to change over time, depending on the ideology and the educational priorities of the government of the day, and policy improvements may also be driven by lessons learned from experience. Regardless of the content of any particular policy, what is crucial for a group process is that a clear policy and associated decision-making criteria exist and are applied.

Effective engagement

44. The requirement of effective engagement is of particular note, and it can only exist in the environment of a good decision-making process generally. Therefore, a good overall process and effective engagement are dependent on each other and mutually reinforcing.

Principles of engagement and their application to school closures and mergers

45. Engagement in government decision making may be defined as *'the practice of actively bringing community or public voices into decisions that interest or affect them'*.³¹ There are three main types of engagement, depending on who is empowered to make the final decision. In consultation, the government retains the sole final decision-making role, whereas in negotiation, decision-making is shared with at least one other interested party. Finally, delegation

31 *'NZTA draft state highway public engagement guidelines'*, p. 5. <http://nzta.govt.nz/about-us/consultations/draft-state-highway-public-engagement-guidelines>

places the final decision in the hands of the public or a particular interested party. In this report, I will focus primarily on consultation, as this is the form of engagement that is generally employed by the government for deciding on school closures and mergers. As is detailed later in the report, the government occasionally goes beyond consultation to negotiation, or even delegation,³² in school reorganisation processes, but consultation remains the dominant form of engagement.³³

46. Consultation has a twofold purpose: making good decisions, and providing assurance to those affected that the decision-making process was fair and sound.
47. In relation to making good decisions, it is about ensuring that the decision-maker, to the greatest extent possible, fully understands all relevant issues concerning options under consideration, and has fully tested the rationale for a proposed decision before it is finalised. The parties that should be consulted include those who may have information that is both relevant to the issues being considered, and not already known to the decision-maker.
48. In terms of assurance, consultation is about ensuring that the people or organisations affected by the proposed decision can be confident that the decision-making process was fair and sound, and that their interests have been taken into account. In addition, by engaging with those who will be affected, it is more likely that, following the process, these people or groups will be motivated to help realise the benefits on which the decision is premised.
49. As I have noted, consultation is not negotiation, as it is only in the latter case that all negotiating parties must reach agreement to a proposal for it to be adopted. Nor is it to be confused with opinion polling (which is about determining the popularity of a proposal, rather than the arguments for and against it) or marketing (which involves drumming up support for a proposal rather than testing its merits through open-minded engagement).
50. Usually, consultees will include those whose interests are likely to be affected by a decision, along with those who have particular expert knowledge in the matters under consideration.
51. Consultation need not be exhaustive — it simply needs to be adequate to allow for a high degree of assurance that the resulting decision will be soundly based. Precisely how much assurance should be attained varies from case to case, and it principally depends on (a) the likely **impact** of the decision (how many people's interests will be affected and to what extent), and (b) the **urgency** of the situation (the extent to which people's interests

Consultation has a twofold purpose: making good decisions, and providing assurance to those affected that the decision-making process was fair and sound.

32 Technically the Minister always retains final decision-making power under the Education Act 1989 but, in processes that I have characterised as negotiations or delegations, the understanding was that the Minister would only sign off on a closure or merger that had the prior agreement of the school.

33 I am aware that, in the context of closure or merger processes, the Ministry of Education tends to reserve use of the term 'consultation' to the specific process stipulated by provisions of the Education Act 1989. I consider this an unduly narrow use of the term, and will refer to the particular consultation process required by the Education Act as 'statutory consultation'.

will be negatively affected until a decision is made and implemented, and the extent to which extending the process will compromise other contingent projects). In addition, the **complexity** of the issues under consideration will influence how much consultation will be required for any given degree of assurance to be attained. This is because extra complexity will demand that any analysis undergoes more testing with stakeholders, and that even the initial explanation of the issues is sufficiently comprehensive to enable consultees to understand them and provide informed feedback.

52. In terms of process, an effective consultation will generally include the following steps.
- Clearly explaining to consultees the nature of the issue and the analysis conducted so far (including any options or proposals, and the rationale for them) and providing the relevant background information
 - Giving consultees sufficient time to make properly considered and informed submissions
 - Considering submissions with an open mind
 - Clearly explaining the analysis of the submissions and the rationale for the resulting determination.
53. A thorough consultation will often include the extra step of issuing a provisional decision and undertaking a second round of consultation to test the soundness of the decision before it is finalised.
54. A fundamental requirement for any consultation is that it is, at all stages, a process of genuinely open-minded engagement. All too often, a fait accompli will undergo ‘consultation’ before it is formally adopted, but, regardless of how it is dressed up, a process that lacks open-minded engagement is not a real consultation.
55. A very useful outline of the features of consultation is included in a good practice guide published by the Department of Internal Affairs.

What consultation is (and isn’t)

The outcome of robust consultation is not necessarily consensus or agreement. Consultation is a process that permits and promotes the two-way flow of ideas and information. Effective consultation is based on principles of openness, transparency, integrity and mutual respect.

Consultation is a valuable check on a proposal — it can identify bugs or problems, and gauge the level of support for and understanding of a proposal. No one person has all the knowledge, so consultation is an opportunity to get feedback and ideas from a wide group of people.

Tapping into a range of knowledge, perspectives and experience can prove powerful in making a proposal work — and can impact both on the proposal itself and the way it is implemented. The benefits of wider participation allow

A fundamental requirement for any consultation is that it is, at all stages, a process of genuinely open-minded engagement.

important knowledge and understanding to be gained in the process. The consultation process may confirm the thinking behind the initial proposal, or identify new matters that hadn't been considered. It can also generate submissions expressing a variety of differing views or perspectives.

As a result, people may not see their particular perspective come through because a range of ideas taken together lead to change (or not). This means there is unlikely to be agreement on all matters.

Wide involvement and participation contribute to informed choices, but in any consultation process the responsibility for decisions remains with the decision-makers.

One of the key elements of effective consultation is that it should lead to a better understanding of each other's positions.

It is also vital that you report back to people on how their input has contributed to the final decisions. Otherwise, people are unlikely to see the value in contributing in the future and will make comments such as 'well, they'll do what they were going to do anyway' or 'the changes they make will only be minor ones'.

56. Sometimes, decision-makers or their advisors will resist engaging in appropriate levels of consultation, including situations in which they overestimate their grasp of all the relevant issues and prematurely believe that further engagement will unnecessarily create extra work and prolong the decision-making process. In such cases, a decision-maker may seek to give assurance to those affected and achieve 'buy-in' via post-decision marketing. This may be experienced as a 'steam-rolled' decision followed by an intensive charm offensive whereby the decision is 'socialised' with affected parties to gain retrospective endorsement, or at least to minimise opposition. Additionally or alternatively, consultation on **implementation** of the decision may be exaggerated, to imbue the preceding decision-making process with greater legitimacy.
57. On other occasions, consultation may become unnecessarily prolonged if a high level of engagement causes the decision-maker to inadvertently start treating the process more as a negotiation, whereby the main aim is to achieve a consensus decision rather than necessarily the best decision.
58. It is certainly the case that a balance needs to be achieved between speed and thoroughness. A comprehensive but overly slow process may harm the very interests it is designed to protect. Those people who know that a decision affecting them is pending will want the period of uncertainty over their future to be minimised. Therefore, it is legitimate for a decision-maker to consider the affected community's need for 'certainty' in determining the period of consultation. However, it is crucially important to recognise that the need for 'certainty' is not just about knowing the final decision, but also about understanding and appreciating the rationale for it. If an affected community has a decision imposed on them which they consider has

It is certainly the case that a balance needs to be achieved between speed and thoroughness. A comprehensive but overly slow process may harm the very interests it is designed to protect.

adversely affected them, and they cannot understand why the decision was made (or are forced into questioning the decision-maker's motivations), then an ongoing sense of grievance and unfairness will overwhelm the benefits that any 'certainty' achieved by a quick decision will achieve.

59. Applying these principles to the closure of schools under the Tomorrow's Schools model, it is clear that closure and merger decisions have a profound **impact** on a school community. The **urgency** of the situation will usually be less pronounced (though the Ministry needs to be mindful of the risk that a long period of uncertainty about a school's future may cause it to 'bleed out' — in that its roll and staffing may go into a terminal decline). Therefore, one can expect that the consultation process for such initiatives will be significant. The **complexity** of the issues under consideration will vary greatly from case to case. In some instances, it will be obvious that a school cannot survive due to a combination of very clear factors (for example, low roll numbers, a series of negative ERO reports and lack of community support). In other instances, the viability indicators³⁴ may be far less obvious and a complex interplay of factors may bring the viability of a school into question even when individual indicators do not show cause for concern. Finally, when a group or network of schools is under consideration, rather than a single school, (such as in a network review), then the complexity of the situation is likely to be exponentially higher. As complexity rises, so should the level of consultation.
60. For the purposes of this investigation, I am reviewing the role not of the Minister as ultimate decision-maker, but of the Ministry — both in terms of how it has conducted engagement processes on behalf of the Minister, and in terms of advising and making recommendations to the Minister regarding any decision on closure or merger.

³⁴ See discussion of viability at paragraphs 62–63.



SCHOOL

Part Two — Policy and practice: before the Canterbury reorganisation

Single school processes

61. Individual schools have always been subject to closure or merger consideration once the government has lost confidence in their educational or economic viability. There is no clear definition to be found in legislation or Ministry policy about how the 'viability' of any school should be determined. However, as funding is based on student numbers, roll projections inevitably play an important part in the decision-making process. School viability is determined on a case-by-case basis, taking into account the particular situation of the school. Occasionally, closure may be recommended by the ERO or following a viability study by a Commissioner.
62. The following viability categories are listed in the appendix of the school closure desk file, (version 3, dated September 2012) to assist with determining the Ministry's view about the future of an individual school.

School viability is determined on a case-by-case basis, taking into account the particular situation of the school.

Table 1: School closure desk file viability categories

Network	<ul style="list-style-type: none"> • For primary schools <ul style="list-style-type: none"> - What is the pre-school population in the area? How many of these children are likely to attend the school? • For secondary schools <ul style="list-style-type: none"> - What are the rolls of the contributing schools? How many of these students are likely to attend the school? • For all schools whose future viability is being considered <ul style="list-style-type: none"> - Is there another school in the area (within reasonable travelling distance) that the students could attend? - Is there capacity within the accessible network of schools for the students?
Governance	<ul style="list-style-type: none"> • Does the school's parent/local community have the capacity and capability to provide governance for the school? • Would having a combined board of trustees with another school be an option for this school?
Finance	<ul style="list-style-type: none"> • Can the school operate effectively within the operations grant that its roll generates? Research shows that rolls of less than 10 may result in the board of a school struggling to meet its fixed costs. • Is there a history of reliance on significant community fundraising to support the school?
Property	<ul style="list-style-type: none"> • Is the property in a condition to provide for effective teaching and learning? • Is it viable to achieve this within the current resourcing? • Are there any contracts in the pipeline (already committed) for projects/maintenance at the school? • How much of the school's 5YA funding is spent? • Are there more unused rooms on site than those legitimately in use?
Staffing	<ul style="list-style-type: none"> • Is the school able to attract suitably qualified staff? • Is there a high turnover of staff at the school? • Is there a history of staffing issues (for example, complaints, personal grievances, court cases involving staff at the school and school issues, non-teaching staff being on the wrong pay rates, etc)?

Student engagement and achievement	<ul style="list-style-type: none"> • Is student behaviour effectively managed at the school? • Do the rates of student attendance compare positively with similar schools? • Do the rates of stand-downs, suspensions and exclusions compare positively with similar schools? • If the school has secondary students, is it accredited to provide NCEA? How does its achievement compare to other similar schools? • If it is a primary school, how does its national standards data compare to other similar schools? • If the school is a primary school, does the data gathered from Reading Recovery and other initiatives show that effective learning is taking place?
Community support	<ul style="list-style-type: none"> • Does the local community support the school (for example, parents enrolling their children there, being involved in the school events, etc)? • Do the local businesses support the school?
School leadership and management	<ul style="list-style-type: none"> • Is the school charter completed and submitted to the ministry? If so what does the analysis of variance show? • What have the financial trends of the school been in recent years (for example, is it operating deficits or surpluses, what is the level of debt, etc)? • Has the school needed significant interventions (LSM or Commissioners) in the past?
ERO report	<ul style="list-style-type: none"> • Does the most recent ERO review identify significant concerns at the school? • In the last ERO report, did the ERO indicate that it will return to the school in the next 12 or 24 months?
Other considerations	<ul style="list-style-type: none"> • Are there other issues at the school that should be taken into consideration?

63. The first eight of these ten categories comprise a useful overview of school viability factors (ERO reports are highly relevant, but they are assessments of educational viability factors, rather than a viability factor in their own right). 'Network' is a demographic assessment of whether a school's roll is holding up and whether the population in the area matches schooling provision as a whole.

Individual school closures and mergers case studies

64. The following case studies illustrate how the closure process has worked in a few selected examples. For each case, I have identified (in bold type) the viability categories from the table above that appear to have been relevant.

The closures of Waverley High School and Otepopo School

65. Waverley High School in South Taranaki had serious systemic issues impacting on the quality of education and student safety which arose in 2006. The factors impacting on the viability of the school included low student numbers (**network**), poor **student engagement and achievement, staffing**, poor **leadership and management**, and a low level of **community support**. There were also other accessible schooling options in the area (**network**). The presence of a Commissioner³⁵ meant the Ministry was able to commence consultation on the back of detailed information about the viability of the school. Technically, any request by a Commissioner to initiate closure could be categorised as a voluntary closure. However, the Ministry used the 'directed' or 'forced' closure process to ensure that the community had meaningful opportunity to comment.³⁶ My overall impression is that a genuine attempt was made to engage with the school community by the Waverley High School Commissioner and the Ministry, prior to and throughout the statutory consultation process. The closure process was triggered by multiple concerns affecting the viability of the school and had led to the appointment of the Commissioner. Nonetheless, there was a perception amongst some involved that the Commissioner was not sufficiently independent from the Ministry, and that the views of parents were not adequately represented. One group considered that the Commissioner had an agenda to close the school (which was rebutted by the Minister.)
66. Otepopo School was a relatively small, decile 7, state co-educational full primary school (Year 1–8) with low student numbers, in North Otago (around 20 kilometres south of Oamaru). Otepopo School closed in September 2010 after a long history of providing education in North Otago. During the closure process, although many local students received their education elsewhere, parents and staff prepared a submission declaring their 'unequivocal desire' for the school to remain open. While Otepopo School was treasured by its community, there were multiple factors which impacted on its viability (**network, governance and student achievement**) and other schooling options were accessible. Intermittent discussions about the future of the school had occurred for some years. The concerns about the future of the school gathered momentum in 2009 when a Commissioner was appointed after the Ministry recommended that the board of trustees be disestablished. The information-gathering exercise undertaken by the Commissioner when reporting on the viability of the school provided detailed insight into the issues faced by the school (which at that time had a roll of just 13). The Commissioner went to significant lengths to engage with the school community during the statutory consultation process.

My overall impression is that a genuine attempt was made to engage with the school community by the Waverley High School Commissioner and the Ministry, prior to and throughout the statutory consultation process.

35 A Commissioner is an independent statutory officer whose powers are derived from statute. The Commissioner has no greater power to control the school than the school board itself. The general aim of statutory intervention is to return schools to self-management.

36 The 2012 desk file confirms that the directed/forced closure process should always be used when a Commissioner is in place.

The Minister also undertook an additional round of consultation about the possibility of Otepopo School becoming a satellite school, which meant that all options were subject to consultation before the decision to close the school was finally made.

67. The presence of Commissioners at Waverley High School and Otepopo School meant that the Minister was able to commence consultation on the back of detailed knowledge about the schools. Both schools had serious systemic issues (hence the decision to replace the board of trustees with a Commissioner) which impacted on their viability. There was a good level of engagement with the school communities by the Commissioners before the closure decisions were finalised, which is particularly important in the absence of an operating board of trustees.
68. In circumstances where the viability issues affecting a school are particularly obvious, the task of consulting effectively should be relatively straightforward (that is, if the reasons for closure are compelling and clear, then explaining the case for closure and soliciting and analysing feedback can usually be achieved through an uncomplicated engagement process). However, closing any school is a decision of considerable magnitude, and it remains important that affected parties are closely involved with the process, adequately informed and provided with a meaningful opportunity to comment.

There was a good level of engagement with the school communities by the Commissioners before the closure decisions were finalised, which is particularly important in the absence of an operating board of trustees.

The closure of Aorangi School

69. Aorangi School was a small, lower-decile primary school located in Christchurch's Ilam electorate with a diverse student roll, including migrant and refugee families. As at 1 March 2008, its roll was 88 students. ERO reports were positive and a bilingual unit was established in 2008. In June 2007, funding had been approved for a \$2.6 million rebuild of the school, due to serious problems with moisture and rotting buildings. The rebuild of the school was subject to ongoing delays and was not underway when the moratorium on reorganisations expired. The key factor in the decision to close Aorangi, in January 2010, was that the expense of new buildings was not considered to be justified because the needs of the students could be met by nearby schools. (In other words, **property** was the only factor impacting on the viability of the school.)
70. Statutory consultation was commenced in June 2009, without any advance warning provided to the school of this unexpected change in direction. The decision to initiate consultation abruptly during rebuild negotiations alienated the school community. The Ministry had anticipated this, warning the Minister to expect a high level of school and community opposition. The board commenced judicial review proceedings concerning the Minister's decision which, amongst other matters, challenged the adequacy of the information provided to the school. Overall, Justice French determined that the Minister had done enough to discharge her statutory obligation to consult and dismissed the application for judicial review. However, it is important to bear in mind that the primary question before Justice French

was whether the statutory consultation process met the requirements of law, not whether the totality of engagement between the government and the school represented good administrative practice. By contrast, the focus of my investigation is the administrative support that the Ministry provides to the Minister during this broader process by running an integrated programme of engagement.

71. The decision to close Aorangi School in January 2010 demonstrated that the government was prepared to close schools in the face of virtually unanimous opposition from the local community. This signalled the beginning of a tougher approach to school closures in general, following the expiry of the moratorium the previous year. In examining this case, Claire Hills commented:

Aorangi was not a failing school. Although its March 1, 2009 roll returns show its roll was eighty-eight students it could be argued that it was a niche school. As well as meeting the needs of its mainstreamed students it was a school favoured by 'quirky gifted kids', refugee families, parents who wished their children to be educated in a bi-lingual unit, a magnet school for students with special needs and the only provider of bi-lingual education in north east Christchurch.³⁷

72. Aorangi was a well-regarded school, but the cost of repair was ultimately not considered by the Minister to be justified. The Ministry anticipated that opposition to the closure proposal would be strident, and its April 2009 Education Report recommended avoiding a protracted consultation process which might have a detrimental effect on student learning. There is nothing to suggest that the Ministry considered engaging in preliminary discussion with the board before statutory consultation was commenced. Aorangi School stated that it was '*shocked and surprised*' when it received notice of closure from the Minister, as it was then engaged in discussions with the Ministry about the rebuild project. The board was provided with one week to plan the consultation process (during the school holidays) and four weeks to respond (although subsequently obtained a two-week extension until 10 August 2009). While there was virtually no support for the proposed closure, the consultation process confirmed the Ministry's view that the students could be accommodated elsewhere. The proposal to close Aorangi depended on a single negative viability factor (**property**), which was open to interpretation and analysis, and needed to be carefully balanced against other contextual factors. In these circumstances, a richer engagement process was warranted than in the more straightforward case studies above. The Ministry undertook a separate consultation with the wider community (not required under the Education Act), but the lack of prior warning meant that there was no opportunity for any questions the school might have to be answered before the process commenced. In these circumstances, the appropriate course of action would have been to provide a comprehensive release of information to the school to ensure that the school was in a

The decision to close Aorangi School in January 2010 demonstrated that the government was prepared to close schools in the face of virtually unanimous opposition from the local community.

³⁷ Hills, C. 'Close or be closed: to what extent can school closures and mergers be negotiated?' PhD thesis prepared for Massey University, 2013: p 177.

position to respond. Regrettably, when consultation was commenced, the Ministry did not release to Aorangi School all the information that had informed the Minister's decision, such as the relevant Education Reports.³⁸ This meant that Aorangi was forced to make extensive use of the OIA to obtain relevant information.

73. The judicial decision concerning Aorangi School provides some guidance about what information should be proactively released to schools to support the consultation process. In her judgment of 21 December 2009,³⁹ Justice French stated that consultation requires that the school knows what is being proposed and is sufficiently informed so as to make an intelligent and useful response. The statutory scheme under section 154 of the Education Act was intended to provide fairness for the school board and to ensure that the Minister had the benefit of all relevant information. Justice French was sympathetic to the board's position that the Ministry should have proactively provided it with some of the information it eventually obtained under the OIA. She tempered her criticism on the basis that it was reasonable for the Ministry to assume a degree of significant prior knowledge by the school. She also acknowledged that Aorangi School did eventually obtain the relevant ministerial briefing papers (albeit through OIA requests). There was also a limit to the level of information the Ministry was obliged to disclose. Although the board had not been provided with the underlying working papers on which the cost calculations were based, the proposal to close the school had been sufficiently explained. While disclosure of the underlying information might have assisted the board's accountants with their appraisal of the Ministry's costings, sufficient information about the substantive issues was in the board's possession.
74. I note that Justice French expressed her '*personal sympathy*' with the view of Aorangi that the decision to effect its closure as soon as January 2010 amounted to '*indecent haste*'. Part of the concern of the school was that this allowed insufficient time to ensure continuity of bilingual provision in the local network of schools. Claire Hills stated:
- Anne Tolley has assured the Aorangi community that bilingual education was available at Burnside Primary School and Cobham Intermediate however Aorangi was closed before the transition arrangements had been finalised ... a separate classroom was not available at Burnside Primary School in 2010. The dedicated Te Reo unit had to function on the stage of the school hall.*⁴⁰
75. An internal Ministry email dated 26 January 2010 stated that the judicial review of Aorangi School was '*not a disaster for the Minister or the Ministry*', as Justice French found that consultation met the legal requirements, and

38 An Education Report in this context seeks the agreement of the Minister to commence the consultation process under the Education Act. It includes matters such as background information about the school, the reasons for considering closure/merger, actions taken so far by the Ministry, access to other schools and financial and property implications.

39 *Aorangi School Board of Trustees v Ministry of Education* (see fn 23).

40 Hills, C. (see fn 37): p 181.

it was important *'not to over-react'*. The writer thought that the indicated areas of improvement were best achieved by refinement to the current methodologies. The email also suggested that the calculations of costs and savings for all proposed mergers and closures should be done by national office to ensure a consistent approach. On 4 February 2010, the Ministry advised the Minister that, in response to the Aorangi case, it would work on implementing a process for the more proactive supply of information to boards of trustees. The Ministry would consider, where appropriate, the provision of Education Reports. It would also ensure consistency in the inclusion of educational outcomes in Education Reports, and review internal processes for gathering financial information about the costs of a school closure or merger.

76. I acknowledge that the Ministry wanted to avoid the consultation process becoming protracted and that additional time to respond was provided. However, it was regrettable that Aorangi School had to resort to the OIA to obtain information which should have been proactively released by the Ministry, due to the complexity of the issues. As articulated by former Ombudsman, Dr David McGee, Aorangi School should not have had to use the OIA to *'ferret out'* information that was directly relevant to the proposal. I consider that Education Reports should be released as a matter of course, in order to provide a degree of transparency to the decision-making process. The Education Reports provide crucial insight into the weighing of the relevant factors in each case. It is difficult to see how a school could fully understand the rationale for a proposal about its future based on complex factors by simply receiving a letter from the Minister explaining that consultation had commenced.
77. The decision to close Aorangi School was far more contentious than those concerning Waverley High School and Otepopo School. Only one viability factor (**property** – cost of repair) was a cause for concern, while most other factors were strongly in Aorangi's favour. In addition, Aorangi had previously received a firm commitment that the government would meet the cost of repair. In these circumstances, a much more comprehensive and layered consultation process was justified — allowing the issues in contention to be properly teased out and subjected to informed debate — than had the case for closure been more clear-cut.

As articulated by former Ombudsman, Dr David McGee, Aorangi School should not have had to use the OIA to *'ferret out'* information that was directly relevant to the proposal.

Multi-school processes — 'school reorganisations'

78. Multi-school closure or merger processes, or 'school reorganisations', take place when the government considers that the schooling network in a particular geographical area could be made significantly more efficient through a reshaping process. In school reorganisations, the focus of analysis naturally shifts from the individual school towards the comparative and contextual, factoring a thorough analysis of the circumstances of each individual school into a broader analysis. As already noted, the number of

relevant factors is exponentially larger for multi-school reorganisations than for single-school closures. As a result, the government needs to commit to a firm framework of policy and procedure (within which decision-making criteria exist), if such processes are to be coherent and manageable.

79. A number of frameworks across a wide spectrum of underlying policy have been used over the last 35 years. In the following pages, I endeavour to outline the main features of each successive framework and to briefly review the extent to which they enabled sound administrative practice in their overall design, and whether this was demonstrated in implementation, with particular focus on the consultation that occurred within each framework. One might expect that each framework would draw on lessons from the past and represent an improvement on its predecessors, so I will also look at the extent to which this has in fact occurred.
80. An important point to note is that some policy frameworks over the years have amounted to joint decision-making between the government and the affected schools through negotiation⁴¹ (in their design if not always in their realisation). This may be contrasted with government decision-making, where the schools are merely **consulted**.
81. As already discussed, consultation and negotiation are distinct, in that the former may lead to a decision imposed by the consulter on the consultee, whereas any decision in the latter is made jointly by all parties. A consultative process may incorporate elements of negotiation or delegation, in that parts of the decision-making **process** (rather than the decision itself) may be negotiated or delegated, or the **options for consideration** by a single decision-maker may be negotiated or delegated.
82. In the case of genuine negotiation, adequate engagement between the negotiating parties can usually be assumed on the basis that this will be a prerequisite to any agreement. It will then only be consultation with affected parties that are not included in the negotiation that will require detailed consideration. It is self-evident that delegation ensures that affected parties to whom the decision is delegated will be sufficiently engaged. In all other models, there is no built-in guarantee of adequate engagement with any affected party, so explicit provision must be made for it.

A number of frameworks across a wide spectrum of underlying policy have been used over the last 35 years.

Education Development Initiative ('EDI') policy (1991–1999)

83. The EDI policy was a government policy intended to encourage schools to amalgamate by releasing funding through the reorganisation process. It provided a community-led process to reorganise schools in a particular locality in order to improve the delivery of education. The Ministry invited communities (through their boards of trustees) to consider 'reshaping' the

⁴¹ As observed at fn 32, technically, the Minister always retains final decision-making power under the Education Act 1989 but, in processes that I have characterised as negotiations or delegations, the understanding was that the Minister would only sign off on a closure or merger that had the prior agreement of the school.

structure of schooling in their area. Dr Catherine Savage stated:

In November 1991 the guidelines known as the EDI were published in the Education Gazette. The 1991 guidelines were essentially voluntary, asking communities to offer themselves for the processes outlined. The Ministry anticipated that the financial incentives would encourage struggling schools to enter into reorganisation discussions with other local schools.

In the early stages of the EDI implementation the MoE undertook to identify clusters of schools that were perceived as possible candidates for EDI. The MoE considered such features as demographic trends and change, roll patterns, schools' surplus capacity and the structure and appropriateness of education provision in the cluster.⁴²

84. The Ministry's booklet entitled *Education Development Initiative, Policy Framework, Redesigning Education at the Community Level* provided a guide to schools. In the foreword, Education Secretary Dr Maris O'Rourke stated:

We all want to create better opportunities for our children and young people. The best way to do this is to encourage those most directly involved – the boards of trustees, parents, teachers, and principals – to work with the Ministry to consider the current use of educational resources.⁴³

85. Under EDI policy, the influence of the Ministry was comparatively minimal. The process was triggered in a variety of ways. The boards of trustees could approach the Ministry or vice versa. In any case, the EDI process was initiated with the agreement of the boards. If interest was confirmed after the initial approach, the Ministry provided information to the schools about the process and obtained a commitment to enter into an EDI. The Ministry and school boards exchanged information and held discussions in order to develop options for the future of schooling in the area. These options were discussed in the community, along with EDI incentives which brought additional resources to a merged school. The school boards were required to ensure that the proposals had the general support of the community. This resulted in a negotiated memorandum of agreement, which was presented to the Minister for consideration. The formulation of the memorandum of agreement involved:
- a. negotiation between the parties (with Ministry support and advice);
 - b. negotiation between the school parties and the Ministry; and
 - c. consultation within the Ministry regarding the content of the agreement.
86. The legislative requirements for consultation concerning the closure or merger of individual schools were integrated into the appropriate phase of

42 Savage, C. 'Amputation without anaesthetic: 2004 Network Review: school and community reorganisation'. PhD thesis prepared for Massey University, 2005: p 14.

43 *Education Development Initiative, Policy Framework, Redesigning Education at the Community Level*. Ministry of Education, 2000: p. 7.

the EDI process. For example, when the EDI was commenced, the Ministry’s Senior Manager of National Operations was required to notify school boards that closure or merger was being considered under the Education Act. Once the Minister approved the draft negotiated memorandum of understanding, schools involved in the EDI were allowed 28 days to provide any further submissions (even if the school had in fact decided to close). After the Minister approved the final recommendations, any closure or merger would be published in the *New Zealand Gazette*.

87. The EDI desk file set out the following six-step process.

Table 2: EDI process

Initiation	<p>Providing information about EDIs.</p> <p>If the school’s board of trustees wished to proceed further, in the case of larger EDIs, a working group/representative committee was established and a facilitator might be appointed. (Alternatively, the boards of trustees might continue to manage the process.)</p>
Gathering information	<p>Gathering and exchanging information to provide the basis for developing the options.</p> <p>The boards of trustees or working group identified the schools participating for the purposes of consultation. Comprehensive information was disseminated throughout the community about EDIs. A survey might be undertaken to identify community preferences.</p>
Developing and deciding options	<p>Discussing options — consulting with the community.</p> <p>Using the information received from the community, the boards of trustees or working group formulated the options. The proposed options were presented to the community.</p>
Negotiation and agreement	<p>Negotiating incentives — drawing up a memorandum of agreement.</p> <p>This involved a series of meeting between representatives of boards of trustees/the working group and Ministry officers. A final report may be part of a large EDI process with multiple recommendations for the Minister. The desk file stated:</p> <p><i>It is unlikely that 100% of the parent community will support a final option. There will be some opposition and this should be considered before a final decision is made. Working groups should consider strategies for those who oppose the final decision to come to grips with the recommendation and its likely approval by the Minister. Check the Education Act for consultation requirements associated with closure.</i></p>
Presenting the submission	<p>Submitting the agreement with recommendations to the Minister of Education.</p> <p>This is based on the memorandum of agreement and includes details of costs and savings.</p>
Implementation	<p>Actioning the change agreed to by the Minister.</p>

88. The Ministry's EDI desk file operated as a guide to Ministry staff actively involved in the process. The EDI process was intended to improve curriculum delivery by reshaping education provision according to the needs of a locality. The desk file stated:

EDI offers communities an opportunity to reorganise schools in order to improve learning and teaching. Reorganisation might involve changes in urban, suburban or rural areas, such as: the recapitation of primary schools; combining middle intermediates and high schools to create year 1–7 schools (form 1 to 7); middle schools of year 7–10 (form 1–4); or a twin campus junior/senior school. It may involve the amalgamation of two or more schools or a review of education in a wider area involving many schools.

EDI recognises changing demographic patterns both within the schools and in different parts of the country and economic importance of adjusting present position and resources to meet those changing needs more equitably.

Other changes may stand outside EDI policy. An individual school may apply to the Minister of Education for a change of class, school closure or the establishment of a kura kaupapa Maori. However, if more than one school is to be involved in a possible restructuring, the EDI process is appropriate.

89. A Ministry-funded booklet dated December 1992 stated:

SOME LESSONS FROM THE RESEARCH

EDI works best when the problem is clearly specified and a reasonable timeframe is available.

All groups affected by the projected change need to be kept fully informed as to the process.

Surprises are destructive.

Communities need to be reassured that a 'no change' decision is an acceptable option.

The community needs to feel 'in-charge'.

The 'best' solution is a 'compromise' where all parties perceive gains from their point of view.⁴⁴

90. The booklet also stated:

Decisions which need the commitment of the participants to implement need total participation. Whereas this is manageable with small groups it creates problems with larger populations. Voting does not solve this dilemma if those opposed to the majority decision continue to oppose the state's course of action. Indeed a lost vote can galvanise a minority group to more vigorous countermeasures.

...

44 Stewart, D. 'Is EDI for You?' Educational Research and Development Centre, Massey University, December 1992: p. 14.

The best decisions in education occur when all groups concerned believe that their interests and special requirements have been incorporated into the proposal. This suggests that we should look for a compromise, grounded in the relevant theory, which incorporates the beliefs and understandings of all the participants.

Decision making of this kind takes time, energy and commitment to effect. It needs to be facilitated by skilled people, knowledgeable about the decision making process, and concerned that all possible points of view are heard. Facilitators who have a prior commitment to a particular course of action or who have allegiance to a particular group should be avoided.⁴⁵

91. Another relevant Ministry publication, *EDI Policy Framework, Part A: Education Development Initiatives*, set out the options for restructuring for boards of trustees considering closure or merger, and explained the concept of ‘area review’ as follows.

An area review provides an opportunity for the community and the Ministry to look at the way schooling has been arranged in the past, and to reach a view of how the ‘cluster’ of schools might provide best quality education services for students into the future.

92. Most of the completed EDIs involved the amalgamation of schools, with the closure of a small school and consolidation on another site (such as Windsor and Enfield Schools in North Otago). There were larger-scale EDI processes in Whangarei, Kaikohe, Southland and Levin. The Ministry’s *Education Development Initiative* booklet provided the following description of the Southland EDI.

In September 1991, representatives from five rural Southland schools in the vicinity of Tokanui approached the Ministry of Education. They were interested in amalgamating the education resources in their district. The Southland Education Board had successfully amalgamated a number of schools nearby, prior to October, 1989. The new, amalgamated school had more resources and was able to provide better educational opportunities.

At an early stage, the school most distant from Tokanui, the proposed site, withdrew from the EDI. The four remaining schools proposed to merge. A substantial part of the resources they received from the Ministry had been spent on administrative costs, including phone, rates, maintenance, and administrative servicing.

The schools, which had rolls of 13, 15, 32, and 35 decided to amalgamate by the beginning of 1993. They wanted a school that would provide improved resources, and one where their children would be better off socially and educationally.

The Ministry spent approximately \$250,000 on developing the site at Tokanui. It provided additional classrooms, extended the administration area, and

45 Stewart, D. (see fn 44): p 9.

upgraded playing areas, as requested by the community. The new school also received a cash grant, and staffing above its entitlement for two years, to assist the transition. The school was able to establish reading and mathematics resource rooms. A further amount was made available to extend the bus routes.⁴⁶

93. A Ministry-commissioned report in 2001 entitled 'A review of the process involved in the "Marton Review"⁴⁷ identified that the make-up of the working group was a source of continued debate throughout the process, and that there was no specific community representation, beyond the chairpersons of the boards of trustees. There were no clear precedents or established guidelines for the working group to follow. The report suggested that, in future, the membership of working groups should be inclusive and agreed to by all parties. It was important that the role of the working group was clarified and timelines set to minimise disruption (but not compromise the quality of outcomes). The report noted that, in order to reduce disputes over the accuracy of data, the working group must be able to access quality information to enable issues to be fully addressed. It emphasised that the consultation process should be carefully managed by the working group, and agreement should be reached at the start of the process about how EDI policy was to be applied. The author stated:

The Marton Review was initiated in 1997 through an interest in recapitulation expressed by three local contributing primary schools. It was to be a review which would ensure that the future education needs of Marton would be planned on facts rather than guesswork and which would be able to be driven by the schools themselves, not be the Ministry or any group of bureaucrats. However, as the project developed, [timelines] expanded and the outcome became more confused and frustration grew.

The end result of a process which stretched over four years was that the three original primary schools were to be allowed to enrol [Year] 7-8 students from the beginning of 2001. Rationalisation of the educational delivery in the town was achieved by the closure of Rangitikei Intermediate School with the transfer of its Y7-8 technology programme to Rangitikei College. Savings of some \$659,000 were to be distributed among the four remaining schools to enhance the educational opportunities of students.

The final decision was one that surprised and disappointed many of the parties involved in the process in that it appeared to have been based on immediately social considerations rather than the longer term educational needs of the Marton community. However, it was a decision which minimised the potential for conflict within the community and established a period of educational stability in the town. The savings made available to schools will undoubtedly improve the educational outcomes for students.

⁴⁶ Education Development Initiative, *Policy Framework, Redesigning Education at the Community Level* (see fn 43): p. 36.

⁴⁷ 'A review of the process involved in the "Marton Review"'. Ministry of Education, 2001. The Marton Review was commenced in 1997 as a result of three primary schools in Marton expressing an interest in recapitulation.

Although deep divisions had opened up, skilful facilitation of the implementation of the desired changes brought co-operation and collaboration back into the process. All parties are to be commended for their professionalism, commitment and willingness to put aside individual considerations in the process of compromise which was integral to the development of a final agreement within a very short timeframe.⁴⁸

94. While the commitment to enter into an EDI was incentivised, it was essentially a voluntary undertaking. Schools were not obliged to enter into an EDI process if they preferred the status quo, regardless of problems with the local schooling network. Schools were also able to opt out of an EDI process at any stage. The agreements reached by the working group and the Ministry operated within the overarching framework of statutory consultation by the Minister. Therefore, it was necessary for the Minister to agree to any proposed changes before they were implemented.⁴⁹ However, in essence, the focus was firmly on negotiation.
95. Under EDI policy, school reorganisations were largely small scale, often involving two schools, one of which closed or merged with the other. Almost all were requested by the board on a voluntary basis. It was hoped that the financial incentives would provide sufficient motivation for schools to participate in an EDI. However, few schools or school districts voluntarily chose to enter into an EDI process. Some EDIs were abandoned because school communities were unable to reach agreement between themselves to enable EDI incentives to be negotiated. Around 100 EDI projects were completed during the decade of EDI policy, at an average of around 10 per year.⁵⁰
96. In his article, *‘Small New Zealand primary schools: current policy, its impact and some alternatives’*,⁵¹ Graham Collins noted that EDI policy was given a much lower profile following the election of November 1993, with a reduction in the government majority. He also considered that Tomorrow’s Schools had contributed to a *‘one school, one community mindset’* which was not conducive to school reorganisation through the agreement required under the EDI policy. He stated:

Schools in my study exhibited a strong tendency to act in their own interests, rather than in the interests of the local network. Stronger incentives than presently exist may be needed to change this conditioning.

...

In future, small school policy might need to target a new range of incentives to try to encourage more co-operative and collaborative activities between

48 See fn 47, p. 23.

49 As noted in fn 32 and fn 41, the Minister would technically have been entitled to continue consideration of the closure/merger for schools which withdrew from an EDI.

50 In 1999, New Zealand had 2,258 state primary schools. While 100 schools had closed, the number of composite schools (providing primary and secondary education) doubled to 80, which meant that the overall number of state schools had reduced by a total of 60.

51 Collins, G. (see fn 6).

schools. In particular, separate incentives might be needed for stronger schools (in market terms) to collaborate with weaker schools; and for weaker schools to seek more innovative responses to their current problems rather than just merger or closure. An enhanced SASC [School Administrative Support Cluster⁵²] programme might be an appropriate vehicle for such incentives to be delivered. Through the process of jointly managing co-operative projects that such a programme might encourage the sense of community in neighbouring schools and local districts in the future might naturally be expanded beyond just the community that serves one particular school.⁵³

97. EDI policy was consistent with the self-management ethos of *Tomorrow's Schools* in that local representatives would make proposals about the rationalisation and possible reorganisation of schools. The EDI policy was based on the belief that enabling schools to make choices and seeking compromise was the best way of maximising positive outcomes rather than having solutions imposed. The EDI policy acknowledged the benefits of empowering communities to make decisions about the educational needs of their children. There was an emphasis on exchanging information and developing the options for change in consultation with the community (undertaken by the working party or boards of trustees), followed by the negotiation of incentives by the working party or boards of trustees. This inevitably meant that compromise was an integral part of any particular EDI process, particularly when the changes were on a larger scale. The policy was designed to ensure that all parties involved achieved benefits in order to maximise buy-in for implementation. However, the relatively slow reduction of schools under the initial decade of EDI policy suggested that a different approach was required to address the oversupply of schools.
98. In essence, therefore, EDI was a process of negotiated agreement between the government and schools, where only those who were not party to the negotiation itself should have had any reason to feel excluded from any resulting decision.

The policy was designed to ensure that all parties involved achieved benefits in order to maximise buy-in for implementation. However, the relatively slow reduction of schools under the initial decade of EDI policy suggested that a different approach was required to address the oversupply of schools.

Network reviews (2001–2004)

99. While the EDI policy (in particular, its mechanism for redistributing funds following the disestablishment of one or more schools) remained 'on the books' for funding school closures and mergers, a new approach for larger-scale school reorganisations emerged from 2001 following the election of a Labour-led government. The term 'area review' (used for larger EDI processes) was changed to 'network review'.
100. The Minister of Education sought a more proactive approach to school reorganisation. The network review process was envisaged as a more efficient and decisive method of addressing the oversupply of schools

⁵² This policy aimed to encourage local schools to cooperate in clusters (local groups) to make school administration more efficient.

⁵³ Collins, G. (see fn 6): p 76.

caused by school-age population decline. The decision to undertake a network review was made by the Minister, rather than the local community. After several rounds of consultation, the Minister made final decisions to retain, merge, close or establish schools to create a new network of schools. Therefore, network review represented a decisive shift away from negotiated school reorganisations to government-imposed change. In terms of good administrative practice, this change imposed a weighty onus on the Ministry to ensure that it incorporated adequate engagement into the process.

101. While there was no longer provision for the negotiation of an agreement by the boards of trustees, the network review process retained the framework of EDI incentives. Every school that closed or merged generated cash grant funding and a revised property entitlement, as a result of savings that were realised. Savings made as a result of the review were reinvested back into the continuing schools in the network. The funding returned to a school was based on a formula according to roll size, and its use was negotiated with the Minister. Those schools that were part of a large reorganisation, or 'network review', might also receive Joint School Initiative Funding (JSIF) for future shared school education projects.
102. The 'Frequently Asked Questions' section of a Ministry of Education document entitled 'Background to Network Reviews', written for schools, stated:

The population changes that are happening mean that we need to act now to ensure that schools are in a position where they will be able to continue to operate and focus their resources on their children into the future.

...

The issues that lead to a review cannot be ignored so usually no change isn't an option. A review could mean fewer schools (through closures and/or mergers), more schools, new schools or different types of schools.

...

Schools have always opened and closed, in the past in an ad hoc manner, but now in a planned structured way with room for community input.

Wainuiomata network review

103. The network review process was initiated in 2001, when a review of the schools in the Wainuiomata Valley was carried out. The Wainuiomata network review operated as a precedent for network reviews in 17 other districts between 2003 and 2004.⁵⁴
104. In 1999, the Ministry had become concerned about schooling in Wainuiomata due to roll decline and duplication of facilities at secondary and intermediate level. The process was finalised in 2001. A Ministry report

⁵⁴ In 2002–2003, reviews were undertaken in seven districts: Dannevirke, Masterton, Opunake, Putaruru, Taieri-Mosgiel, Turangi and Waitaki. In 2003–2004, reviews were undertaken in eleven districts: Central Northland, Russell Peninsula, Matakaoa, Wairoa, Taihape and Okato–Coastal Schools, South Egmont, Upper Hutt–Stokes Valley, Grey Valley, Timaru and Invercargill.

reflecting on the process⁵⁵ stated that when officials met with local principals to present demographic information, it was agreed that the future would be characterised by ‘slow and inevitable’ decline with increasing unused facilities. A reference group was established with the Ministry to manage the review process. The report noted:

Fourteen state schools were involved in the review. Of these, two high schools merged into one, two intermediate schools merged, and six primary schools merged into three. Two primary schools, Fernlea and Arakura remained unchanged, although they received some benefits.

105. The Wainuiomata review process included the following broad steps.

- Seeding through preliminary discussion with officials and boards
- Inception of Review and appointment of facilitator
- Stakeholder consultation
- Community consultation
- 28-day consultation
- Implementation.

106. EDI funding was distributed amongst the reconfigured network of Wainuiomata Schools as follows.

Table 3: Wainuiomata schools EDI funding distribution

Wainuiomata High School	\$1,853,639
Wainuiomata Intermediate School	\$523,502
Sun Valley Primary School	\$313,125
Glendale Primary School	\$446,459
Wainuiomata Primary School	\$371,390

107. The ‘Learnings and recommendations’ of the Wainuiomata Area Review included the following.

- Preliminary discussion with principals and boards about demographic change and surplus property can produce positive results.
- The project would not have succeeded without funding of special issues, including teacher-only days.

55 ‘Wainuiomata Area Review’, Ministry of Education (Central South Regional Office).

- Placing a moratorium on staffing not dependent on March rolls relieved tension and speculation about the rolls for newly merged schools.
- Managing disagreement about the appropriate school sites would have been easier to manage and discuss if the ten-year property plans had been completed.⁵⁶ The earlier that costs and savings can be identified, the more that the focus can be on educational improvement.
- A group that represents the interests of stakeholders is needed to manage the process. It needs to be a workable size and wider than principals and boards of trustees. In the pre-decision phase of the review, most of the members represented their own school's points of view rather than the wider community perspective. The reference group should have clear terms of reference.

108. In July 2003, the ERO undertook a review of the Wainuiomata network review. The ERO concluded that while the financial objectives had been largely met and there had been development of the curriculum, the quality of educational provision had not been significantly progressed. It recommended a dual focus on economic and educational objectives throughout the network review process, with strategic planning being developed prior to, and alongside, any merger processes. The ERO stated:

The Network Review process as currently implemented is more successful in focusing on and achieving outcomes associated with the future economic sustainability of schools – the future educational quality, while identified as a key focus of Network Review policy objectives, is not given sufficient attention during the Network Review process – the likelihood of a Network Review achieving its educational objectives is therefore not assured.

Subsequent network review processes

109. A press release from Trevor Mallard dated 9 February 2004 stated:

The population changes that are happening mean that we need to act now to ensure that schools are in a position where they will be able to continue to operate and focus their resources on their children into the future. Across many parts of New Zealand the number of primary aged children is expected to decline (national population projections show a drop of 60,000 primary school-age students over the next 15 years). This impacts on the way education is provided and what resources are required and will flow through into the secondary sector.

...

There is no Ministry minimum or maximum school size. The Education Review Office has found that smaller schools in general are more fragile in terms of good governance and ability to keep good teachers and that they cannot provide the wider range of subjects and curriculum choice that large schools can. However the circumstances of each school as part of the whole

In July 2003, the ERO undertook a review of the Wainuiomata network review. The ERO concluded that while the financial objectives had been largely met and there had been development of the curriculum, the quality of educational provision had not been significantly progressed.

network and local conditions are taken into account throughout the review consultation process.

110. The Minister explained that a number of changes to network review policy had been introduced following the ERO report into the Wainuiomata network review, including undertaking a baseline stock-take before any review, the use of implementation facilitators to assist with the reorganisation, and developing new practice guidelines.
111. In 2004, the Ministry released a summary of the network review process in the booklet entitled *Building Sustainable Schooling Networks*. The booklet was designed to assist boards of trustees and school communities to understand the process of network review. The booklet stated that roll decline in many primary schools created a mismatch in some areas between supply and demand. The introduction to the booklet outlined:

A network review is a consultative process involving schools and the community. The process encourages parents, school staff and people in the community with an interest in schooling to work together on ways to ensure the future quality of education in the area. The key objective is to provide robust and viable high quality schooling for the present and future needs of students.

112. The key features of the network review strategy/process were described as follows.
- The Ministry identifies those areas where the school-age population had declined to the extent that the local network of schools could be better organised to meet the educational needs of the district. The Minister announces to school communities that the area would undertake a network review.
 - The Ministry appoints a facilitator, and a reference group⁵⁷ is formed to discuss the possible options for school reorganisation. The facilitator provides information to inform that process. The facilitator produces a stage one report to summarise the discussions. The Ministry develops the possible options for discussion with boards and their communities. The facilitator then produces a stage two report which forms the basis of the Ministry's submission to the Minister for reorganisation.
 - The Minister considers the options for change that were intended to ensure that the schools in a new network would be accessible to students, efficient and effective in their use of educational resources, and sustainable in delivering high-quality education.
 - The Minister commences the statutory consultation process by advising schools of the proposed changes.
 - Boards consult with their communities and the facilitator produces a

⁵⁷ The membership of the reference group was shaped by community needs and was likely to include school trustees and school principals. In larger reviews, by agreement, a person might represent more than one school.

stage three report. The Ministry produces a further submission for the Minister, who advises schools of the decision. For those schools facing closure, a further 28 days is available for boards to comment on the proposed reorganisation.

113. In the judgment of *Butler v Attorney General*,⁵⁸ the High Court dismissed a claim that the Minister had failed to undertake genuine consultation about his decision to close Kapuni Primary School in South Taranaki (an area which had experienced significant demographic change). The Court noted that the South Egmont Review Group included representatives from the affected schools, the NZEI and PPTA, the NZSTA, iwi and other community groups. The facilitator's report summarised the arguments in favour of all models advanced. The Court stated that while the Ministry did not support Kapuni's proposal that it remain open in its recommendation to the Minister, there was nothing to suggest that the Ministry (or Minister) ignored what Kapuni had said. The Court stated:

*I am satisfied that both the Ministry and Minister independently carried out genuine and meaningful consultation processes. Their rejection of Kapuni's proposal does not equate to a failure to consult, or in the broader sense of breach of natural justice.*⁵⁹

114. However, during interviews with my staff, Ministry officials acknowledged that although the amount of community involvement was often quite high in network review processes, schools generally didn't have much choice and were 'told what was going to happen'. One Ministry official commented that there wasn't any real discussion about the data – it was more about 'no change is not good enough — what are you going to do?' In addition, the steering groups were primarily made up of principals, and school communities 'probably didn't feel much ownership' of the process.
115. In her PhD thesis, Claire Hills provided the following commentary on the Masterton district network review.

*The 2003 network review process provided the illusion of consultation. It is pertinent to remember what was shaping the process. The InterLEAD consultants were government funded. By labelling the emerging community concerns as 'myths' and explaining them away it could be argued that the consultants were positioning themselves as 'right' in their reading of the situation, in which case the community did not really have any valid arguments against review. Certainly it is true to say that the original proposals changed, but if the community preferences cost money, they sank without a trace. The unspoken message was that despite the introduction of Tomorrow's Schools, and the consultation process, the power to make decisions clearly lay with the Ministry.*⁶⁰

116. Dr Catherine Savage observed in her doctoral thesis that the Ministry had been slowly increasing control over the decision-making process since the

58 *Butler v Attorney General*, 18 August 2004, Harrison J, High Court New Plymouth, CIV-2004-443-332.

59 *Butler v Attorney General* (see fn 58) at [43].

60 Hills, C. (see fn 37): p 163.

introduction of the EDI policy. Her research suggested that participants in the Ranford network review had a strong sense of powerlessness. In Dr Savage's view, the consultation process also encouraged tension and competitiveness between schools. She stated:

This research indicated that this Ministry-led reorganisation had a negative impact on the wellbeing of the community and the participation of the community in education. The stakeholders in this research felt that the Ministry did not take into account the unique needs of the community, instead making decisions in isolation that would impact the whole community . . . participants felt that their right to choose and participate in their child's education had been taken away.⁶¹

117. However, Dr Savage acknowledged that the network reviews were successful in reducing the number of schools. In her article, 'School reorganisation', she stated:

It is likely that a significant amount of educational funding had been spent on unnecessary oversupply of provision. Schools in areas of declining populations had been struggling to maintain rolls, attract teachers, principals and BoT members, and offer an enriching curriculum. It seems that teachers, parents and community members welcomed action at the initiation of the reviews and wanted a resolution to struggling schools and substandard education provision (Allen, 2004). This implies that communities often wanted action, but wanted initiatives which would strengthen education in rural areas. They also wanted acknowledgement that while small schools are relatively expensive to provide, they are no less valuable to the communities than larger ones (Collins, 2003; Savage, 2005).⁶²

118. There was considerable emphasis on engagement and collaboration in the *Building Sustainable Schooling Networks* booklet, which described the network review process. In theory, schools were provided with the opportunity to have input into the development of options for reorganisation through the mechanism of the reference group. Two reports informed the Ministry's submission to the Minister, before the statutory consultation process was commenced (at which point individual school boards consulted with their communities). However, some of the outputs from engagement with the reference groups appear to have been strongly influenced and mediated by the Ministry.
119. In his article 'Small New Zealand primary schools: current policy, its impact and some alternatives',⁶³ Graham Collins observed that there was a degree of confusion about whether 'negotiation' or 'consultation' underpinned the network review process. He noted that, in some documentation, the Ministry referred to a process of negotiation with boards and communities; elsewhere the process was described as one of consultation only, with the Ministry and Ministry having the final decision-making power.

61 Savage, C. (see fn 42): p 125.

62 Savage, C. 'School reorganisation'. In *Another Decade of New Zealand Education Policy; Where to now?* (eds) M Thrupp and R Irwin. Hamilton: Waikato Print, 2010: 57–65.

63 Collins, G. (see fn 6).

120. In practice, network review shifted the process of school reorganisation away from negotiation to a consultation-based model. The role of the Ministry (and Minister) during the network review period was significantly more prominent and powerful than during the EDI period. The decision to commence a network review was made by the Minister (on advice from the Ministry), and participation was not a voluntary matter. There was no specific provision for a period of information exchange with the community (stage two of the EDI process). The reference group was focused on developing options and was not specifically mandated to negotiate agreement about the shape of schooling.
121. The shift away from voluntary participation and negotiated agreement was a deliberate strategy to ensure that the oversupply of schools was addressed. There is, however, no reason why effective engagement cannot be achieved within this more directive framework. The onus is then on the Ministry to make explicit provision for appropriate engagement to ensure administrative good practice. I have seen no evidence of the Ministry making such provision during the network review period.
122. In the *Tomorrow's Schools* model, there has always been an expectation amongst schools that they would have a high level of involvement in decisions about their future. The upshot is that, under highly directive government policy frameworks such as network review, great care is needed by the Ministry to maintain adequate engagement with and between affected schools. Under network review, the mechanism of reference groups provided a forum for engagement between schools, prior to the statutory consultation period, but the adequacy of the overall programme of engagement has been the subject of much debate. In the *Butler* case,⁶⁴ it was noted by the Court that all models put forward by the affected schools were included in the facilitator's report from the reference group. However, the available information suggests that many of the affected parties felt alienated from the decision-making process, and there was widespread mistrust of the process. Network review encountered significant opposition and resistance, to the extent that it quickly became politically unpopular. There was widespread concern about whether local communities were given adequate opportunity to be involved in the process of reorganisation, and whether improved learning outcomes would eventuate.

The shift away from voluntary participation and negotiated agreement was a deliberate strategy to ensure that the oversupply of schools was addressed. There is, however, no reason why effective engagement cannot be achieved within this more directive framework.

The moratorium on network reviews (2004–2009)

123. On 23 February 2004, the Minister announced that as a result of listening to '*feedback about the rate of change*', there would be a five-year moratorium on school network reviews⁶⁵ unless recommended by the ERO due to concerns about the quality of education, or initiated by the community. In any community-initiated review, the savings would be returned to local

64 *Butler v Attorney General* (see fn 58).

65 For the avoidance of doubt, the moratorium on network reviews did not affect the ability of the Ministry to initiate the closure of an individual school where issues of viability arose.

education, as with the prevailing process. The moratorium would not affect the 11 districts nearing the end of network review processes at the time. The Minister stated that he wanted the education system to refocus on quality teaching and learning as the changes to the network and the system as a whole were bedded in (including the final year of implementing NCEA). The Minister also indicated that he wanted research to be undertaken on the outcomes of network reviews, *'to ensure that we remain on track to fulfil our goal of improving the quality of education for students through creating strong school networks'*.

124. Teachers' unions and professional bodies responded positively to the announcement. For example, the New Zealand School Trustees Association (NZSTA)⁶⁶ issued a media release stating that it was not philosophically opposed to school reviews, particularly where school rolls were falling, but that *'boards themselves should be empowered to initiate and take control of any review decision, rather than imposition from the government ... NZSTA is pleased to see that board empowerment is back on the agenda'*.⁶⁷ The NZSTA stated that one of the fundamental tenets of the community governance provided by Tomorrow's Schools was that the best decisions are taken as close as possible to the point of impact.

Evaluation of the network review strategy

125. The Minister asked for an independent analysis of the network review processes, which resulted in the 2007 report entitled *'Evaluation of the school network review strategy'*.⁶⁸ The report identified concern among respondents that the reorganisations had not been well managed. The report highlighted a lack of clear rationale and support from the Ministry. It identified as a major issue the failure of the Ministry to establish transparent and clear processes before commencing reorganisations under the network review strategy.
126. The report noted that participants believed that the reasons for change were primarily economic rather than educational. The network review process was not conducive to district-wide cooperation and set up an adversarial environment between schools and the Ministry. Within this system, change proposals were interpreted as plans in which the communities felt they had little say. While the Ministry had a clear vision as to its implementation of the government's strategy, this was neither understood nor accepted by the schools and communities, due to the way in which network reviews were carried out. They could not engage positively because they felt that their schools were under threat. While the Ministry used the term 'school network review', schools saw the processes as mechanisms for closing schools without a clear evidential basis for doing so. The report stated:

A fundamental problem with the SNR [School Network Review] strategy was

The report...identified as a major issue the failure of the Ministry to establish transparent and clear processes before commencing reorganisations under the network review strategy.

66 A membership-based organisation representing the interests of school boards of trustees.

67 NZSTA media release, 23 February 2004.

68 Conner L, Pearce D, MacGibbon L, Hickey S. *'Evaluation of the school network review strategy'*. Canterbury: University of Canterbury, 2006.

that schools saw the process as initiated by the MOE in a 'top down' approach that was imposed on them. This was difficult to reconcile or defend when schools are self-governing bodies and have a right to consider the needs of its community.

...

The Office of the Auditor-General (2006) identified the lack of a national plan with independent validated, up-to-date property information as an impediment to adequate planning at national and regional levels. The SNR strategy designed to rationalise the schooling provision within districts or networks of schools on economic and educational grounds rested heavily on the MOE conducting a thorough and high-quality evaluation of a range of factors such as demographic trends, property and network capacity. The Auditor-General's report casts doubt on whether such information is currently available to the highest standard.

127. The recommendations which arose from this review included that:

- *the Ministry continues to monitor the educational and economic outcomes of the 2003–2004 network review strategy;*
- *future reviews have a prominent focus on educational as well as economic goals;*
- *the number of concurrent district reviews of educational provision is limited in order to be manageable and well resourced;*
- *the criteria for initiating reviews of education provision are clear, applied with consistency and transparency, and informed by accurate evidence from a range of sources, including data on student achievement;*
- ***communities have a strong role in initiating (in partnership with the Ministry) and leading district reviews of educational provision, thereby developing a clear and compelling reason for change and vision of the future; [emphasis added] and***
- *[the Ministry] maintains a national register of school property with high-quality and up-to-date information.⁶⁹*

Community Initiated Education Planning (CIEP) (2006–2009)

128. The Ministry developed a new community-focused process for enabling school reorganisations during the moratorium. In December 2006, the Minister of Education agreed to the implementation of the Community Initiated Education Planning (CIEP) policy. This policy framework represented

⁶⁹ In 2012, the Ministry commissioned engineering company Beca Group Limited to review school property management, to provide a more efficient delivery of school property infrastructure. The Ministry has made comprehensive changes, including the establishment of an Education Infrastructure Service. There is also a programme and fund for schools requiring major development. There would be a facilities management programme for those schools that want it — for those boards which wish to step away from daily property management issues.

a distinct move away from strongly government-led reorganisation towards joint (negotiated) decision-making.

129. The Ministry's CIEP desk file explained the process, whereby the community was tasked with contributing to decisions about the future of education in the area, in partnership with the Ministry. As with the EDI policy, there was no obligation to enter into a CIEP process or to see the process through to a final outcome. If there was support in the community for a CIEP, an independent facilitator invited the community to form a working group to develop a strategic education plan for the network (which included a Ministry representative in an advisory capacity). The first stage of the process involved the working group developing a vision of desired educational outcomes and seeking community consensus on that vision. The second stage tasked the working group with developing options to implement the desired outcomes. If the community agreed, the desired outcomes/vision and options were then presented to the Minister. At all stages of the process, if agreement was not reached, the matter was referred back to the working group (including if the Minister disagreed with the reported outcomes).

130. The CIEP desk file stated:

Between 2002 and 2004, the Government undertook two rounds of wide scale network reviews in New Zealand. This programme came to an end on 23 February 2004 when the then Minister of Education, Hon Trevor Mallard, announced a moratorium on network reviews. However, the drivers for the network reviews, such as falling rolls and staffing retention, still exist in many communities throughout the country. Therefore, the Ministry has developed new processes for considering future education provision in communities.

The development of the new processes involved evaluating the two previous network review rounds and integrating these learnings with a desire to achieve a more community involved process. In September 2005, the then Minister reinforced the direction the Ministry was taking in developing processes to support community initiated reviews of education provision.

....

When the former Minister of Education, Hon Trevor Mallard, announced a moratorium on school network reviews, he stated that the only exceptions to this would be where two or more schools themselves asked to be reviewed, where schools applied for a change in structure and where adverse Education Review Office reports raise concerns about educational quality. This approach continues to apply. CIEP is a framework developed to enable communities to undertake: discussions about their future needs; development of a shared vision; and planning towards strengthening education.

131. The following general principles for consultation were set out in the CIEP desk file:

- *The educational needs of and possible benefits for students are paramount.*
- *The principles of Te Tiriti O Waitangi underpin interactions with Māori*

communities, schools and individuals. Appropriate consultation – in terms of timing, method and outcomes – is vital.

- *Schools and communities need time to think through the implications of demographic trends and impacts of these changes to their schools.*
- *The impact of the decision on other schools, communities and the wider network needs to be considered, as no school exists in isolation.*
- *The Ministry must ensure that all processes be fair, collaborative and transparent.*
- *The people being affected by the decision need to have the opportunity to influence the decision-maker in making a decision.*
- *The decision-maker needs to make the best possible decision based on all relevant information.*

132. CIEP processes were undertaken in Murupara,⁷⁰ Kaitaia,⁷¹ Bush District and Kaikoura.

133. The Kaikoura CIEP progressed to the stage of developing a strategic plan for schooling in the area. An independent evaluation of the Kaikoura CIEP process, dated December 2008,⁷² concluded that the CIEP process had potential as a collaborative approach to regional education provision, but required some modification for that to be realised. The report noted that the process facilitation role, the make-up of the working group and the Ministry's role were key components of the success of the CIEP model. In this case, there was considerable concern by respondents about the process for selecting the working group, and about the final strategic plan not being disclosed before it went to the Minister. The respondents felt that the final strategic plan was significantly influenced by the facilitators and the working group with the voice of the community being '*somewhat difficult to hear*'. The recommendations of the evaluation included the following.

- The working group needed to be representative of the community, and there should be a clear set of criteria for its appointment.
- Community involvement needs to be part of any CIEP process from the start.
- The Ministry needs to be transparent about the reason for any CIEP process.
- All stakeholders need to have a comprehensive understanding of the data and the process of analysis.

70 The Murupara CIEP resulted in the closure of Rangitahi College and Murupara Primary School and the establishment of Murupara Area School.

71 Following discussions with the working group in Kaitaia, the CIEP was not formally initiated.

72 Prepared for the Ministry by RMG Consultancy Ltd.

134. The 2008/2009 Bush District CIEP was abandoned in August 2009, after the working group resigned, following community consultation on reorganisation options. Claire Hills considered that although the new policy was based on *'the rhetoric of partnership'*, the underlying rationale for education restructure remained demographic/economic. She identified widespread dissatisfaction about the process of engagement and consultation undertaken by the Ministry. Ms Hills stated:

The Bush District Community Initiated Education Plan 2009 was a rural regional review. The outraged schools and their communities fought successfully both individually and collectively in a multi-faceted approach to protect their schools from the threat of closure . . . The term for the process clearly suggested that 'the plan' is developed or initiated by the community. When the Ministry refused requests from the community and the media to disclose the names of the people or organisations who had initiated the CIEP and how the Working Group had been appointed, the process became a contradiction in terms. This issue served to illustrate yet again that when school closures and mergers are concerned, the absence of clear and transparent consultation processes causes serious stakeholder resistance and aggravation.⁷³

135. More generally, the Ministry advised me that:

The difficulty with this process was in asking local community members to decide about the future of their schools. It was soon evident that this was too difficult for people living in the local community.⁷⁴

136. CIEP can be broadly distinguished from network review in that participation was voluntary (as with EDI policy), whereas network reviews were triggered by the Ministry identifying areas of population decline and schools could not opt out of the process. A difference between CIEP and EDI policy was that a closer relationship between the working group and community was envisaged in CIEP. The working group was tasked with designing a process which allowed the community to discuss future education provision, rather than negotiating an agreement for the Minister's consideration. In effect, developing the options was delegated to the community. As with network review, the CIEP process retained the framework of EDI incentives. The Ministry retained a role on the working group to provide advice and information as matters progressed, but not to drive or influence the process.
137. CIEP provided an educational change framework which allowed negotiated (and even elements of delegated) decision-making during the period when non-voluntary school closure and mergers were explicitly off the government agenda. Under the CIEP process, the working group was tasked with developing a vision and implementation plan, in collaboration with the community. CIEP was intended to allow communities to work with the Ministry to explore the wider educational issues of their particular community and to create a strategic plan in response to their needs. It

CIEP provided an educational change framework which allowed negotiated (and even elements of delegated) decision-making during the period when non-voluntary school closure and mergers were explicitly off the government agenda.

⁷³ Hills, C. (see fn 37): p 168.

⁷⁴ Written summary prepared for my investigation by the Ministry.

envisaged wide stakeholder representation including parents, whānau, students, iwi, rūnanga, teachers, early childhood educators, tertiary providers, local business people, school boards and principals, and local councils.

138. The CIEP policy placed the development of options in the hands of communities (although the examples above indicate a gap between the theory of CIEP and its implementation). In some respects, CIEP went beyond the recommendation of the *'Evaluation of the school network review strategy'*⁷⁵ (that communities have a strong role in initiating and leading district reviews, in partnership with the Ministry) by effectively providing communities with the primary role. While the Minister retained the ability to disagree with the vision and plan of the working group, progress depended on the agreement of the working group.

The movement towards the *Strengthening Education* approach

139. The five-year moratorium on non-voluntary school reorganisations expired in February 2009, though Ministry staff advised me that there was no bright line marking its end. The Ministry also emphasised that it was not at all a case of resuming the practice of network reviews, but it was not clear what, if any, government policy framework would replace it. The approach during this time was described to me by senior Ministry officials as *'evolving'*, and *'informed by the lessons of the past'*.
140. While the moratorium applied only to school reorganisations and not individual processes, it did have the flow-on effect of also reducing individual closures and mergers to a bare minimum. This effect is also apparent during other periods: the applicable policy for school reorganisations sets the tone across the board, so that an interventionist reorganisation policy generally translates into not just a busy reorganisation programme, but also to a relatively high number of 'Minister-initiated' individual school closures or mergers.
141. In 2011 and 2012, the Ministry initiated reorganisations in Kawerau (seven schools) and South Dunedin (five schools). In the written summary prepared for my investigation, the Ministry stated that the process used in reorganisations around this time *'reflected many aspects of the network review strategy in that it is strongly initiated and fronted by the Minister of Education'*. The Ministry used the Kawerau process as a trial to inform the development of a wider policy. An internal Ministry memo dated 9 June 2010, concerning the Kawerau reorganisation, stated:

It is not proposed that reviews of networks of schools as undertaken in 2002-2004 or CIEP processes be undertaken to deal with these situations. Both of these processes carry significant 'baggage' from earlier events. In particular, both processes were characterised by layers of consultation, not required by the

75 Conner L. et al (see fn 68).

Education Act 1989 (the Act), that often proved to be divisive and destructive of communities.

What is proposed is a more direct approach to rationalising and strengthening education by clusters of schools where education provision is a serious concern. It is proposed that strengthening of education provision by clusters of schools be based on mergers of schools followed by intensive educational development and support aimed at maximising the benefits of merging.

...

It is proposed that where appropriate, on a selective, considered basis, the Ministry make a case for reorganisation, and provide the Minister with a range of options for her consideration and to be used as the basis for consultation with the boards of trustees of the schools in the cluster. On the basis of the case made for strengthening education in a cluster of schools, the Minister's prior agreement to consultation being initiated will be sought.

142. This became known as the *Strengthening Education* approach (though the only specific references to *Strengthening Education* that I have seen occur in the context of internal papers concerning the Kawerau reorganisation).
143. The Ministry's Education Report dated 27 September 2010 concerning the Kawerau school reorganisation contrasted the CIEP and *Strengthening Education* processes in the following manner.

Table 4: CIEP vs Strengthening Education

CIEP	Strengthening Education
<ul style="list-style-type: none"> • Begins from an imbalance between education provision in place and need, which is reflected in applications from boards for changes to the schooling network 	<ul style="list-style-type: none"> • Begins by the Ministry identifying the need to strengthen education provision in schools through concentration of resourcing in a smaller number of schools that meet the education needs of students
<ul style="list-style-type: none"> • Developed by the CIEP Working Group • Implemented by the CIEP Working Group • Involves the Working Group undertaking consultation with the education providers and the wider community 	<ul style="list-style-type: none"> • Consultation on specific models for future education provision in the area • Involves the Ministry consulting with the boards of schools and boards consulting communities. The Ministry may support this with independent facilitators

144. The nascent policy represented another shift away from negotiated agreements for school reorganisation to government-led and -imposed change.
145. A key feature of *Strengthening Education* was that options for reorganisation were developed by the Ministry with the background of a period of engagement. The purpose of the preliminary engagement was primarily to 'seed' the reorganisation rather than develop options. It was primarily a Ministry-led approach that was intended to include comprehensive consultation with boards of trustees. Rather than developing options

through the ‘working group’ or ‘steering party’, the Ministry undertook several rounds of consultation directly with school boards with the aim of consolidating education provision into fewer and larger schools, to ensure that:

- the number of schools can be sustained in the future; and
- schools do not have to waste money maintaining property which is surplus to requirements.

146. Around the same time, the Ministry issued operational guidance to its staff, for individual processes, in the form of two desk files which were subject to annual review.⁷⁶ This was the first time the Ministry sought to clearly define the process of closing or merging individual schools. The Ministry had previously developed desk files for school reorganisations during the EDI and CIEP periods. The Ministry had also published material to explain the overall policy approach to stakeholders and the public. The new desk files standardised the policy to be followed for individual school closures and for two-school mergers. They provided instructions on the consultation process concerning the closure or merger of schools to operational staff in national, regional and local offices. The desk files provided guidance and various templates to ensure that staff satisfied the requirements of the Education Act 1989. The desk files did not refer to *Strengthening Education* or explain the approach to be taken to the more complex process of school reorganisations. They were intended to describe existing practice, rather than to introduce change. Nonetheless, the desk files were written in a manner which reflected the approach of the *Strengthening Education* policy and, as such, they provide important markers for the emerging strategy.
147. The focus of the desk files was on ‘consultation’ under the Education Act 1989, rather than negotiation or delegation. The guiding principles for consultation in the closure and merger desk files were identical to the CIEP desk file principles, with one key difference. The CIEP process was described as ‘*fair, collaborative and transparent*’, whereas the revised desk file principles were ‘*fair and transparent*’. The omission of the word ‘collaboration’ highlighted a key difference between the CIEP process and the emerging strategy, which was firmly focused on rationalising the number of schools in a more expeditious manner than had been possible under the CIEP policy.
148. The school closure desk file⁷⁷ stated that the Ministry determined the preferred option for the school, before discussion with the board was initiated. The desk files stipulated that the senior advisor would make contact with the board in all cases and arrange appropriate support ‘*many times*’ before the decision to initiate closure or merger was made. While the desk files instructed that statutory consultation should occur on a ‘*no-surprises*’ basis, the nature of the preliminary engagement was not tightly defined. For

⁷⁶ The merger desk file was first issued in February 2011, while the desk file on closure was released in March 2012.

⁷⁷ *School Closure Desk File, Version 3*, Ministry of Education, September 2012: paragraph 11.

example, the period of initial discussion between the board and Ministry was intended to establish whether the board supported a decision to enter into a closure or merger process. It was not clear to what extent schools were able to influence the Ministry's assessment of their future. I also note that the desk files did not provide guidance on the release of information to schools.

149. The desk files set out the general procedures to be followed in relation to the closure and merger of individual schools, but they did not elaborate on how larger-scale processes should be managed. In the *Strengthening Education* period, the precise formulation of any given consultation process for a school reorganisation varied according to the circumstances. There were no internal or external guidelines.

Case studies for school reorganisations (2009–2012)

150. In order to illustrate how school reorganisations were managed in the period between the end of the moratorium and the Christchurch reorganisation, I have set out some case studies below.

The merger of Miramar South School and Strathmore Community School

151. A standalone merger of two schools occupies uncertain territory in that it does not fit easily with either individual school closure processes, or with complex school reorganisations — though it shares characteristics of each. In my view, such mergers are best seen as small-scale reorganisations, and the procedure adopted should be consistent with this.
152. Miramar South School and Strathmore Community School were decile 2 primary schools near Wellington airport. Miramar South was a Year 1–8 school, and Strathmore a Year 1–6 school. Both schools had declining rolls and students from diverse cultural backgrounds.⁷⁸ The possibility of merging the two schools was raised in 2006 by Strathmore Community School and discussed with the Ministry, but it was not pursued at that time.
153. The impetus for the merger was the estimated cost of the required property upgrade at Miramar South School, as reported by the Ministry in June 2010. The consultation process was commenced in June 2011, after several months of sharing information and discussion. There were initial conversations with the schools over a period of time, and all the options discussed were included in the proposal. The schools were directly involved in discussions about the consultation process and there was a high level of engagement with the schools and their communities. The Ministry prepared a list of documents which it thought would be useful, and asked what else the schools might want.
154. The process of engagement enabled the timely provision of information to inform the consultation process. The early involvement of the facilitator (before

In the Strengthening Education period, the precise formulation of any given consultation process for a school reorganisation varied according to the circumstances. There were no internal or external guidelines.

⁷⁸ Strathmore's roll had fallen to around 40, following the recapitulation of Seatoun School and Miramar South School. The roll of Miramar South was around 95.

consultation was commenced) was also helpful. The schools were given 18 months until implementation, which provided sufficient time to develop a vision before the hiring of the principal. While Miramar South preferred to be the continuing school, both schools accepted their future as a merged school. I am satisfied that Miramar South was adequately informed about the proposal to merge and had the opportunity to put its arguments forward.

155. The merger of Miramar South School and Strathmore Community School in Wellington was regarded by those involved to be a highly successful consultation process. A senior Ministry official involved in the Miramar merger commented that the process was empowering for the communities, as they were able to take the strengths of both schools and build them into the newly merged school. A feature of this process was high levels of communication and information sharing between the Ministry and school communities. This meant that the schools were able to fully understand the benefits of the proposed merger.
156. Of the case studies discussed in my report, the merger of these two schools provides the best example of a successful consultation process. The high levels of transparency maximised buy-in and fairness, despite both schools wanting to be the continuing school.

A feature of this process was high levels of communication and information sharing between the Ministry and school communities. This meant that the schools were able to fully understand the benefits of the proposed merger.

Health Camp schools

157. Health Camps were established in the 1920s to provide a brief residential stay for the physical benefit of children with physical health needs, from poor families. It was intended that children's education would continue during their stay at Health Camp. The focus of Health Camp schools (governed by a board of trustees appointed under section 95(1) of the Education Act 1989) evolved in response to changing social conditions. Since around 2011, Health Camp schools have focused on children with social and behavioural needs rather than physical health needs. They provide short-term education to children, who reside in the Health Camp typically for 4 to 6 weeks.
158. Special schools (including Health Camp schools, residential schools and any correspondence School) are disestablished under section 98(2) of the Education Act 1964, and consultation is not required under this provision. There are only two reasons required for the closure of a special school: if the Minister is dissatisfied with the manner in which the school is being conducted, and/or if the Minister considers that sufficient provision is made by another similarly established special school *'in or reasonably near'* the same locality. (The Education Act 1964 also specifies three months' notice of closure if the board requires it.) Read in isolation, consultation is not required for the disestablishment of a special school. However, special schools are also subject to the Education Act 1989, and therefore the consultation requirements of section 154 apply. The table below summarises the consultation process undertaken by the Ministry in relation to the Health Camp schools.

Table 5: Timeline of Health Camp school review consultation process

December 2008	An independent review commissioned by the Ministry proposed restructuring the Health Camp schools in order to improve education delivery.
18 April 2011	After a number of delays, the statutory consultation process was commenced. The five Health Camp schools ⁷⁹ were given four weeks to respond.
30 June 2011	The Ministry provided its Education Report to the Minister.
July 2011	The Minister gave the schools 28 days to provide any further arguments why they should not close. The Minister also invited public submissions by notice in the <i>Education Gazette</i> and on the Ministry website.
September 2011	The Ministry provided a further Education Report.
November 2011	The Minister confirmed her decision that the schools should close and be restructured under a single provider.

159. None of the five Health Camp schools supported the proposed changes. Several of the schools expressed concern about the consultation process in their initial submissions. For example, Otaki Health Camp School stated that the process was ‘*appalling*’ and considered that more than four weeks was required to prepare a comprehensive response — particularly as the independent review had not previously been disclosed. The Otaki Health Camp School board stated:

It is nonsensical to suggest that from the point of first learning about the possibility of closures we could, with integrity, provide due diligence to providing you with an informed and reasoned response. The minimal timeframe you have provided us, due to legislative requirements, appears to be using us as pawns. It is difficult to avoid the suspicion that this process has a pre-ordained outcome.

...

Minister, for over two years you kept the review on your desk and didn't share it with Boards of Trustees. Within four weeks you expect the Board to digest the contents of the review, as well as provide you with feedback on the wisdom of moving to the governance structure of one contract and provided for all Health Camps and schools within the country - quite simply, why the rush?

79 Roxburgh Children’s Health Camp School (Central Otago), Glenelg Children’s Health Camp School (Christchurch), Otaki Children’s Health Camp School (Otaki), Pakuranga Children’s Health Camp School (Auckland) and Maunu Health Camp School (Whangarei).

160. The Otago Health Camp School submission included the following comment.

Since 2008, in Education, there have been a number of other reviews concluded, reported and implemented and many in various stages of the process...In these reviews consultation has been transparent and the review process more closely related in time to the original papers that initiated the reviews. In making this submission we believe our Health Camp School community is disadvantaged by the hasty response being asked of us which does not appear to reflect best practice in review processes.

161. Glenelg Health Camp School's (final) submission included the following comment about the consultation process.

We believe that the MOE has made a gross error by not providing [the 2008 Health Camp Review] until early May 2011...It appears that the proposal to close the school has been under some discussion for years. To us, it seems that we have been deliberately excluded from knowing about this proposal until the last minute. This is a major concern and does not follow natural justice.

162. The Ministry's June 2011 Education Report (prepared after the first period of consultation) noted the concerns about the consultation process, but stated that the total consultation period amounted to three months. The Ministry's September 2011 Education Report (prepared after the second period of consultation) explained that the 2008 independent review was not previously released, because it had been undertaken to review the performance and function of Health Camp schools — not to determine whether they should close. The Ministry received 12 public submissions, which were assessed as primarily raising issues which could be addressed under the new model.

163. There had been considerable delays in advancing matters since the 2008 independent review identified the need to resolve governance issues and improve education delivery. It appears that the Ministry wished to avoid a lengthy consultation process in order to ensure that matters were resolved by 2012. This was consistent with the *Strengthening Education* approach, which placed the emphasis on consultation rather than directly involving schools with the development of options (by negotiation under the EDI policy and by delegation under CIEP). There is no information to suggest that the Ministry considered contacting the Health Camp schools before the consultation process was commenced. The Ministry's communication material identified that the 'speed' might mean that consultation was perceived by some of the five schools as a 'token' gesture. A number of Health Camp schools expressed concern about the consultation process in their submissions, including the suspicion that the outcome was predetermined. The timing of the process meant that the boards of trustees felt under pressure to digest the relevant information, consult with stakeholders and prepare a thorough response. (Although the Ministry's Education Report stated that consultation extended over three months, the schools only had two months to prepare their responses.)

164. After the first round of consultation, the Ministry identified a '*moral obligation*' to extend the consultation process to include the wider community. This was a sensible decision which could have occurred at an earlier juncture, to inform the analysis. The Health Camp schools have a long history of service in the New Zealand education system and other stakeholders had a clear interest in changes to their structure. While the issues may have been relatively plain in this case (given the factors identified by the independent review), the schools were clearly dissatisfied with the manner in which the process unfolded. The submissions received by the Ministry strongly convey that the schools experienced the process as one that was '*imposed*' on them. They expressed concern about both the adequacy of background information provided and the timing of the process.

Residential schools

165. Up until 2012, the Ministry operated four residential special schools, on a single sex basis. These were Westbridge in Auckland, McKenzie and Halswell in Christchurch, and Salisbury in Nelson. Salisbury and Halswell catered for students with special learning needs associated with intellectual impairments. McKenzie (and Westbridge) provided services for children with complex behavioural and social needs. Salisbury School was the only national residential school for adolescent girls with intellectual impairment and complex needs. Historically, Salisbury has had a maximum roll of 80 students but, by February 2012, its roll had declined to 44 following a new admissions process introduced by the Ministry.

The submissions received by the Ministry strongly convey that the schools experienced the process as one that was '*imposed*' on them. They expressed concern about both the adequacy of background information provided and the timing of the process.

166. The table below sets out a timeline of the consultation process.

Table 6: Timeline of residential school review consultation process

2009	The Ministry trials an approach of moving special education to mainstream schools, with learners supported by specialist individual approaches. ⁸⁰
May 2011	The Ministry obtains agreement in principle to rationalise residential special schools from Minister Anne Tolley.
February/May 2012	The Ministry recommends to Minister Hekia Parata that residential special education should be reviewed, after some preliminary discussion with the schools
May 2012	The Minister commences consultation under the Education Act concerning the future of four residential special schools. The wider sector was also provided with the opportunity to comment on the development of the new Intensive Wraparound Special Education Service (IWS) and whether there was a continuing need for residential schools
August 2012	The affected schools are provided with 28 days to comment on the proposal to close Salisbury and McKenzie Schools and to change Halswell from boys only to co-educational.
October 2012	The Minister confirms her decision to close Salisbury and McKenzie Schools.

167. In December 2012, the decision to close Salisbury was ruled unlawful by the High Court. Justice Dobson held that the Ministry failed to identify the risks to the Salisbury girls of physical and sexual abuse and stated that this was a mandatory relevant factor, given published research about the increased risks. (Salisbury School argued that female students would be vulnerable to abuse in their final submission but this had not been accepted by the Ministry on the basis of a lack of evidence.) In May 2013, the Minister confirmed that Salisbury would stay open and continue to deliver services within the Intensive Wraparound Service (IWS) model. The Ministry anticipated that the demand for residential schooling would continue to reduce as the IWS expanded and more students remained in their local community. The Ministry commenced a programme of work aimed at addressing the concerns raised by the judicial review decision (including research on the risks of placing girls with intellectual disability in a co-educational environment).
168. The process followed in the case of the residential schools continued a trend of giving schools no warning prior to commencing statutory consultation

⁸⁰ Following the closure of Waimokoia Residential School in late 2009, the Ministry developed the Intensive Behaviour Service (IBS) which focused on moving special education from residential settings to mainstream schools with an enhanced focus on individualised support for the special education needs of individual children. In January 2013, the provision of support was expanded and the Intensive Wraparound Service (IWS) commenced operating.

which, in my view, did not engender trust in the process. It also meant that the views of the schools could not be fully incorporated into the work-up of the proposals. Members of the Salisbury School Board of Trustees acknowledged that there had been discussion over the years about special education, but they were surprised when the Minister commenced the formal consultation process.

169. The Ministry's Education Report stated that commencing statutory consultation would be unexpected for some of the residential special schools and might even result in public protest. The Ministry planned to mitigate the surprise by discussing the process with schools after it was commenced. The Ministry commenced the process with a face-to-face meeting with each school, and schools were provided an information pack about the IWS. The Ministry informed me that:

Many meetings were held throughout this process with the Board Chair and Principals. The offer was made to each school that we would support them through this process — Salisbury declined our offer. There was never an intention to get rid of all the schools. The point of the consultation process was to seek opinion from the public and the schools about the need and purpose of the schools, given the new approach to inclusive education (IWS) in schools.

170. The Ministry also undertook an extensive (non-statutory) consultation process with the wider sector about providing education to learners with complex needs (including the future of residential special schools), which it was not required to do under the Education Act. (Many of the 368 written submissions, including those from the Children's Commissioner and IHC, considered that the proposal needed more research and consultation before it was taken further). This was an improvement on the Health Camp schools consultation process, where wider consultation was undertaken during the final round of consultation. The wider consultation process in this case appears to have influenced the decision to retain two of the residential schools (Halswell and Westbridge). However, as a general comment, undertaking a parallel consultation process about the broader issues while consulting with individual schools about proposed closure means that the initial proposals may not have the full benefit of relevant contextual information.
171. It appears that the Ministry took steps to compensate for the lack of warning concerning the statutory consultation process. Nonetheless, Salisbury School considered that the initial proposal was very vague and that no clear reasons or information were provided to explain the proposal (certainly there was no suggestion that Salisbury students would be placed in a co-educational environment).
172. Salisbury School was not provided with the opportunity to comment on the co-education option until the preliminary decision was made by the Minister to keep two residential schools. The wider education community did not have the opportunity to comment on the co-educational aspect of the proposal at any stage. I recognise that consultation is a dynamic process, and it is to be expected that proposals will be varied and refined. However, it is possible that more effective engagement would have enabled this option

The process followed in the case of the residential schools continued a trend of giving schools no warning prior to commencing statutory consultation which, in my view, did not engender trust in the process.

to be fully considered (which may also have averted the need for court proceedings). In 2014, a single board of trustees was established to govern Halswell and Westbridge (the board of Salisbury was invited to join but declined). It was also agreed that Halswell could enrol a limited number of girl students from the start of 2014.

173. On 16 June 2016, the Minister of Education initiated consultation about the proposed closure of Salisbury School, after the Ministry reported that the roll of Salisbury was very low (nine girls), and the high level of funding required to support its continued operation was not an effective use of resources. Salisbury had submitted a proposal that it focus on providing residential education for students with Autism Spectrum Disorder and intellectual disability, but this was not accepted, as it was seen as inconsistent with the IWS policy.
174. The Minister also commenced a separate consultation process on an application from Halswell Residential College in Christchurch to become fully co-educational. The Salisbury board argued that a decision on Halswell's application should not be made until the consultation about the future of Salisbury School was completed. Salisbury School considered that a decision about Halswell becoming co-educational would prematurely determine the closure of Salisbury School. However, the Ministry considered that undertaking both consultations at the same time was appropriate, as it ensured that Salisbury was fully informed of the context and potential implications of the decision on Halswell's application.
175. On 27 July 2016, the Minister announced that Halswell Residential College would become fully co-educational from the beginning of 2017. On August 2016, Salisbury School submitted that there remained a need for a single-sex school option, in addition to the co-educational option at Halswell, and that there would be no suitable alternative for Salisbury students if the school were to close. The school submitted that the closure would materially disadvantage the girls with Autism Spectrum Disorder and Intellectual Disability in a residential environment and that it was inconsistent with the New Zealand Disability Strategy of providing the '*best education for disabled people*'. The Minister's interim decision on the proposed closure of Salisbury has been delayed (following Salisbury's submission) and is, at the time of writing, under consideration by the new Minister of Education, Nikki Kaye.

South Dunedin reorganisation

176. In the decade from 1998 to 2008, the school-age population in South Dunedin declined by over 1,000 students (a 32 percent decrease). There were 10 schools in the area (two secondary, one intermediate and seven primary). Two primary schools had enrolment schemes in place (St Clair and College Street), but the other five had fairly small rolls (including Forbury at 107 and Macandrew Intermediate at 151).
177. In March 2008, the Ministry initiated the CIEP process at a meeting of South Dunedin schools. At that stage, the CIEP process was the only method by which schools and the Ministry could consider future options for the school

network (although individual boards were able to pursue closure or merger). An independent facilitator was appointed to lead community discussion about the future of schooling. In March 2009, the facilitator reported that no further progress could be made under the CIEP model, as consensus had not been achieved and the schools did not wish to move into a formal review process. The facilitator noted a lack of confidence in the CIEP process, with a number of schools considering that the Ministry should have a more direct input in reviewing the schooling network.

178. In October 2009, the Corstorphine School board of trustees requested voluntary closure and, in early 2010, the Ministry reconsidered its approach to the reorganisation of South Dunedin schools. There was a need to consider reorganisation, to reduce the risk of unplanned closures due to persistent roll decline. The 32 percent decline in student population had also impacted the ability of some schools to provide quality education. On 25 March 2010, the Ministry advised Education Minister Anne Tolley:

The Ministry recognises that the South Dunedin area has too many schools for its population, but it has not been able to implement changes to the network since no framework has been approved for this now that the CIEP process is no longer being implemented.⁸¹

179. The table below summarises the consultation process which unfolded for South Dunedin.

Table 7: Timeline of South Dunedin school review consultation process

2008/2009	Discussions about a CIEP process were initiated but discontinued.
March 2010	Minister Anne Tolley invited South Dunedin schools to submit ideas about restructuring options. Macandrew Intermediate responded to this request (proposing a merger with Forbury on the Macandrew site). In July 2010, the Ministry undertook discussions with Macandrew Intermediate, King's High School and Queen's High School.
November 2010	Minister Tolley commenced a first round of consultation under the Education Act about primary schooling provision in South Dunedin (King's and Queen's High Schools were not included in the proposals). The two options involved the merger of Macandrew Intermediate and Forbury School on the Macandrew site or the closure of Macandrew and the retention of Forbury. The other proposal concerned the merger of Caversham, College Street and Calton Hill Schools (creating either a full or contributing primary school).

81 *Education Report*, Ministry of Education, 25 March 2010.

February 2011	The Minister commenced a second round of consultation on variations of the original options. One option involved merging Macandrew Intermediate and Forbury into a full primary school on the Macandrew site. (Closing Macandrew and retaining Forbury was also an alternative.) The other option involved four different merger variations for Caversham, College Street and Calton Hill Schools.
March 2011	The Ministry received a ‘ <i>condition assessment and scenario report</i> ’ from Signal Management Group on the property impact of the merger scenarios. It concluded that Macandrew School would be the most suitable for expansion into a full primary school rather than Forbury. There were structural issues with Forbury and the Macandrew site was larger with more scope for expansion.
May 2011	The Ministry considered that the Macandrew site was preferable and that the special characteristics of Forbury could be replicated. The Minister made the preliminary decision that Forbury and Macandrew intermediate should merge on the Macandrew site to create a full primary school (this proposal was supported by Macandrew but not by Forbury). Caversham, College Street and Calton Hill Schools were to be merged as a Year 1–8 primary school.
July 2011	The Minister confirmed her decision that Macandrew (rather than Forbury) and Caversham would be the continuing schools.

180. In its submissions, Forbury School highlighted the risk that the unique experience offered at Forbury would be lost in a new school. It considered that the Ministry was overly focused on property issues at the expense of educational outcomes. Forbury School vigorously opposed the preliminary decision via a number of avenues, including a street march on 21 May 2011 to the Octagon, and a petition to Parliament which received significant media coverage. The school was strongly of the view that its unique character could not be replicated, and it disputed the Ministry cost estimates for remedial building repairs. Forbury obtained its own building report, which indicated that the cost of remedial work was significantly less than the Ministry’s estimate. Forbury considered that the buildings at Macandrew were not generally suitable for junior children. It argued that the level of opposition meant that there was a real risk that the merger would not be supported after it occurred — and that students would enrol in other schools. The Forbury board stated:

Forbury School has been defined as being unique and different. Its contribution to education in South Dunedin is recognised by many different individuals throughout Dunedin and New Zealand. It provides a unique teaching opportunity to Otago and Massey University students in the development of future teaching professionals. It is this recognition that motivates the widespread dismay of the school’s possible closure. The school’s culture has been heavily influenced by the leadership of its principal but its culture is more than that.

In its submissions, Forbury School highlighted the risk that the unique experience offered at Forbury would be lost in a new school.

...

The culture of Forbury will not be transferable to a newly merged school. As a new school, a new culture will be developed which may have elements that are similar. An organisation's culture does not come out of thin air. Literature describes three forces that play the most important part in sustaining a culture. These are selection practices, the actions of top management, and the socialisation methods or the way traditions are passed down. Closure ends these practices. The effective closure of Forbury School will end the Forbury culture so cherished and admired by New Zealanders throughout Dunedin and New Zealand.

181. A former board member of Forbury School advised me that the special group of teachers who were the key to Forbury's success dispersed all over Dunedin as a result of the merger. She asserted that the Ministry did not fully know the state of Macandrew Intermediate and, because of unforeseen costs, it was not able to improve the school buildings in the manner envisaged. The board member commented:

There were three rounds of consultation for the proposed merger between Forbury School and Macandrew Intermediate. At each stage the community opposition to the merger intensified. There was no support for the merger and there was overwhelming support, from near and far, for Forbury to stay as it was. The reasons given by the Ministry for the merger were unconvincing and contradictory to the purpose of reorganisation. A merger (as opposed to simply closing Macandrew Intermediate) seemed entirely illogical and of huge cost to the government to implement ... the Ministry insisted that educational outcomes be a priority, however it was on property issues that they based their arguments, therefore we had to address the property issues at every stage of the consultation and were subsequently criticised for doing so.

182. The Ministry undertook a review of the consultation process in response to the petition to Parliament by Forbury School. The Ministry concluded that a robust consultation process had occurred, stating:

The final decision of two primary school mergers in South Dunedin was the culmination of a robust and thorough consultation process. The views of the community have shaped and influenced the final decision. This is clearly evidenced in the Caversham, College Street and Calton Hill Schools merger with the Minister's decision to merge those schools as a full primary, reflecting a clear community preference. The retention of the Calton Hill site is an acknowledgement of the difficulties that the community presented concerning access to schools on the flat areas of South Dunedin. The concerns of the Forbury School Board and community in relation to the merger were carefully considered, first by the Ministry, and then by the Minister, in making decisions.

...

It is important to note that consultation rather than negotiation was required under the legislation. The Ministry and Minister were also not required to seek agreement from all the schools concerned. Consultation generally requires open minded communication and hearing the voice of others who are given the opportunity and right to be heard. The Education Reports to the Minister,

and her subsequent decisions and annotations, do reflect that true and meaningful consultation has taken place. It is acknowledged that decisions of this magnitude can be distressing for parts of the community, and given the polarised views expressed, it is unlikely that any decision would have been agreeable to all parties involved.

183. The reorganisation of schools in South Dunedin highlighted the absence of a clear policy framework for non-voluntary school reorganisations. The Ministry had recommended that the Minister limit consultation to its preferred option, which at that stage included closing Macandrew Intermediate. This was consistent with the emerging *Strengthening Education* approach, under which the Ministry formulated the options and consulted only on the one it favoured. However, Minister Anne Tolley directed the Ministry to take a more collaborative approach. At her request, the first round of consultation under the Education Act included two possible options and an 'open' option. This first round of statutory consultation was described as being akin to an informal listening period. In the second round of consultation, the schools would then be provided with the opportunity to submit on firm proposals, prior to the 28-day period of further comment before the final decision was made.
184. The decision of the Minister to merge Forbury with Macandrew was a controversial aspect of the South Dunedin reorganisation. In terms of the overall process, it seems likely that Forbury School had sufficient opportunity to articulate their point of view during the multiple rounds of consultation. The strategy of undertaking a preliminary round of consultation, against a background of discussion, ensured that the multiple possible options were given relatively detailed consideration by the Ministry. The Ministry thoroughly considered Forbury's submissions and explained the reasons for its position. The Ministry acknowledged the special character of Forbury but considered that the Macandrew site was preferable, after more detailed property information became available. Ultimately, it was the responsibility of the Minister to determine the significance of the strong and vocal community opposition to the merger.
185. Forbury School expressed the view to me that, for a variety of reasons, it became disempowered during the establishment process. (I understand that two of five members of the establishment board were from Forbury, but they resigned after the principal was appointed.) The final decision to merge was made in May 2011 and the newly merged school was to be operational by January 2012. Thus, it appears that the establishment board was under considerable pressure to make decisions, including recruitment. In my view, it is important that the Ministry has a process which ensures that adequate post-implementation support is provided. On this point, the Ministry stated:

Both Appointed Boards had independent educationalists appointed (then they assumed the role of the Board Chair) for the specific purpose of providing expertise and support in the post-implementation phase. The constitution of the Boards (as opposed to using a continuing school board model) was carefully considered for the purpose of post-implementation support, and how

The reorganisation of schools in South Dunedin highlighted the absence of a clear policy framework for non-voluntary school reorganisations.

to best enact the decisions — especially as we knew for both mergers there was not full support. Both mergers also had change managers appointed that could guide the Appointed Boards and individual Boards, as well as provide liaison assistance with the Ministry ... We also met regularly with the union representative, an NZSTA representative and the Otago Primary Principals' President to discuss ways to support both pre and post implementation.

186. Forbury School used the OIA to request communications between the Ministry and surrounding schools. The Ministry proactively released a copy of the Education Reports, although the appendices were not included. The outcome of the property assessments was broadly summarised in the Education Report, but there was insufficient detail for the schools to understand the rationale for the estimated property costs. I consider that more property information could have been considered for proactive release to Forbury and Macandrew Schools. However, I note that the Ministry processed the OIA requests from Forbury and Macandrew Schools on an urgent basis, and an extension of time was provided (to both schools) to allow the property information to be considered.

The Kawerau reorganisation

187. Kawerau is a small town, dominated by the wood processing and engineering industries. The number of school-age learners in Kawerau declined from around 1981, with a downturn in the local economy. In March 2008, discussions were held between the Ministry and schools on the possible future reorganisation of schools in Kawerau. The matter did not proceed to the CIEP community consultation phase, as the majority of schools favoured the status quo (although Kawerau Intermediate considered that a wider discussion was needed).
188. In May 2010, the Ministry reported that the six schools in the Kawerau cluster were in serious decline, identifying a number of viability factors, including **network**, and **student engagement and achievement** (particularly at Kawerau College). There was surplus capacity for around 700 students in the network of schools. The Ministry had also received an application for a kura kaupapa Māori (kura)⁸² to be established in the area, which triggered the process of looking more closely at the Kawerau network as a whole.
189. The Ministry identified four broad options for reorganisation, all of which included merging Kawerau Intermediate and Kawerau College. One Ministry official commented to me that the issues in Kawerau had been '*on the radar*' for some time, and the Ministry had an obligation to manage the network rather than '*let schools die*', even though there was no overarching framework in place to guide the reorganisation of schools. An (undated) internal memo entitled 'Network project — Kawerau' stated:

The Minister has confirmed that she wants us to continue with the proposal to consider reorganisation of the schooling network in Kawerau ... This is

82 Kura are Te Reo Māori immersion schools.

not a CIEP. It is a staged project of work to strengthen student achievement in education in Kawerau, consisting of two threads. The first stage is to ensure that the configuration of schools enhances and strengthens education outcomes for students. Analysis suggests this requires restructuring of the schooling network through mergers of schools, and/or recapitation/decapitation. The second stage is to provide enhanced support and professional development for teachers, principals and boards. The two strands will be managed in parallel. The Ministry will lead the exercise, on behalf of the Government. The community, particularly the Māori community view plays a significant part in considering structural changes and the future of education.

190. At a meeting in Kawerau on 21 October 2010, Minister Anne Tolley outlined her concerns about the ongoing school-age population decline. She asked the boards to consult with their parent communities about options for strengthening education in the town by merging schools.
191. The table below summarises the consultation process which occurred in Kawerau.

Table 8: Timeline of Kawerau school review consultation process

October 2010	Minister Tolley commenced statutory consultation on the reorganisation of education in Kawerau. The first round of consultation involved multiple options all predicated on the merger of Kawerau Intermediate and Kawerau College.
January 2011	After considering submissions from the schools and a further Education Report, the Minister commenced the second consultation round with three options, one of which included retaining Kawerau Intermediate (option B). Although this option met with a favourable response, the Ministry considered that it did not do enough to address the oversupply of schools.
April 2011	The Ministry reported that the level of opposition to the merger was high and recommended the closure of Kawerau Intermediate and retention of Kawerau College.
May 2011	The third consultation round was commenced. The Kawerau schools were given 28 days to provide any arguments against option C (close Kawerau Intermediate; retain Kawerau College; change Kawerau South to a Year 1–8 school; merge Kawerau North School, Kawerau Central School and Putauaki School to form a Year 1–8 school; and establish a kura).
July 2011	The Minister initiated a fourth round of consultation on a new proposal to close Kawerau Intermediate and Kawerau College, with the establishment of a new Year 7–13 campus on the Kawerau College site (the merger of the three primary schools and establishment of the kura were also confirmed).
November 2011	The fifth round of consultation provided Kawerau Intermediate and Kawerau College with the opportunity to provide, within 28 days, any reasons why they should remain open.
December 2011	New Minister of Education Hekia Parata confirmed the interim decision of her predecessor Anne Tolley as final.

192. The Ministry had advised the Minister of its preferred option for reorganisation of the six schools.⁸³ However, the Minister declined to consult on a single option and envisaged that there would be two main rounds of consultation. The first round involved presenting five options devised by the Ministry and inviting community feedback. The second round was likely to focus on more specific proposals (with a third 28-day consultation period if required). Minister Tolley thought that it would be unfair to consult on the one option identified by the Ministry without obtaining community input. This resulted in a more graduated process than what had been proposed by the Ministry, which provided the schools with some opportunity to influence the options within the framework of a statutory consultation process. The Minister stated:

The Ministry asked me to note the information provided, to discuss the proposal to strengthen the education provision in Kawerau with my colleague Hon Dr Pita Sharples, and to agree to consultation regarding the proposed strengthening of education provision in Kawerau, including the likely merger of schools, and the provision of education development initiative resources being commenced. The Ministry also asked me to indicate my preferred option for the reorganisation of schools and provided four options for my consideration. I declined to indicate a preferred option and asked the Ministry to proceed on the basis that all four options would be consulted over.

My reasons for wanting to consult on all options were that I felt it was unfair to go out to the community with just one option. I wanted community feedback and ideas so thought the best way was to present the options the Ministry had identified and to invite community input.⁸⁴

193. In its judicial review proceedings, the board of Kawerau Intermediate argued that the consultation process was flawed, on the basis that the views of the community were not properly considered. However, Justice Woolford considered that the correct process was followed and there was nothing to suggest that the board of Kawerau Intermediate did not have sufficient information to make ‘*intelligent and useful feedback*’.
194. During discussions with my staff, Kawerau Intermediate emphasised that it is particularly important to work closely with the community in lower socio-economic areas. The communities are often already vulnerable, and greater effort is needed to ensure inclusiveness in decision-making. Although the schools were generally aware of the significant issues in Kawerau, they had no advance warning before the first round of consultation was commenced

During discussions with my staff, Kawerau Intermediate emphasised that it is particularly important to work closely with the community in lower socio-economic areas. The communities are often already vulnerable, and greater effort is needed to ensure inclusiveness in decision-making.

⁸³ The Ministry's preferred option was:

- merge Kawerau Intermediate and Kawerau College;
- merge Kawerau North School with Kawerau Central School on the North site, with Central being the continuing school;
- change Putauaki School from a Year 1–8 to a Year 1–6 school; and
- retain Kawerau South School.

⁸⁴ *Kawerau Intermediate School Board of Trustees and Minister of Education*, July 2012, Woolford J, High Court Rotorua, CIV 2012-463-000138 [2012] NZHC 1632. Affidavit of Minister Anne Tolley, 5 April 2012: [8] & [9].

in October 2010. There was no opportunity to submit ideas about the provision of schooling, as had occurred in the South Dunedin reorganisation. A former board member of Kawerau Intermediate commented that although there had been some prior indications, most of the schools were genuinely shocked when consultation was commenced.

195. A feature of the Kawerau reorganisation was the number of rounds of consultation undertaken by the Ministry in relation to the proposals. In April 2011, the Ministry reached the view that the viability of the proposal to merge Kawerau Intermediate and Kawerau College was questionable, due to the widespread opposition. The Ministry concluded that closing Kawerau Intermediate was necessary to achieve the consolidation of schools in Kawerau, and the third round of consultation was commenced on this basis (together with retaining Kawerau College and two full primary schools). The Minister subsequently commenced a fourth round of consultation about establishing of a new Year 7–13 campus, which involved the closure of Kawerau College and Kawerau Intermediate. This configuration was confirmed in December 2011 after the fifth round of consultation.
196. The abandonment of the proposal to merge Kawerau Intermediate and Kawerau College due to strident opposition and the emergence of a new proposal (to close the intermediate and the college and establish a new campus school) meant that five rounds of consultation were required. One Ministry official advised me that the Ministry *'probably over-consulted'* in Kawerau, as a result of having to present the revised proposal. The principal of Kawerau Intermediate suggested that the best approach might have been to inform schools of the need for change, and provide the opportunity to develop solutions. He considered that the Ministry was not willing to give any power back to the community. He thought it would be better to start with a generic model for discussion rather than initiating consultation on multiple *'pre-ordained'* options. He commented that the Ministry needed to adopt a *'less hurtful process'*.
197. A Ministry official advised me that, although it would be a while before the success of Tarawera High School could be fully evaluated, the reorganisation had *'answered the issues on the table'*.⁸⁵ Nonetheless, I consider that it is important to acknowledge the view of Kawerau Intermediate that the Ministry imposed the outcome on the Kawerau community. It is regrettable that community opposition to the proposals increased to the point where the Ministry considered that a merger between Kawerau Intermediate and Kawerau College was no longer viable (given that this was the initial preferred option and it would have enabled Kawerau Intermediate to participate in the establishment of Tarawera High School).

85 The ERO report for Tarawera High School, dated 24 June 2016, states that the board of trustees and staff have been very effective in establishing the new school to better meet the needs of the wider community.

General analysis and conclusions

198. The ‘Report of the economic and educational viability of small schools review’⁸⁶ observed that imposing change was inconsistent with the underlying philosophy of *Tomorrow’s Schools*. The review committee concluded that schools and their communities must be involved and consulted ‘in every sense of the word’ in any school reorganisation proposal. EDI policy was constructed with this in mind, and the focus on negotiated agreement meant that much of the power was intended to remain in the hands of schools and their communities. However, during the initial decade of *Tomorrow’s Schools*, few schools districts voluntarily entered into EDIs and the oversupply of schools in many areas thus remained unaddressed.
199. The story of non-voluntary school reorganisations in the *Tomorrow’s Schools* era began in earnest with the network review policy in 2000 (where negotiated change was replaced by government-led decision-making). The network review process was firmly focused on reducing the number of schools, within relatively tight timeframes. The prevailing mantra was that the status quo was not an option, which placed many communities on the defensive from the start of the process. The network review process provided a more efficient technique for rationalising schools, but created high levels of resistance. There was a sense amongst some participants that the primary rationale was economic, and that community consultation about broader educational and social considerations was largely window-dressing. The ERO questioned whether the Wainuiomata network review resulted in improved educational outcomes for learners. In her 2009 article, ‘*School Reorganisation*’, Dr Catherine Savage stated:

The problems with the Labour-led network reviews clearly demonstrate the need for improved policy. What is needed is an investigation into the appropriate balance of power. The bottom-up school-based initiatives of the early 1990s were largely unsuccessful in reducing the number of schools and the top-down intervention of the Labour government generated significant community resistance. Somewhere in the middle lies a better way.

...

Demographic projections clearly suggest school reorganisation across the country has only been placed on hold and it is inevitable that reorganisation will again become a priority. When it does, the Ministry needs to proceed with caution; although it is necessary to reduce disparity, school reorganisation continues to be fraught with emotional and practical challenges.⁸⁷

200. The unpopularity of the network review policy contributed to the announcement of a five-year moratorium in 2004. The 2007 ‘*Evaluation of the school network review strategy*’⁸⁸ concluded that schools should have a strong

The network review process provided a more efficient technique for rationalising schools, but created high levels of resistance.

86 See fn 8.

87 Savage, C. (see fn 62): pp 61 and 64.

88 Conner L. et al (see fn 68).


role in leading network/district reviews, in partnership with the Ministry. This reflected the principles of *Tomorrow's Schools* and was welcomed by many stakeholders. In some respects, the CIEP policy went beyond the idea of partnership, in that the process for formulating the options was effectively delegated to school communities. However, it is important to bear in mind that school reorganisations were only able to occur on a voluntary basis during this period. This could cause tension in cases where the government saw the need for network change but was unable to persuade participants to pursue a change process. For example, while the Ministry identified the need for a review of schooling in South Dunedin and Kawerau, and there was some general acceptance amongst schools that change was inevitable, there was no agreement amongst the schools to move into a formal process. The CIEP process was discarded after the expiry of the moratorium and a new framework began to emerge. The idea of partnership recommended by the 2007 independent review was not retained in the next round of school reorganisations.

201. The *Strengthening Education* approach was a method of rationalising groups of schools to improve education services. It represented another change from negotiated outcomes to imposed decision-making (with consultation). The precise elements of the consultation process were not defined, and varied according to the circumstances.
202. It is telling that the Ministry represented the overall process as 'outcome' rather than 'consultation'-orientated. It provided a direct approach to rationalisation which was, in part, designed to avoid multiple layers of consultation. The Ministry was anxious to avoid the impression of a return to network reviews, yet the emerging approach shared many similar features. The development of options for school reorganisations was seen by the Ministry as an internal matter, for it alone, against a variable background of discussion. The lack of any reference or working groups meant that schools lacked a forum for discussing the resulting proposals. The amorphousness of the emerging framework, the Ministry's tendency to deal directly with individual schools rather than facilitate broader discussion among schools, and an emphasis on 'outcomes' rather than 'consultation', all reduced the scope for collaboration in a process that was strongly Ministry controlled and directed.
203. There were no definitive internal guidelines, nor any external guidelines, about the *Strengthening Education* approach to undertaking school reorganisations. Divergent views emerged about the extent to which school boards should be afforded the opportunity to comment. The net result of the lack of clarity in the Ministry's process was a high level of uncertainty among stakeholders (and within the Ministry itself) about the approach to closing or merging schools. The Ministry did not have systems to ensure the proactive release of information to support the consultation process, which meant that some schools struggled to fully understand proposals. (In the Dunedin and Kawerau reorganisations, schools were reliant on the OIA to obtain relevant information). It does not appear that the Ministry

implemented a system to ensure that adequate information was proactively released following the Aorangi judicial review judgment (despite internal emails stating that this would occur).

204. I acknowledge that slow progress towards addressing the oversupply of schools was made under the (negotiation-based) EDI and CIEP policies. Having stronger incentives and prompting cluster-based thinking may be helpful in encouraging schools to proactively consider reorganisation. Nonetheless, when one goes beyond incentivising agreement for change to directly imposing change (as in the network review process and *Strengthening Education*), then a detailed and transparent plan for consultation with the affected school communities is required— one which recognises schools’ semi-autonomy and self-governance but encourages collective solutions. I do not consider that the *Strengthening Education* methodology provided an appropriate framework for that to occur. In my view, the implementation of a process consistent with the underlying tenets of *Tomorrow’s Schools*, which ensure that schools are fully involved, informed and consulted about decisions affecting their future, remained elusive in the period prior to the Christchurch reorganisation.
205. In general terms, the policy and procedure for school reorganisations during the first 20 years of *Tomorrow’s Schools* fluctuated markedly. One might have hoped that, from the outset, the Ministry, operating within the overarching policy direction of the government of the day, would work from the base requirements of the new Education Act to build an engagement process that incorporated the principles of good decision-making detailed in paragraphs 38–60, and that incremental improvements would then lead to steadily better processes.
206. In fact, it seems that the development of Ministry processes as they have evolved within EDI through network review and CIEP, and then to *Strengthening Education*, has been a haphazard journey, and that lessons learned from past mistakes have been readily forgotten in subsequent policy iterations. Clarity of process and transparency in decision-making has been the exception rather than the rule.
207. In late 2010, school reorganisation policy and procedure were as unsettled and unclear as ever. Schools undergoing reorganisation processes had no basis for certainty about how the process would unfold and what the Ministry’s terms of engagement might be. This may not be so critical in times when few reorganisations are being contemplated, but natural disaster was about to impose the sternest test to the schooling network that the Ministry had ever faced.

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Part Three — Policy and practice: the Canterbury reorganisation

Earthquakes and immediate aftermath

208. Within a six-month period, the Canterbury area suffered two major earthquakes and numerous aftershocks. On 4 September 2010, a magnitude 7.1 earthquake hit the Canterbury region in the early hours of the morning, causing significant damage and weakening infrastructure.
209. In response, the Ministry of Education constituted its Emergency Management Overview Group (EMOG). EMOG provided a leadership structure for the Ministry to manage an emergency and reported directly to the Minister. EMOG established a temporary team in Christchurch to manage the response, headed by Deputy Secretary Canterbury Earthquake Recovery, Nicholas Pole. Luckily, a relatively small number of schools were seriously affected by the first earthquake. The main focus of the Ministry was repairing any damage and taking steps to ensure all schools were safe. The Ministry stated that after around one month it was '*business as usual*'. Mr Pole commented that processes put in place in response to the first earthquake were useful when the February 2011 earthquake occurred, including partnerships with engineering and contracting companies.
210. The 6.3 magnitude earthquake of 22 February 2011, which occurred at lunchtime on a busy weekday, had a devastating effect on the city and its inhabitants. It resulted in the deaths of 185 people (over half occurring in the collapsed Canterbury Television Building). The earthquake caused

widespread damage to buildings and land in Canterbury, particularly in the central city of Christchurch. The eastern suburbs were badly affected, with significant liquefaction producing tonnes of silt. Earthquake swarms continued to hit the Christchurch area during 2011, with two larger earthquakes occurring in June (magnitude 6.4) and December (magnitude 5.8). A gradual decline in earthquake activity occurred through 2012 as the ground settled.

211. Remarkably, no students were seriously injured at schools, although the February earthquake resulted in substantial damage to the Christchurch school network when it hit at 12.51pm. The Christchurch schools deserve significant credit for keeping their students safe. All schools were affected to a varying extent by the February earthquake. One senior ministry official commented that the schooling network was *'knocked off its feet'*. All Christchurch schools were closed for two to three weeks, and eleven schools were forced to establish temporary locations. Sharing facilities was common, with some schools adopting a split day — their students either attending the morning or afternoon shift.

212. The Canterbury Earthquake Recovery Authority (CERA) was established by the government in response to the February 2011 earthquake to develop and lead the government's response and recovery strategy for Greater Christchurch. The Ministry closely monitored the impact of CERA decisions and was continually redrawing the population catchment areas for schools, as well as assessing the costs for remediation and rebuild. The Ministry commented:

The scale of the earthquakes was such that multiple government agencies had to re-orientate their focus and work with a national, coordinated response to create as much certainty under urgency as possible to support Christchurch. The response was regional, national and global.

213. The Christchurch Education Renewal Team (CERT) was created within the Ministry directly after the February earthquake. This team was made up of 23 Christchurch staff and its role was to provide leadership, management and implementation of education 'renewal'. Programme Director Coralanne Child headed the team and she reported to Nicholas Pole. The immediate focus was to get all schools reopened. The Ministry and schools collaborated well over this initial period, although some schools in the harder-hit areas advised me that they were under considerable pressure to reopen within three weeks. Schools and their communities rallied together to help get the schools running again.

214. The damage caused by the earthquakes was especially severe in the city centre and eastern suburbs of Christchurch (including New Brighton, Parklands, Bexley and Aranui). My staff undertook interviews with four of the five Aranui Schools (Aranui High, Aranui Primary, Avondale Primary and Chisnallwood Intermediate Schools), and the observations of these schools' principals are instructive.

215. The principal of Aranui Primary School stated that the February 2011 earthquake badly damaged the underground infrastructure of the school and left many of the students traumatised. The infrastructure was repaired by the Ministry but the surface was mostly left as it was. The children were demoralised by *'a huge hole, smashed-up paths and liquefaction silt still blowing into their classrooms'*. He was advised by the Ministry that buildings were safe, but received no detailed information about their status.
216. The principal and board chair of Aranui High School stated that there was a major exodus of around one-third of students on the roll. The school was undergoing a rebuild at the time of the February earthquake, and there was very little damage to the new buildings. The school grounds *'looked like a bomb site'*, but they understood that the Ministry needed to be cautious about investment before any decisions were made.
217. The principal of Chisnallwood Intermediate stated that the school was closed for around three weeks, with a lot of liquefaction in the surrounding area. There was damage to sewerage tanks and water infrastructure and some damage to buildings. The principal of Avondale School gave a similar report. His school reopened three weeks after the February earthquake, and the damage was mainly to power, water and sewerage, rather than school buildings. The roll gradually returned to around 350 with an overall loss of 30 percent.
218. During 2011, the Ministry commissioned inspections of all Christchurch, Kaiapoi and Rangiora state schools. The *'Christchurch Schools Condition Assessment Project'* was completed for 123 schools, providing an assessment of capital liability over the next 10 years. For some months, the Ministry collected information about the state of school property, including earthquake damage, weather-tightness and structural strengthening requirements (to improve earthquake resilience), and this fed into a general condition assessment and a 10-year cost estimate. The information was sourced from Ministry databases, loss adjustors' assessment of damage, condition assessments carried out at schools, geotechnical reports and engineering reports. The property assessment involved direct engagement with each school, and the Ministry project manager was required to meet with school representatives to discuss each school's property plan and any current property issues.
219. The Ministry advised me that school property performed *'reasonably well'* during the earthquakes, in that no buildings had collapsed and damaged buildings could be repaired (albeit at considerable expense in some cases). The largest impact on school property was on the land, particularly schools located on the east side of Christchurch.
220. The focus of the Ministry's response until around mid-2011 was primarily on restoring services, establishing shared services where necessary, and completing building assessments. In June 2011, another earthquake resulted in some further damage to land and buildings, particularly in the Port Hills region. Redcliffs School in Sumner was forced to operate from temporary

The focus of the Ministry's response until around mid-2011 was primarily on restoring services, establishing shared services where necessary, and completing building assessments.

premises offsite,⁸⁹ and rolls dropped again in the eastern suburbs. Nicholas Pole emphasised that through 2011 there was a continuing ‘destabilisation of assumptions’ concerning the movement of students.

Longer-term planning: ‘From Recovery to Renewal’

221. The situation in Christchurch was different from other school reorganisations undertaken by the Ministry, in that it was prompted by the extensive damage to school land and buildings caused by a natural disaster. There was also a pre-existing oversupply of schools and areas of underperformance in terms of education delivery.
222. Issues of oversupply were exacerbated by the post-earthquake exodus from Christchurch. When the February earthquake struck, over 50,000 students and teachers were involved in compulsory education in Canterbury. Around that time, there was spare capacity for around 5,000 students in the Christchurch school network. The earthquake resulted in an exodus of around 12,000 students from the area. (There was no significant population movement after the initial earthquake in September 2010.) Many subsequently returned, but, as of March 2012, there were 4,500 fewer students enrolled in greater Christchurch schools compared with March 2010. The Ministry estimated that in the period after the February earthquake the Christchurch network had excess capacity for around 9,400 students. Many of the returning students also settled in different areas of Christchurch. The large amount of potential out-of-zone enrolments from students who had shifted made it difficult for some schools to manage in-zone enrolments. Coralanne Child explained that, to alleviate the situation, the Ministry was able to establish special enrolment criteria for schools that requested it. The Ministry advised me that population displacement in the red zone area (together with the pre-existing capacity in the network) meant that the provision of schooling needed to change dramatically, regardless of the damage to school property.
223. So, not only did the government need to restore the Christchurch school network due to the extent of damage from the two major earthquakes, but it was also confronted with a fragile schooling network that needed regeneration and realignment.
224. Nicholas Pole noted:

Christchurch catenated into a very short period of time some of the longer glacial changes that have occurred in other parts of the country such as rural population decline and regional change.

So, not only did the government need to restore the Christchurch school network due to the extent of damage from the two major earthquakes, but it was also confronted with a fragile schooling network that needed regeneration and realignment.

⁸⁹ On 23 March 2015, the Minister announced the proposed closure of Redcliffs School on the basis that the possibility of future rockfall meant it was not possible to guarantee uninterrupted provision of education on the site. Following consultation with the school community, the Minister decided in late 2016 that the school would not close, but would be relocated to nearby Redcliffs Park.

225. In the aftermath of the earthquakes, the Christchurch community was hugely impacted by the loss of housing, jobs and social infrastructure. There had been a significant displacement of population combined with a profound ongoing psychological impact. Nicholas Pole emphasised the enormity of the challenge in undertaking a school reorganisation process of the scale of Christchurch in such circumstances. He stated in an interview with my staff:

It was complex, it was tough, there were so many competing issues at the same time and people were driven by a need for certainty in a hugely fluid and changing context, overlaid by a general psychological fatigue affecting all communities and actors involved.

226. In July 2011, the Minister of Education Anne Tolley (and the Minister for Tertiary Education Steven Joyce) agreed on five principles to guide decision-making in Christchurch,⁹⁰ including achieving the best educational outcomes and making cost-effective decisions. The importance of engagement and genuine consultation was noted, as follows.

Engagement with the education sector, community and local businesses is needed if decisions are to meet the needs and aspirations of the Christchurch community. Genuine consultation will empower communities and iwi to be part of shaping the future of the education network. Nonetheless, decision makers must ensure that the timing and extent of the consultation reflects the circumstances of the specific decision, including the degree to which the result of a consultation could legitimately affect outcomes.

227. On 29 August 2011, Cabinet agreed to the development of an Education Renewal Plan.⁹¹ The first step was to develop a vision for the future of education in Christchurch through a process of engagement with schools and the community. Minister Tolley advised Cabinet that the scale of population change meant that the government would need to consider the closure and merger of some current schools, and the building of new schools. The Minister's Cabinet paper stated:

It is now time to build a vision for the future of education and training in Canterbury that enables complementary planning across early learning, schooling and the post compulsory sector. As a first step we propose working with the sector to develop medium term goals across these areas and an ambitious programme of work to deliver on these. These goals are stretch goals to specifically drive the renewal of education in Canterbury.⁹²

90 Education Report dated 29 July 2011 listed the following agreed principles:

- Support children and students to achieve the best possible educational outcomes
- Secure sufficient levels of access to quality education provision
- Prioritise the needs of target groups within the education system
- Make cost-effective decisions so that all additional spending represents value for money
- Focus on the future and build on local strengths, particularly through the use of innovative approaches

91 Also referred to in the same Cabinet paper as an Education Recovery Plan, as it was intended to have the status of a 'Recovery Plan' for the purposes of the Canterbury Earthquake Recovery Act 2011.

92 Paper from the Minister of Education and the Minister for Tertiary Education to the Cabinet Business Committee, entitled *Education Renewal Plan for a Future Learning Network for Canterbury*, with handwritten date of 29 August 2011: paragraph 19.

228. The Cabinet paper noted the high level of autonomy in the education system, with boards of trustees responsible for the governance of state schools. It stated:

*Our plan will not be directive and will respect the autonomy of educational institutions.*⁹³

229. The Treasury inserted the following comment into Minister Tolley's Cabinet paper.

*Treasury is supportive of the development of an Education Renewal Plan for Canterbury and notes the importance of engaging with both the community and central government agencies through the development stages of the plan. We are supportive of the intent to explore innovative approaches to deliver education but also note the potential for significant costs to be incurred in re-establishing the education network in Canterbury. We would expect the plan to include robust analysis of the demand for education in Canterbury in the future and around the types of educational infrastructure that will be required to support this.*⁹⁴

230. On 1 September 2011, Nicholas Pole finalised the terms of reference for a Canterbury Earthquake Renewal Project, which identified 13 interrelated sub-projects as the basis for the development of the Education Renewal Plan.

- Early childhood education
- Schooling network stabilisation
- Network design
- School design
- ICT futures
- Modern school environment
- Teaching and learning
- Workforce planning
- Governance and accountability
- Education and urban renewal
- Tertiary renewal
- Financing
- Consultation and engagement.

93 Cabinet paper (see fn 92), paragraph 25.

94 Cabinet paper (see fn 92), paragraph 74.

231. The purpose of the network design sub-project was described as follows.

The purpose of this work is to reconfigure the education infrastructure, including closing, merging and establishment of new schools, to ensure the network enables access, ensures quality provision and provides value to the Crown. This work will explore what the future network will be for the next 50 years. This is an opportunity to provide advice on a wide range of options for the design of the future education network of schools in Christchurch that are innovative and sustainable.

232. The financing sub-project included as a deliverable:

[d]evelopment of a business case for government including capital and operational elements starting from a substantial reorganisation of the network.

The visible process: 'Directions for education renewal'

233. In October 2011, Christchurch educators and school communities were given the opportunity to comment on the development of what was now called a draft Education Renewal Recovery Plan — by responding to broad questions concerning the future of education in Christchurch via the Shaping Education Engagement Process. The Ministry received over 200 submissions, which were summarised in a document entitled 'Directions for Education Renewal in Greater Christchurch' (draft *Directions*), which set out the details of what was now termed the Education Renewal Recovery Programme (ERRP).

234. A Ministry memo to the New Zealand Educational Institute (NZEI) dated 4 October 2011 stated that the final Education Renewal Plan was expected to be completed by April 2012. The plan was unlikely to include decisions about the future of individual schools, but would set the direction for the work over the next five to ten years. The Ministry would consider the whole network of schools in Christchurch, and would give the government advice about where schools were most needed.

235. From March 2012, Christchurch schools were able to access their condition assessment data through a designated website (each school was provided with an individualised log-in).

236. In April 2012, Cabinet agreed to release the ERRP for a four-week period of consultation. The Cabinet paper explained the ERRP structure as follows.

The programme provides a comprehensive programme of work focused on the recovery of education and improving the performance of the system. In particular, it has a focus on transitions and overlaps between sectors.

The programme includes:

- *goals for education in greater Christchurch including overall goals and sector-specific goals*
- *current context, challenges and vision for the future in each sector*
- *proposals to achieve this vision for each sector*

- *consultation questions on the proposals we are seeking feedback on.*

But it does not include a detailed network plan or details of how we will deal with individual schools, tertiary providers or early childhood services. Once the plan is finalised, we will develop an implementation plan that will include the network plan for the compulsory sector.⁹⁵

237. In May 2012, the ERRP was released for further public consultation. The document stated that the process of network renewal would fall somewhere in a continuum between ‘*restore the network to its pre-earthquake state*’ at one end, to ‘*renew the network and transform how we deliver education*’ at the other. The public were able to make submissions through the *Shaping Education* website or directly to the Ministry. A feature of the consultation was 15 focus groups, including community forums.
238. During June/July 2012, the Ministry analysed the 520-odd submissions it received on the draft *Directions* (with assistance from CORE Education). This covered high-level concepts. There was strong support for the creation of an education advisory board for greater Christchurch. Campus-style facilities were seen as potentially positive, but the idea of having ‘*fewer but larger schools*’ was the least-supported proposal, and further discussion was requested about how this would be achieved. There was also a preference amongst the majority of submitters for smaller schools and retaining the identity and traditions of schools in population-reduced areas. Overall, the Ministry concluded that respondents endorsed the general direction that renewal provided an opportunity for creating a stronger educational environment, but that they wanted continued community engagement during the renewal process.
239. The final *Directions* document was published in August 2012. This document set out a number of generic goals and principles (such as supporting lifelong learning and promoting innovative and sustainable solutions). The Ministry confirmed its conclusion that there was widespread support for the proposed direction but again noted the request for more community engagement. The document stated that ongoing discussions with the community would be a key feature of the next phases of the renewal process. Again, the final *Directions* did not identify what level of rationalisation the Ministry was considering, stating:

Whatever the response, it will fall somewhere along a continuum that extends from ‘restore the network to its pre-earthquake state’ at one end to ‘renew the network and transform how we deliver education’ at the other.

...

In practice, the approach is likely to be somewhere between these two options: to repair facilities where this is cost effective and where the local population

Overall, the Ministry concluded that respondents endorsed the general direction that renewal provided an opportunity for creating a stronger educational environment, but that they wanted continued community engagement during the renewal process.

⁹⁵ Education Report Cabinet Paper: Canterbury Education Renewal Recovery Programme, 18 April 2012, IM60/104/53/3.

is sufficient to ensure the viability of the school, and to build new schools in areas of major population growth. There will be cost considerations and other restrictions related to land decisions and other factors.⁹⁶

240. On 5 September 2012, the Minister announced the establishment of the three advisory boards (Education Advisory Board, Waitaha Advisory Board and Pasifika Advisory Board), which had been proposed in the ERRP as a mechanism to provide for local voices in renewal issues.

Announcement of proposed closures and mergers

241. On 13 September 2012, at a meeting in Lincoln for school principals and board chairs, the Minister disclosed a detailed plan for the reconfiguration of the schooling network in Christchurch, including proposals to close or merge 38 schools. The Minister and senior officials from the Ministry met with the 40 most affected schools separately, immediately before the main presentation, in order to 'personally advise these schools of the proposal first'. The majority of affected school representatives arriving at the venue were completely unprepared for the announcements, and reactions ranged from disbelief to outrage.
242. The plan involved 140 schools being split into 39 geographical cluster groups, and each cluster was placed in one of three categories: restore (minimal change), consolidate (moderate change) and rejuvenate (major change). Overall, 13 state primary and intermediate schools were proposed for closure. Eighteen state primary schools were proposed for merger. It was also proposed that five Aranui schools would combine to form a Year 1–13 campus. In addition, two Banks Peninsula schools would be 'consolidated' into the existing Area School. The proposals for Christchurch secondary schools at that time were of a more general nature with a number of options being noted as under consideration. For example, the summary of the proposal for Avonside Girls High School was:

No formal proposal, awaiting geotechnical information. Potential options include continue OR merge at Christchurch Girls High School OR merge at Christchurch Girls High School and operate as 'dual shift' OR close OR close and establish new school to meet single sex and co-educational aspirations.

243. The announcements were regarded by many schools as a significant breach of trust, given the expectation of inclusive decision-making created by the previous communications and assurances of the Ministry. Educators had expected that some form of review of schooling would occur in due course, but that it would take place with the knowledge of, and in consultation with, the schooling community.

The majority of affected school representatives arriving at the venue were completely unprepared for the announcements, and reactions ranged from disbelief to outrage.

⁹⁶ *Shaping Education Te Tareinga Matauranga Directions for Education Renewal in Greater Christchurch*, August 2012: pp. 23 & 24.

The invisible process: The development of the business case

244. Schools were baffled by the announcement on 13 September 2012, as it seemed to come out of nowhere. What they didn't know was that another process had been unfolding at the same time without their knowledge.

Treasury's Better Business Cases model

245. In August 2010, the Cabinet Office issued a circular setting out Cabinet's expectation for the approval of major capital projects and proposals requiring new Crown funding. In short, such projects had to be planned in accordance with Treasury's *Better Business Cases* guidance.⁹⁷ For the Canterbury earthquake recovery, it was confirmed that all '*projects and programmes requiring Crown investment in whole or part*' would need to follow Treasury's guidelines.
246. The Better Business Cases (BBC) process is structured around a '*five-case model*' (comprising strategic, economic, commercial, financial and management components), which is widely used in the United Kingdom public sector, and is designed to lead to better-informed decisions, better value for money, and the achievement of better outcomes generally.⁹⁸
247. A quick reference guide for Better Business Cases has been produced by the Treasury and it gives a good overview of how the model works. I have included the guide at the end of this report as **Appendix 1**.
248. A Cabinet Office Circular of 2010 entitled *Capital Asset Management in Departments and Crown Entities: Expectations*⁹⁹ stipulates that the Cabinet should be involved, as early as practicable, in key capital decision-making processes. In general, a two-stage approval process must be followed under the BBC model.
- **Stage 1:** consideration of the **indicative business case**, which confirms the case for change and the need for investment, considers possible options, recommends an alternative or preferred way forward for further development of the proposal, and seeks the early approval of decision-makers to further develop the investment proposal;
 - **State 2:** consideration of the **detailed business case**, which sets out the basis for the recommended course of action that maximises value for money, and seeks approval to develop and finalise the arrangements for successful implementation. Approval at this stage may be given subject to certain constraints or conditions.
249. The key steps for developing two-stage business cases are set out in a table produced by Treasury.¹⁰⁰

97 '*Better Business Cases, Guidance on Using the Five Case Model: An Overview*'. New Zealand Treasury. 28 February 2014. Retrieved on 8 May 2017 from www.treasury.govt.nz/statesector/investmentmanagement/plan/bbc

98 '*Better Business Cases, Guidance on Using the Five Case Model: An Overview*' (see fn 97).

99 *Capital Asset Management in Departments and Crown Entities: Expectations*, Cabinet Office, CO (10)(2).

100 '*Better Business Cases, Guidance on Using the Five Case Model: An Overview*' (see fn 97): Table 4, page 14.

Table 9: Treasury’s Guidance on Using the *Five Case Model: An Overview*

The Five Cases	Process Stages by Case and Better Business Case Deliverable			
	Strategic Assessment	Indicative Business Case	Detailed Business Case	Implementation Business Case
Strategic	Step 1: Outline strategic fit and the need to invest	Step 2: Make the case for change	Revisit and confirm	Revisit and confirm
Economic		Step 3: Explore the preferred way forward and short-list options	Step 4: Determine potential value for money	Step 8: Procure the value for money solution
Commercial		Outline the procurement strategy	Step 5: Prepare for the potential deal	Step 9: Contract for the deal
Financial		Indicative costs for short-listed options	Step 6: Ascertain affordability and funding	Confirm the financial implications of the deal
Management		Strategy for successful delivery	Step 7: Plan for successful delivery	Step 10: Ensure successful delivery

250. It is important to note that both the Cabinet Office two-stage process and this Treasury table are focused on individual large-scale and/or high-risk projects, rather than the higher level of ‘portfolio or programme’ as described in the ‘planning and scoping’ section of the quick reference guide.¹⁰¹

251. The distinction between ‘projects’ and ‘programmes’ becomes important as one seeks to plot the Ministry’s business case planning against the BBC methodology.

The Ministry’s indicative business case

252. The need to develop a business case for the repair and renewal of the schooling infrastructure in Christchurch was recognised by the Ministry as it shifted its focus from emergency repairs to the longer term, during 2011, and work on the IBC itself commenced in September of that year. Katrina Casey, Deputy Secretary for Education, stated:

It was interim because while it sought agreement on the investment of \$1bn

101 See Appendix 1.

into the infrastructure for schools in the Greater Christchurch area, it did not provide a detailed breakdown. It was also interim because a number of the proposals would enter a statutory consultation process. The process was expected to and did indeed result in considerable change to the original proposals. It was therefore always the intention that when all critical decisions were made, a subsequent Business Case would be prepared. The Interim Business Case was completed in July 2012.

...

A Business Case of this sort would not ordinarily be used for a decision to close or merge a school. Where such a decision is being considered ordinarily, the considerations are on a smaller, case by case basis or where the Ministry is looking at a much narrower part of the educational network. The scale of the damage in Christchurch and the Government's desire to ensure a coordinated approach across the whole city required the preparation of a Business Case.¹⁰²

253. The Ministry furthered this explanation in a summary it prepared for me.

Given the surplus capacity in Christchurch schools, coupled with the damage to school property and the demographic displacement from the earthquakes, it was clear the physical shape of the schooling network would change. The need to significantly reshape the schooling network provided a unique opportunity to invest in Christchurch's future and provide a range of new buildings and schools in new locations where they would be needed in the future. Hence, the recovery plan needed to be in the form of a Business Case seeking commitment for new capital funding to repair earthquake damage and realign network capacity with demand.

254. On 1 September 2011, the Ministry commissioned Aurecon¹⁰³ to draft the (stage one) indicative business case (IBC),¹⁰⁴ under the guidance of the Ministry's School Property Group (SPG).¹⁰⁵ The general manager of the SPG, Kim Shannon, was appointed as the project sponsor. Aurecon had considerable knowledge of Ministry processes through previous engagements. The contract between Aurecon and the Ministry stated:

Description of Services

Prepare an indicative business case for the Ministry's assessment of the works required to the school network following the earthquakes in Christchurch, including:

- *Build on the initial thinking already developed by the Ministry and other contracted parties (eg KPMG funding model)*
- *Create the strategy that defines and supports the rebuild effort. Due to substantial impacts on the school network, the Business Case needs to*

102 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28). Affidavit dated 30 August 2013, paragraph 24.

103 Aurecon is a global engineering and professional services organisation (including project management).

104 Also referred to as the Greater Christchurch Education Renewal Programme Interim Business Case or the Greater Christchurch Education Renewal Business Case.

105 Now part of the Ministry's Education Infrastructure Service (EIS).

address uncertainty and provide flexibility. It will need to address items such as the cost, how it is financed and needs to define the environment within a 25 to 50 year timeframe

- *Identify, define and assess trade-offs to be made in the re-build effort*
- *Support the Ministry to engage with the community in parallel with the Business Case development.*

255. The first task of the Ministry and Aurecon was to develop the Investment Logic Map (ILM) through workshops with key stakeholders responsible for the delivery of the Education Renewal Plan. The purpose of the ILM was to define the fundamental nature of the problem and scope the potential solutions. As a result, three key strategic interventions were identified with respect to property.

- Rationalise and design a school network optimised to meet education provision.
- Better integrate schools to use shared facilities provision across Christchurch.
- Improve the standard of school infrastructure.

256. The ILM is reproduced below.

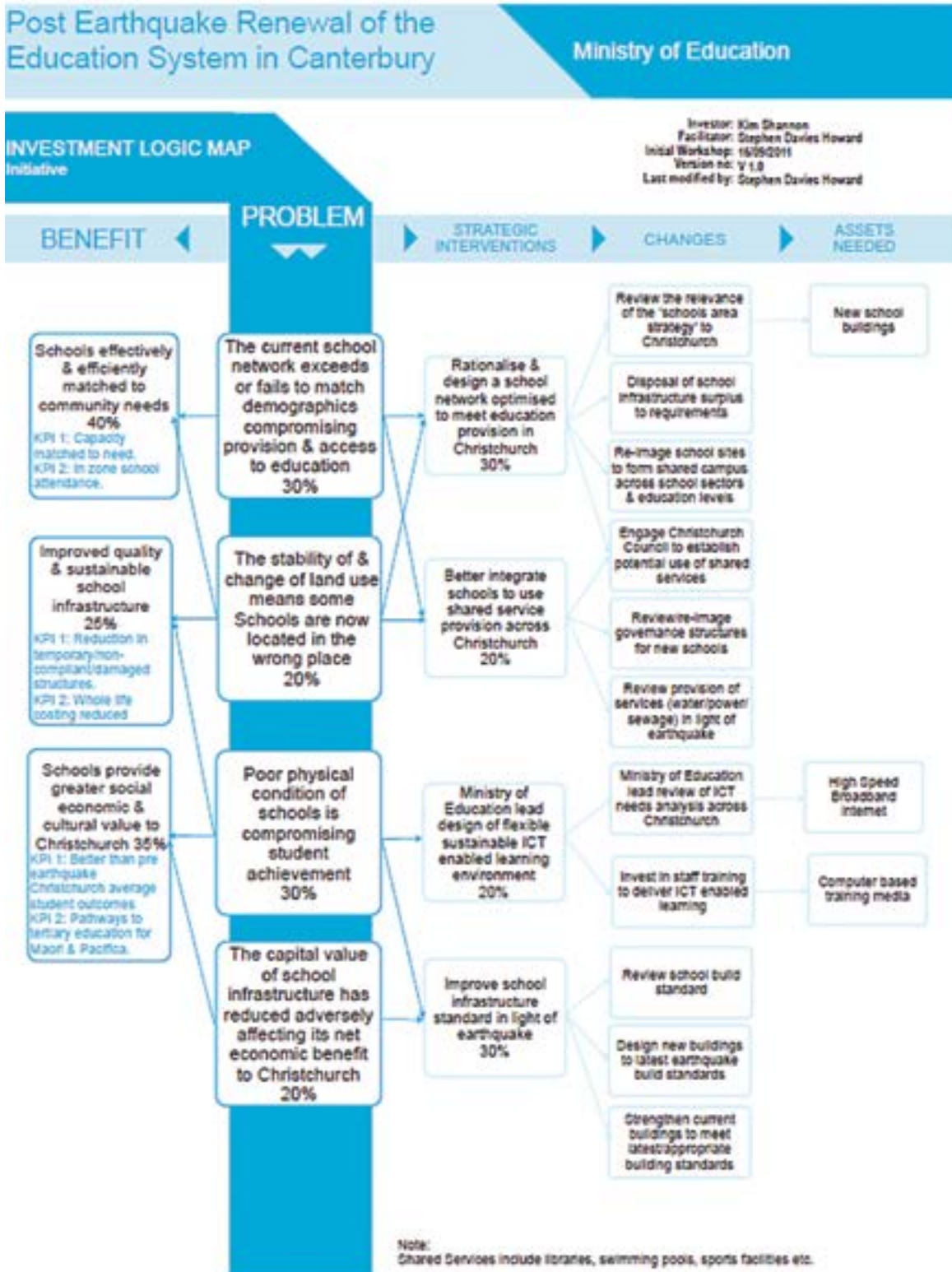


Figure 1: Investment Logic Map

257. The first iteration of the draft IBC (dated 11 November 2011) undertook an initial assessment of the long list of options against the strategic interventions derived from the ILM framework and four *'critical success factors'* (value for money, flexibility and responsiveness to changing requirements, market capability and capacity, and future-proofing and delivery of quality in design).
258. In December 2011, the second draft of the IBC identified options for the preferred way forward, ranging from *'do minimum'* to *'major rebuild, major rationalisation'*. A group of 26 schools was identified with high damage and low rolls. A number of different responses were developed in accordance with the different levels of investment. The options for this group of schools included closures.
259. In March 2012, the Ministry advised the Minister that it was in final stages of developing the draft IBC.
260. By May 2012, the third revision of the IBC was completed. This draft confirmed that the preferred investment approach was *'major investment and major rationalisation'*. The underlying objective was to make the most of the substantial investment required to repair the damaged buildings by also improving and modernising the school network. The draft set out detailed options for 123 earthquake-affected schools in greater Christchurch, whereby the schools were grouped into 29 geographical *'clusters'* (including eight *'earthquake-affected clusters'*). Each cluster was judged against five criteria and given a *'traffic light'* colour rating for each of those criteria, and figures for each school were listed against components of the same criteria.¹⁰⁶ This resulted in one to three proposed options which were also rated in terms of the five criteria and, in most cases, a *'preferred option'* was nominated. For each cluster, simply repairing all schools (that is, returning them to their pre-earthquake state) was one of the listed options. How each cluster performed in terms of this assessment system also determined whether the cluster as a whole was placed in three broad categories, which, in order of increasing scale of change, were restoration (low-level change); consolidation (moderate change); and rejuvenation (major change).
261. An example of a Detailed Network Assessment can be seen at **Appendix 2**. The options included individual school closures and mergers for most of the consolidation and rejuvenation clusters.
262. Through May and June 2012, the Ministry discussed the IBC with other central government agencies, and the Minister consulted with her Cabinet colleagues. Ministers were asked to consider taking a phased approach to implementation of the proposals developed through the IBC, supported by appropriate consultation and communication, as this would allow the Minister to bring the community along. For example, it was suggested that schools in the rejuvenation category might be consulted after schools in the consolidation category, to cater for the greater complexity of change. While

¹⁰⁶ The criteria were access; equity; education and governance; infrastructure; and scale of investment.

several major projects were identified for immediate implementation in the restoration category (such as the rebuild of Halswell Primary School, the new school at Pegasus Town and repair of swimming pools), other projects in the restoration category were planned to occur within a 10-year timeframe.

263. On 8 June 2012, the IBC project sponsor, Kim Shannon, sought guidance from the Minister about the level of community engagement needed to progress the options for potential school closures and mergers. It was decided that a graduated approach to implementing the ERRP was desirable. While statutory consultation under the Education Act might commence from around November 2012 for schools that voluntarily elected closure or merger, in most cases consultation would commence in early 2013, once facilitated discussions had occurred with cluster governance groups and school boards of trustees. Ministry draft media material explained that cluster governance groups would be established to lead community engagement, supported by the Ministry. Boards would consult with their communities where closures or mergers were proposed. Information packs (later provided to schools on 13 September 2012) stated that the purpose of the discussion period was to *'ensure a shared ownership of the issues, solutions and the construction of a Learning Community Cluster Plan that will inform the future shape of education provision within education communities going forward'*. It was envisaged that the cluster education plans would achieve economies of scale by further considering the shared provision of services across groups of schools. The cluster governance groups were intended, in part, to help validate options rather than reconsider them.
264. On 20 August 2012, the ERRP, including the IBC, was presented to Cabinet by the Minister of Education. The Minister advised that simply repairing earthquake damage on a school-by-school basis would deliver limited returns for student achievement by perpetuating current inadequacies in education performance, and result in a mismatch between supply and demand due to population movement. Taking a purely *'network approach'* by closing schools in areas of low demand and opening others in areas of new demand would resolve inefficiencies, but would not take advantage of the opportunities the earthquakes had provided to address pre-existing issues. The recommended *'cluster-based approach'* to renewing the educational network involved grouping the 123 Christchurch schools into clusters of one to seven schools to help the Ministry understand the bigger picture for education in the cluster. The cluster boundaries mirrored those used by New Zealand Statistics, the Ministry of Social Development and other government agencies for long-term network planning. The Cabinet paper stated:

The Ministry has commenced discussions with affected education communities and will formally consult with the Boards of Trustees and principals of affected schools following Cabinet's consideration of this paper. As part of this consultation, the Ministry will establish cluster governance groups consisting of members from the school Boards represented in each

Taking a purely *'network approach'* by closing schools in areas of low demand and opening others in areas of new demand would resolve inefficiencies, but would not take advantage of the opportunities the earthquakes had provided to address pre-existing issues.

cluster along with early childhood representation, and a Ministry official. This approach will help validate options, gain feedback and support shared ownership of the final decision. I will report back in 2013 once the consultation has been completed on the next steps for these schools.¹⁰⁷

265. Cabinet approved the Minister’s preferred investment option of ‘renewal’, which entailed 38 school closures and mergers and a \$1 billion investment in the Christchurch education network. The Minister was asked to progress the first tranche of work and announce the key elements of the Greater Christchurch Education Renewal Plan. (It was not stated in the Cabinet paper that the announcement would refer to the Education Renewal Recovery Plan. The Ministry’s Education Reports refer to ‘education renewal in Christchurch.’) In relation to the group of schools subject to closure or merger proposals, Cabinet directed that consultation be commenced without the period of facilitated discussion with boards of trustees and cluster governance groups recommended by the Minister and Ministry. The Cabinet also agreed that the Minister would consult on only one option concerning these schools.

Explaining the IBC

266. In order to understand the Christchurch reorganisation process, it is crucial to have a firm grasp on how the IBC options were developed and how they were integrated with the broader public consultation in the *Directions* process, to produce the final proposals announced by the Minister on 13 September 2012. Here’s how the Ministry portrayed the process in the published *Interim Business Case* document (as it appears on the Ministry’s website):

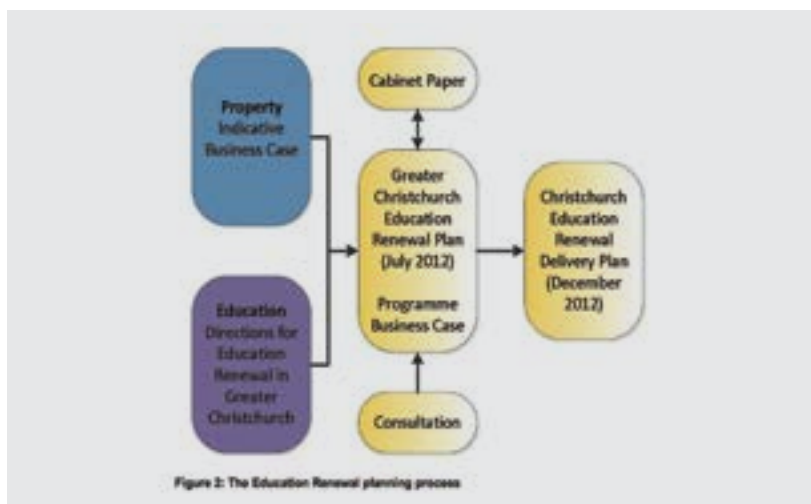


Figure 2: Ministry of Education’s Interim Business Case process

107 Cabinet paper, *Education Renewal for Christchurch, Waimakariri and Selwyn*, paragraph 36. Retrieved on 8 May 2017 from www.shapingeducation.govt.nz/read-more-2/release-of-interim-business-case

267. This diagram seems reasonably straightforward, but the process was, in practice, far less clear-cut.
268. As represented in the diagram above, the IBC was principally focused on **property**: (that is, *'How much damage has been done to the physical infrastructure of schools in Christchurch, and how should it best be remediated?'*) However, this is only part of the story, as **network** elements (*'Are the schools still in the right place?'*)¹⁰⁸ and **education** considerations (*'How engaged are the students and how are they performing?'*) were also brought into the mix. The five criteria used for the assessment of each cluster and for schools within each cluster, and the measures used to derive a rating for each one, make this clear.

108 See Table 1 at paragraph 62 for further information.

Criteria	Measure			
Access	Distance to closest school Capacity to meet demands on projected rolls	Age 5-9yrs <3.2km to nearest school	Age 5-9yrs >3.2km to nearest school but within 2.4km of bus route	Age 5-9yrs >3.2km to nearest school and no bus route
		Age 10+yrs <4.8km to nearest school	Age 10+yrs >4.8km to nearest school but within 2.4km of bus route	Age 10+yrs >4.8km to nearest school and no bus route
Equity	Education diversity measured at a cluster level	Available in cluster	Available in neighbouring cluster	Not available in cluster or neighbouring cluster
Education and Governance	Student performance, engagement and length between ERO review cycles. Note: NCEA Level 2 data uses an adjusted average based on the Decile Standardised Average. Provisional 2011 data has been used.	Student Engagement <2 per 100 students AND ERO Cycle 3yrs plus NCEA Level 2 >85%	Student Engagement >2 per 100 students OR ERO Cycle 2yr review cycle NCEA Level 2 70–85%	Student Engagement >2 per 100 students AND ERO Cycle 2yr review cycle NCEA Level 2 <70%
Infrastructure	Roll size. Percentage utilisation. Scalability and flexibility (Site Area).	Roll PS>250 Int>600 SS>1000	Roll 150<PS<250 450<PS<600 350<SS<10000	Roll PS<150 Int<450 SS>650
		Utilisation >85%	Utilisation 65–85%	Utilisation <65%
		Site Area >2.5 ha	Site Area 2–2.5 ha	Site Area <2 ha or unsuitable for rebuild
Scale of Investment	Total projected cost (maintenance and capital) over the next 10 years.	<\$10,000 per student	\$10,000 to \$20,000 per student	\$20,000 per student

In determining the above criteria it is recognised that there is a substantial volume of data available which can be assessed. The above criteria were determined as providing a robust snap shot of the condition of the network and in forming a solid basis on which further assessment can be undertaken, on a cluster by cluster or school by school basis.

Figure 3: Christchurch network assessment criteria

269. In terms of the school viability categories set out in **Table 1 at paragraph 62**, the five criteria can be matched as follows.

Table 10: Comparison of Business Case criteria with school viability categories

IBC criterion	School viability category
Access	Network
Equity	Student engagement & achievement? (no clear fit)
Education and Governance	Student engagement & achievement ¹⁰⁹
Infrastructure	Network/Property
Scale of investment	Property/Finance

270. This table shows that only two of the five criteria have a **property** focus, whereas the others are about **network** and **education**. All criteria except for 'equity' are measured quantitatively, so they are all about numbers and can be assessed without the need to engage with schools directly. The measure for 'equity' is curious, as it includes factors that are difficult to quantify, and it is unclear from Figure Figure 3: Christchurch network assessment criteria how a rating was determined.¹¹⁰

271. The figures for individual schools that are listed in the Detailed Network Assessments page¹¹¹ are relevant to the 'education and governance', 'infrastructure' and 'scale of investment' criteria, and not to the 'access' and 'equity' criteria. The limited availability of achievement data meant that **property** and **network** were inevitably the most influential considerations. (There was also a 'key determinants' section, which listed the local factors used to inform the development of options).

272. The heading of the Detailed Network Assessment page¹¹² also includes 'catalyst for change', which can be one or more of 'people', 'land' or 'building'. This is explained in the IBC as follows.

The catalysts for change and investment can be broadly classified into People, Land and Buildings.

¹⁰⁹ Despite the name of this IBC criterion, 'governance' is not also the subject of direct assessment here.

¹¹⁰ The 'network assessment' dated 24 May 2012 describes the equity criteria. 'Students across the network will have equal access to quality schooling as well as education choice. Equity includes the quality of facilities, education quality and the access to a range of education options (including kura, bi-lingual, secondary and technology facilities)'.

¹¹¹ See **Appendix 2**.

¹¹² See **Appendix 2**.

People: Projected increase or decrease in the number of students living in the catchment of a network. The Ministry has been monitoring 2011 and 2012 schools rolls across Greater Christchurch. The March 2012 data has been geocoded by the student home addresses to help understand the enrolment patterns across Greater Christchurch. UDS Partners have developed household and population projections which will form the basis for planning for District and City Councils, NZTA, Canterbury Regional Council and other organisations, including the Ministry of Education. The key measures to determine if People is a catalyst for change are:

- *Demographic Change – large numbers of households moving across and out of certain parts of Greater Christchurch.*
- *Compromised Education Capability – damaged facilities and temporary solutions since the earthquakes have reduced the capacity of the network to address learner achievement.*
- *Inequity in Education Provision and Performance – Māori and Pasifika learners in Greater Christchurch largely perform below the national average and MME provision is not equitably distributed.*

Land: Land is a catalyst for change where it is deemed to be unsuitable to locate a school on. The Ministry has a programme to do geotechnical assessments of schools sites and is prioritising schools in East Christchurch and Kaiapoi. Land is a catalyst for change where the education site is deemed unviable due to unstable land conditions.

Building: Building is a catalyst for change where the investment required to repair or rejuvenate school property is uneconomical and suitable alternatives are available in the network. The Ministry has completed a condition assessment of school property across Greater Christchurch that includes all infrastructure related issues (e.g. leaky buildings, significant maintenance liabilities).

273. In terms of these definitions, the ‘catalysts for change’ may be correlated with the other criteria and categories as follows.

Table 11: Comparison of Business Case criteria/school viability categories/‘catalysts for change’

IBC criterion	School viability category	Catalyst for change
Access	Demographic/Network	People
Equity	Education? (no clear fit)	People
Education and Governance	Education/Governance/Leadership	People
Infrastructure	Demographic/Network	People
Scale of investment	Property	Land/Building

274. The 'land' category may not seem to be well correlated to 'scale of investment', if it is applicable only in cases where a school's land is now 'deemed to be unsuitable to locate a school on', as in the above definition — rather than where the land is 'deemed too expensive to fix'. However, in all of the actual detailed network assessments where land is identified as a catalyst for change, one of the options is to repair all schools on their current site (which would not be possible if the land on which one or more schools were located was unsuitable). This suggests that land viability has an economic component, and that there are degrees of viability (as opposed to being a simple 'viable'/ 'non-viable' dichotomy).
275. The 'people/land/building' categorisation is mirrored in the introduction to the IBC, where the corresponding terms are given a wider definition for the purposes of identifying the priorities for the 'education renewal'.

People: Focus first and foremost on our children and young people

All parents want to see their children eager to learn, achieving success, and gaining knowledge and skills that will, in time, enable them to become confident, adaptable, economically independent adults. Regrettably it has not turned out this way for a significant proportion of our young people. We need to ask ourselves as we plan the rebuild, how can we use this opportunity to address inequities and raise outcomes. We need to give priority to actions that will have the greatest positive impact on learners.

Property: Find economically viable ways to deliver diversity, choice and innovation

Generally the school property portfolio responded well compared to other asset categories, but given the size of the seismic events the network has suffered severe damage. The Greater Christchurch Schools Condition Assessment Project established a projection of \$572mil for the maintenance and capital investment across the Greater Christchurch school network over the next 10 years. The cost of the rebuild will be considerable and dreams need to be tempered by a sense of what is pragmatic and realistic to deliver on strategic objectives.

Land: Consider the practicalities of sites and the changes in communities and urban infrastructure

Land damage has been a major element in the loss of urban infrastructure. While some buildings have been relatively undamaged, the sites they occupy have been significantly compromised and many will be unsuitable or costly to rebuild on. As a result large residential suburbs have been designated untenable for reconstruction, which in turn, has changed the nature and pattern of urban development within Greater Christchurch. Changes in residential areas will have a significant impact on the pattern and demand for schools in the region.

276. Aurecon was contracted to draft a 'stage one business case' in accordance with the requirements in the Cabinet Office Circular.¹¹³ To that end, Aurecon investigated and costed five investment options and, from its second draft in December 2011, it recommended that the government pursue a '**major investment with major rationalisation**' path. Between that time and June 2012, Aurecon convened a number of workshops with Ministry staff to continue development of the IBC. By late May 2012, the five criteria had been applied to all the Christchurch clusters, with options (and often a preferred option) identified for each cluster.
277. Some changes were made between the May draft and the final IBC that was presented to Cabinet (and which formed the basis for the Minister's proposals), but the preferred options for closures and mergers remained largely the same.
278. In terms of the BBC model, the IBC began its development as a standard **project-level indicative** business case (with the key strategic interventions mapped out in the ILM) but, in later iterations, it was called an '**interim business case**' (which departs from BBC terminology), and, in its final form,¹¹⁴ it is the *Greater Christchurch Education Renewal Programme Interim Business Case*. This is explained in the introduction.

This Programme Business Case has been developed to fulfil the requirements of Treasury's Better Business Case Guidelines by coordinating the Directions for Education Renewal and the Indicative Property Business Case to:

- *Understand the strategic context;*
- *Define existing processes and areas of potential improvement;*
- *Scope the potential benefits, risks and contingencies;*
- *Develop Business Requirements; and*
- *Explore the preferred way forward.*

These outputs were developed in consultation with key stakeholders.¹¹⁵

279. This is consistent with Figure 2: Ministry of Education's Interim Business Case process at paragraph 266, and it suggests that the **project-level indicative** business case was combined with the outcome of the *Directions* process to form a **programme-level interim** business case. Over a year later, in November 2013, a final programme business case was produced. This may be found in a quite separate section of the *Shaping Education* website from the interim business case, and neither document links to the other — which they ought to, as they are ostensibly different versions of the same document. It would be very easy to read the interim business case on the website and have no reason to think that the final business case exists, and

113 See paragraph 248.

114 As it currently appears on the Ministry's *Shaping Education* website, www.shapingeducation.govt.nz

115 *Greater Christchurch Education Renewal Programme Interim Business Case*, July 2012, Ministry of Education, p. 5.

no direct way of knowing where to find it.

280. The Executive Summary of the *(Final) Programme Business Case* begins as follows.

On 20 August 2012 Cabinet considered and approved an initial Programme Business Case (the IPBC) for the Ministry of Education's Greater Christchurch Education Renewal Programme (GCERP). This Updated Programme Business Case (UPBC) seeks to expand on and reconfirm the IPBC. It aims to reassess and justify a \$1.13bn investment in education renewal across the greater Christchurch region.

281. In summary, various versions of the same business case have been labelled:

- the *Indicative Business Case*;
- the *Indicative Property Business Case*;
- the *Interim Business Case*;
- the *Programme Interim Business Case*;
- the *Initial Programme Business Case*; and
- the *Updated Programme Business Case*.¹¹⁶

282. This is confusing in itself, but what is really interesting in BBC terms is that, when the *Indicative Property Business Case* was combined with the *Directions* document to form the *Programme Interim Business Case*, it morphed from being a project-level business case to being a programme-level business case. In BBC terms, this makes no sense, as a programme business case should precede and sit above a number of project business cases, but for Christchurch education renewal, what started as a project business case later became a programme business case.

283. In short, the GCERP business case does not fit easily within Treasury's BBC model, and its development does not represent an especially coherent application of that model. In this context, it may not be surprising that the way in which stakeholder consultation was integrated into the business case is far from straightforward or satisfactory.

Engagement — the rhetoric and the reality

284. Guidance for the BBC model stresses the importance of effective engagement with stakeholders. In a PowerPoint presentation entitled *Better Business Cases 'Investing for Change' Overview 2012*, a 'lack of effective engagement with stakeholders' was listed as one of the most common reasons for programme or project failure. The *Updated Programme Business Case* includes as an appendix a detailed 10-page 'stakeholder engagement and

In short, the GCERP business case does not fit easily within Treasury's BBC model, and its development does not represent an especially coherent application of that model. In this context, it may not be surprising that the way in which stakeholder consultation was integrated into the business case is far from straightforward or satisfactory.

¹¹⁶ It could be argued that the *Interim Business Case* was not just another version of the *Indicative Business Case* because it incorporated an important new element (the outcome of the *Directions* process). However, a close reading of the documents with the different titles reveals that they are progressively modified versions of the same document.

communications strategy, which sets out principles and plans for effective consultation in the GCERP property programme. Therefore, the importance of engagement in the development of a business case was well accepted by both Treasury and the Ministry of Education.

285. In addition, the GCERP was developed as a 'recovery programme' for CERA's 'Recovery Strategy for Greater Christchurch' (*Recovery Strategy*). As such, the Ministry was obliged to comply with the requirement that 'Government-led recovery programmes should...be consistent with the Recovery Strategy, particularly the goals and principles'.¹¹⁷ Guiding principles for the *Recovery Strategy* include:

- *Work together: Recovery is a collaborative effort. It is essential to have constructive relationships between the private sector, NGOs, local and central government and the wider community.*
- *Care about each other: Recovery initiatives will take account of people's psychological, physical, spiritual and social needs. They will promote equitable outcomes and connected communities and recognise diversity.*¹¹⁸

286. The 'leadership and integration' component of the *Recovery Strategy* included the imperative that 'CERA, the public and private sector and communities coordinate with each to contribute to the recovery and future growth of greater Christchurch – by: ...facilitating engagement that will result in constructive and enduring governance, partnerships and relationships for recovery'. One of the explicit priorities for the *Recovery Strategy* was to 'communicate and engage with communities including youth so that they understand and can participate in recovery activities and inform the development of recovery programmes'.¹¹⁹

287. Finally, the 'social recovery' component of the *Recovery Strategy*, of which the GCERP was a part, included as two of its five goals:

[To] strengthen community resilience, safety and well, and enhance quality of life for residents and visitors – by:

3.1 *enabling and empowering local communities to shape and lead their own recovery;*

...

3.3 *delivering community, health, education and social services that are collaborative, accessible, innovative and inclusive.*¹²⁰

288. It could scarcely be made clearer that full engagement and collaboration with affected communities was a fundamental principle for all aspects of the

117 *Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha*. Canterbury Earthquake Recovery Authority. May 2012, p. 16. Retrieved on 8 May 2017 from www.cera.govt.nz/sites/default/files/common/recovery-strategy-for-greater-christchurch.pdf

118 *Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha* (see fn 117), p. 6.

119 *Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha* (see fn 117), p. 12.

120 *Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha* (see fn 117), p. 10.

Recovery Strategy.

289. The 'strategic case' section of the IBC includes boards of trustees and their communities as key stakeholders. However, the only stakeholders involved in the development of the IBC were those responsible for its implementation, rather than affected parties. As such, the IBC acted as a platform for statutory consultation with the affected parties, without any prior engagement occurring.
290. In practice, the full extent of engagement for the GCERP — with school boards of trustees, school students, parents and staff, and the wider school community — took place as part of the *Directions for Education Renewal in Greater Christchurch* process, which ran in parallel with the development of the IBC. The defining characteristic of the *Directions* process is that it was very high level. As noted above, the Ministry stated that the feedback from the public consultation process led to the development of the cluster approach. Following two rounds of public consultation, a final document was produced in August 2012 which expressed support for broad aspirational principles such as supporting life-long learning, and promoting innovative and sustainable solutions. With respect to 'schools in greater Christchurch', the *Directions* document included the following commentary.

Planning a renewed schooling system

In planning for renewal, there is a unique opportunity to think about new ways of delivering education to provide better opportunities for learners and support higher rates of achievement.

The total cost of renewing schooling will depend on the mix of options taken and these, in turn, will need to take account of property related issues such as earthquake damage, strengthening requirements and pre-existing issues such as weathertightness, as well as network considerations that deal with population and demographic changes resulting from the earthquakes.

With existing capacity already under-utilised, and ongoing changes in demographics as families re-settle in new locations, there could be up to 10,000 more learner places in schools than required. A key consideration will be the viability of existing individual schools and the increased demand for new schools, particularly in the west and north of Christchurch.

Given the extent of change required, planning will necessarily focus on the network of provision, not on individual schools.

This will enable the Ministry to focus on:

- *maintaining access to education*
- *improving educational performance*
- *encouraging the use of new approaches to teaching and learning, including the use of technology*
- *providing choice, while looking to achieve economies of scale*

In practice, the full extent of engagement for the GCERP — with school boards of trustees, school students, parents and staff, and the wider school community — took place as part of the *Directions for Education Renewal in Greater Christchurch* process, which ran in parallel with the development of the IBC. The defining characteristic of the *Directions* process is that it was very high level.

- *making the most of the Government’s investment in new infrastructure.*

The network renewal continuum

Whatever the response, it will fall somewhere along a continuum that extends from “restore the network to its pre-earthquake state” at one end to “renew the network and transform how we deliver education” at the other.

At one end of the continuum, the response would consist of repairing and rebuilding whatever practicable:

- *schools would only be closed in the most extreme cases;*
- *learners would return to or continue at their pre-earthquake schools;*
- *there would be minimal new assets so learners would be in older (but repaired) buildings;*
- *demographic shifts would see some schools with spare capacity and others with too little.*

At the other end of the continuum, the response would consist of repairing schools that have suffered modest damage, closing schools that have been badly damaged and/or have declining rolls, building new, larger schools, and changing how education is delivered.

- *some schools would be closed*
- *new schools would be built to match demand*
- *more schools would likely be needed in the west and fewer in the east*
- *a significant proportion of learners would be in new buildings.*

At this end of the response continuum, supply would match demand and the quality and flexibility of the infrastructure would be enhanced.

In practice, the approach is likely to be somewhere between these two options: to repair facilities where this is cost effective and where the local population is sufficient to ensure the viability of the school, and to build new schools in areas of major population growth. There will be cost considerations and other restrictions.

291. Christchurch schools saw the opportunity to participate in the development of the GCERP as useful — but the plan which emerged was seen as vague and lacking in specifics, and in no way heralded specific proposals to close or merge schools. For example, the principal of Aranui School was reluctant to describe the *Directions* document as a plan, as it was more about what opportunities existed than how these might be realised through changes to individual schools. Similarly, the principal of Chisnallwood Intermediate thought that the *Directions* document was ‘*very conceptual*’ and the school had ‘*no idea*’ about the proposal to create an Aranui Campus School before it was announced. Some schools didn’t see the consultation process as having

much relevance to their day-to-day reality. For example, Kendal School did not submit on the Education Renewal Plan, as board members were feeling overwhelmed and traumatised. They also had no idea that the school would close, given that it had so little damage. Te Kura Kaupapa Māori o Te Whānau Tahī did not think that the public consultation on the Education Renewal Plan particularly involved them, as they were not in the category of schools which were ‘broken’ or had significant earthquake damage.

292. The distinct impression conveyed by the *Directions* document was that there were a number of general principles concerning the future of the education system in Christchurch on which there was a broad consensus, and that the Ministry would continue to work with the people of Christchurch to establish which options for the repair and renewal of the schooling network would best embody this consensus. There was no hint that proposals about individual schools had already been developed, and the school communities had every reason to assume that specific options would be considered in a transparent and consultative way, in due course. Therefore, when the Minister announced the IBC proposals for closure and merger on 13 September 2012, the schools were taken entirely by surprise.
293. The high-level education renewal plan now appeared to some to be a ‘sham’ or ‘smokescreen’ for a clandestine process of network review. The delivery of the renewal plan has been described by sector representatives as ‘horrific’, with the announcements re-traumatising a community that had already been through so much.¹²¹ One principal stated that the Ministry ‘messed with the heads’ of people who were already struggling to cope with a natural disaster.
294. It is clear that, from the perspective of the affected schools, the closure and merger proposals were essentially developed without their input or knowledge. Schools consider that the consultation that did occur as part of the *Directions* process was of little relevance to the detailed cluster-by-cluster and school-by-school formulation of options that was taking place behind closed doors. Certainly, the process that unfolded caused the schools to feel misled as to what was really going on.
295. What the Ministry and the Minister have said about the process contrasts sharply with what the affected schools experienced. The following statements are extracted from court documentation for the judicial review taken by Phillipstown School against the Minister of Education.

Submissions on Behalf of Minister of Education:

20 By May 2011 the Ministry was working towards critical decisions about the future of the schooling network in Canterbury. From the outset, the Ministry’s intention was to ensure the active engagement of both the educational community and the wider community of Canterbury in exploring options.

The high-level education renewal plan now appeared to some to be a ‘sham’ or ‘smokescreen’ for a clandestine process of network review.

¹²¹ These comments were made by sector representatives at a meeting with then Ministry Chief Executive Peter Hughes in March 2013.

...

25 *In October 2011, the Minister and TEC began to engage with the education sector and the community to explore ideas.*

...

32 *The Ministry received 554 submissions providing almost universal support for the directions outlined in the Draft Directions Programme.*

Affidavit of Coralanne Child:

42 *This engagement was not about the position or future of particular schools or childhood centres. It was too early for that level of detail – we needed a sense of what the community wanted at a higher level before detailed planning could begin.*

Affidavit of Hekia Parata:

23 *I was appointed while this community engagement process was underway. The need for change in the education sector was clear, and embraced from within the community. I understood and supported the approach that the Ministry had adopted; that of community engagement working from a very wide ambit, through to successively more detailed and specific formulations. All with significant community input.*

29 *Taking the Directions Programme, my officials began to formulate a business case for the Ministry's response to the earthquakes: "Greater Christchurch Education Renewal Programme Interim Business Case".*

Submissions on Behalf of Minister of Education:

35 *The Final Directions formed the basis for a business case which Ministry officials began to formulate in response to the earthquakes. The business case that was ultimately prepared was a detailed and lengthy (over 200 pages) document prepared by Ministry officials with specialist contractors contributing their expertise on technical matters such as geotechnical and property issues.*

37 *Cabinet:*

noted that the Minister of Education recommends Option 3 above to renew the education system because:

...

Proposals for a renewed education network have received broad community support through a range of engagement and an extensive consultation process.

296. Justice Fogarty summarised the understanding of the process that he had gained from the Minister's and Ministry's submissions as follows.

9 *The decision to spend \$1 billion was made by Cabinet, not by the Minister of Education. It was made on 20 August 2012. It followed the development of an education renewal recovery programme for Canterbury.*

The programme itself was the result of significant engagement between Ministry of Education officials and the community, beginning in October 2011. Written submissions were received from over 200 individuals and organisations. The Minister released a draft policy in May 2012. At this stage, the policy was not focussing on individual schools, but adopting a macro approach to students...and examining how best to maximise their learning opportunities. The policy was finalised in August 2012, and formed the basis for a business case which Ministry officials began to formulate.

297. The table below tracks the development of the GCERP and its two components.

Table 12: Comparison of ‘invisible’ Business Case and ‘visible’ consultation processes

IBC milestones	Consultation milestones
	In July 2011 , the Minister of Education Anne Tolley (and the Minister for Tertiary Education Steven Joyce) agreed on five principles to guide decision-making in Christchurch, which included the importance of engagement and genuine consultation.
	On 29 August 2011 , Cabinet approved the development of the GCERP. The first step was to work with schools to develop a vision for the future of education in Christchurch through a process of engagement with the community.
On 1 September 2011 , Aurecon was commissioned to draft stage one of the IBC under the guidance of the SPG.	
	In October 2011 , Christchurch educators and community were given the opportunity to comment on the draft GCERP — by responding to broad questions concerning the future of education in Christchurch.
In December 2011 , an early draft of the IBC identified the preferred way forward was ‘major investment and rationalisation’. A group of 26 schools was identified with high damage and low rolls.	
In March 2012 , the Ministry reported (to the Minister) that the preferred way forward was to rebuild the network and rationalise the number of schools.	
	In April 2012 , Cabinet agreed to release the draft <i>Directions</i> document for a four-week period of consultation, including a proposal to establish three advisory bodies to provide a local voice on renewal issues.

By May 2012 , a draft of the IBC was completed, incorporating specific proposals for school closures and mergers. The part of the Christchurch school network which required major rationalisation and investment was divided into nine school clusters, delineated by rivers, roads, and CERA land zones. The main criteria for developing the options for individual schools in Christchurch were roll, investment and network demand.	In May 2012 , the draft <i>Directions</i> document was released for further public consultation under the title <i>Directions for Education Renewal in Greater Christchurch</i> . The draft document signalled that the process of network renewal would fall somewhere in a continuum from 'restore the network to its pre-earthquake state', at one end, to 'renew the network and transform how we deliver education', at the other.
In June/July 2012 , the IBC was finalised — the proposals for individual school closures and mergers essentially unchanged from those in the May 2012 draft.	
In August 2012 , Cabinet approves the IBC.	In August 2012 , the final <i>Directions</i> document was released.

298. As Table 12 demonstrates, the (public) consultation in the *Directions* process and the (effectively secret) development of the IBC occurred in parallel.

299. The Ministry informed me '*[p]rior to the development of the Business Case, the Ministry undertook two rounds of community consultation*'.¹²² However, the individual proposals for closures and mergers in the IBC were essentially in their final form before the deadline for submissions in the second round of the consultation, at the end of May 2012.

300. It is difficult to reconcile:

- the perspective of the Ministry that community consultation preceded, and formed the basis of, the business case;
- the perception of Canterbury school representatives that the closure and merger proposals were developed without their input or knowledge; and
- the timeline as set out above which suggests that the *Directions* process and the IBC development occurred in parallel.

My view is that a complicated range of factors compromised a process that was ill-defined from the outset.

301. The relatively early document (of September 2011) setting out the terms of reference for the Canterbury Earthquake Renewal Project and its 13 sub-projects¹²³ included the following guidance for the consultation and engagement sub-project.

The Minister of Education has agreed in principle that the Ministry should engage with the community in developing a longer term renewal plan for education in Christchurch. The key purpose for the proposed engagement is

My view is that a complicated range of factors compromised a process that was ill-defined from the outset.

122 Paper prepared by the Ministry of Education for the purposes of my investigation entitled '*How the Indicative Business Case was developed and how the community consultation fed into that document*'. The undated paper was provided to the Office of the Ombudsman on 14 February 2014.

123 See paragraph 230.

to work with the education sector in determining the critical elements of the learning network for Canterbury and to generate ideas from the community and stakeholders. The engagement process will be less focussed on immediate decisions but be about opening up discussion around options with regard to potential futures and innovative solutions. . . . The engagement is focused on the future of education in greater Christchurch. It is NOT about the decisions that are required about sustaining the network of education organisations in 2011/2012, **nor is it about the future of individual services, schools or tertiary organisations. While all ideas about the future learning network will be listened to there will be parameters within which future planning will need to be considered e.g. cost.** [emphasis added]

302. Around the same time, the Ministry advised Cabinet:

The engagement strategy will focus on the future of education in greater Christchurch. **It will not be focused on decisions that may be required about the network.** We want to ensure that feedback is specific, expectations are managed, **and that there are realistic expectations about how much influence parties will have in decision making.**¹²⁴ [emphasis added]

303. These statements could be interpreted as suggesting that the intention was always to limit the degree of engagement on the development of options for individual schools, with the emphasis of consultation being on higher-level thinking about 'the future of education in greater Christchurch'.

304. An additional factor is that, by August 2012, when Cabinet approved the GCERP and the IBC, the government was under considerable pressure to make decisions about the future of Christchurch schools. Given the concern about not delaying progress in Christchurch, the decision was made to commence statutory consultation without a period of preliminary engagement, and without the inclusion of the alternative possible options set out in Appendix M of the IBC. In her *Phillipstown* affidavit, the Minister stated:

When I took this proposal to Cabinet, longer timeframes were outlined. However, Cabinet decided that certainty was vital for the people of the greater Christchurch area and therefore decisions needed to be made sooner to achieve certainty. The timeframes were amended accordingly.¹²⁵

305. Deputy Secretary Katrina Casey observed that the plan by the Ministry and Minister to go to the cluster groups to explain the proposals before statutory consultation was initiated would have been more consistent with previous approaches taken to school reorganisation.¹²⁶ However, Ms Casey doubted that taking a staged approach would have achieved much. She

124 Education Report, *Canterbury Education Renewal Plan — Engagement Strategy*, 2 September 2011, Metis no: 610014.

125 *Board of Trustees of Phillipstown School v Ministry of Education* (see fn 28), affidavit dated 13 August 2013.

126 The intention had been that consultation on voluntary closures and mergers would begin in November 2012. In other cases, consultation would be in early 2013 after the options had been discussed as part of the cluster planning process.

thought it was unlikely that schools would have all agreed to the closure of any particular school in their cluster. For that reason, she considered that the Ministry may have been unrealistic about what might come out of such a process and may have been *'partly let off the hook'* by the Cabinet decision not to have a period of engagement prior to statutory consultation. As discussed in paragraph 263, the plan was to engage with the schools **after** the options had been approved, which was unlikely to result in an open, creative and fruitful exchange.

306. Katrina Casey stated that, with the benefit of hindsight, there was a *'degree of naivety'* about the way in which the Ministry talked to the community about what was going to happen. She said the community was fully involved with the process of education renewal in Christchurch until May 2012, but it is understandable if principals felt that it had then fallen into a *'black hole'* in terms of engagement and communication. Ms Casey stated that the Ministry should have properly explained that government processes were such that Cabinet approval would need to be sought as a part of the annual Budget round for such a high level of investment. She surmised that the Ministry *'just didn't join the dots on the fact that it had stopped talking to the community all of a sudden'*, when the IBC was being finalised. Ms Casey stated that the Ministry was more focused on the big picture of renewal with a \$1 billion investment, rather than the 38 schools subject to closure/merger processes. She commented that the Ministry did not want more than 200 schools thinking they might be subject to closure or merger. She said that it was easier to run a more inclusive process for the secondary schools, as only around 30 schools in total were involved.
307. It does seem that the notion that schools needed certainty was instrumental to the determination that engagement should not hold up the decision-making process any more than was absolutely necessary. This is reflected in the following statements of the Minister in her court affidavit.

48 *I knew the announcement would be difficult. First, because we were now moving from the general, aspiration, and conceptual, to the individual, specific, and operational. Second, because while there had been consistent community recognition that change was necessary and even desirable, now it was about to become a reality. And third, because we needed to provide certainty to the entire network of 215 schools, while at the same time advising a subset of 38 schools of the direct implications for them.*

49 *...I had been optimistic that the Government's broad proposal to invest up to \$1 billion over ten years to develop greater Christchurch as a leading educational community, rather than simply to undertake the minimum repair, would evidence our good faith approach, including the transparency of the trade off in having to close or merge a small number of schools.*

50 *It was a difficult presentation because these were 500 or so leaders, stoic and resilient, who had already been through so much, and here I was announcing a proposal involving the closure or merger of 38 of the 215 schools in the greater Christchurch area.*

308. As already discussed,¹²⁷ it is entirely legitimate to want to give an affected community certainty in a decision-making process as quickly as possible, but it is imperative to appreciate what this means: it is not just about knowing the final decision (the ‘*what*’), but also about understanding and appreciating the rationale for that decision (the ‘*why*’). In a disaster-recovery context, giving full effect to this principle is of utmost importance, as natural disasters bring such ongoing vulnerability to the affected population that government initiatives must help the community regain a sense of control over its own destiny — rather than exacerbating the sense of powerlessness that natural disaster causes.
309. In its advice to the Minister, the Ministry failed to recognise adequately one of the two prerequisites for certainty in administrative decision-making (communicating the ‘*why*’) and, as a result, uncertainty about the fate of individual schools was replaced with bafflement as to the reasons for the proposals, along with anger about the disempowering process that had been followed.
310. The comments of the Minister in her affidavit¹²⁸ echo a sentiment that Ministry officials have conveyed to me, namely that the desire was to give assurance to the vast majority of schools in Christchurch unaffected by closure or merger proposals that their future was secure, and that this was to be backed by a \$1 billion investment. Public statements by the Ministry and Minister after the announcement clearly highlighted this message. A Ministry media release following the announcement begins:
- \$1 Billion over 10 years*
- Total number of schools 215*
- Of which:*
- 173 schools are not impacted by closure or merger*
311. A number of subsequent formal statements prepared by the Ministry referred to ‘*the closure or merger of 38 of the 215 schools in the greater Christchurch area*’. The consistent emphasis in such statements was that only a small proportion of the schools in the earthquake-affected area were proposed to close or merge, and that most schools and their associated communities should focus on the promise of renewal and investment.
312. I am somewhat discomfited by the use of the figure of ‘*215 schools*’ in this context, as it comprises all schools in ‘Greater Christchurch’, as defined by the Canterbury Earthquake Recovery Act (*‘the districts of the Christchurch City Council, the Selwyn District Council, and the Waimakariri District Council’*), and extends most of the way to the West Coast via Arthurs Pass. This is a wider conception of Greater Christchurch than is customary, and it extends well

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127 See paragraphs 44–60.

128 See paragraph 295.

beyond areas seriously affected by earthquake damage. It also includes all state-integrated and private schools in the same zone, which the government had no statutory power to close or merge under the Education Act.¹²⁹ The IBC confined its coverage to the 123 state schools in the immediate surrounds of Christchurch and in Banks Peninsula, and it is these schools that were seriously affected by earthquake damage and uncertainty about their future. The '38 out of 215' figure used by Ministry translates to less than one in five affected by closures and merger, whereas 38 of 123 brings it to over 30 percent (or almost one in three). The 13 September 2012 announcement included options for the closure or merger of another five secondary schools, which meant that well over a third of all state schools in the main earthquake-affected zone were subject to proposals or options for closure and merger. Therefore, the figures the Ministry used to accentuate the positive aspects of the announcement — and to justify hastening the decision-making process so as to provide certainty for schools not subject to closure/merger — were questionable.

313. To some extent, I think there is a genuine belief within the Ministry that consultation with schools did form part of the IBC process. I accept that, during the development of the IBC, the Christchurch Education Renewal Team was also engaged in an ongoing programme of discussion and information sharing with schools. The schools were provided with information about the distribution of students and about their land and buildings. Coralanne Child commented that this process of information sharing went on over two years, so schools with low rolls would have been thinking about their long-term prospects.
314. Unfortunately, the Ministry has minimal records from the IBC workshops, which makes it difficult to assess precisely how the process of wider consultation and engagement influenced the development of the proposals. It appears that, while there was an **education renewal** stream of information flowing into the business case, it was predominately at a conceptual level. A Ministry network advisor commented that the wider consultation produced general principles rather than '*something we could really use*' to develop the options. From the network advisor's perspective it was '*woolly*' and there was '*nothing to really analyse*'. While there was some extra information coming into the IBC as a consequence of the Ministry's ongoing engagement with schools, this ad hoc stream of information was dependent on which particular school the Christchurch Education Renewal Team had been talking to. The IBC was primarily focused on quantitative data held by the Ministry, rather than local factors which were more difficult to gather and analyse. Certainly, the schools had no idea they were participating in any process that was leading directly to individual closure and merger proposals. Having examined the IBC development process, along with the timing and nature of

129 Under s 11 of the Private Schools Conditional Integration Act 1975, the Minister does have the power to close a state-integrated school, but only on the basis that it is not complying with the integration agreement.

engagement between the Ministry and individual schools before the 13 September announcement, my view is that consultation with schools and the Christchurch community had a minimal effect on the content of the IBC, or on the closure and merger options and recommendations that were presented to the Minister.

Announcement on 13 September 2012

315. There had been a clear message from the Christchurch education community that more information and engagement was required before ideas such as shared or campus-style facilities could be further progressed. In the circumstances, it was imperative that the presentation to individual schools was managed by the Ministry in a way which delivered the greatest possible buy-in. Unfortunately, the announcements at the Lincoln Event Centre on 13 September 2012 were poorly handled. The announcements — on what has been termed '*Black Thursday*' by some schools — came as a shock and undermined the fragile trust between the sector and the Ministry.
316. The Ministry described the Minister's announcement on 13 September 2012 as heralding the '*third round*' of consultation involving detailed discussions with individual schools. (The first round involved engaging with the community in October 2011 about education renewal and launching the *Shaping Education* website. The second involved formal consultation on the *Directions* document in May 2012 which '*informed the vision for the current proposals*'.) Alongside this third round, the school learning clusters were continuing to engage in the development of their education learning community plans. Many schools felt that the Ministry's description of the proposals as the third round of consultation was unjustified.
317. In some respects, the decision of Cabinet to move the timetabling forward and consult on only one option threw the Ministry's plan for the September announcement into disarray. The Ministry did not reconfigure the material it had already prepared to support the process. For example, the material provided to schools on that day indicated that statutory consultation would not commence in the New Year unless schools elected to enter into a closure or merger process voluntarily. The only aspect of the day that the Ministry changed was bringing the 38 affected schools in earlier so the Minister could talk to them.
318. Many Ministry staff were deeply concerned about how the process went from talking about high-level options with schools to schools closing. There was a general understanding among regional staff that various options would be worked on in clusters of schools, before the formal consultation process was commenced. My view is that communication with regional staff was not always as good as it should have been. One senior official recalled how difficult it was to sit in the room at the Lincoln Event Centre and watch people open envelopes revealing that closure (or merger) was proposed for their school. She said there was '*huge angst and discussion*' in the Ministry about the process.

Unfortunately, the announcements at the Lincoln Event Centre on 13 September 2012 were poorly handled. The announcements — on what has been termed '*Black Thursday*' by some schools — came as a shock and undermined the fragile trust between the sector and the Ministry.

319. Another senior Ministry official acknowledged to me that the material provided on that day wasn't good enough. The official suggested that it had been intended that the statutory consultation process would start on that day. However, the Ministry realised that 13 September 2012 couldn't be seen as the start of the formal statutory consultation, as the schools had not received the required letter from Minister. The official stated that formal consultation was commenced by the Minister two weeks later, after the Ministry had worked out what should have been provided on 13 September 2012. She stated:

We should have sat down at the point and said – this isn't quite what we planned the announcement date for, how do we redesign how it happens from here. We didn't. We just went straight into it. The process for 13 September was designed on what went to Cabinet – it didn't fit for the 38 schools.

320. Overall, I consider that the presentation of the proposals to close and merge schools was seriously mismanaged. The information provided about the schedule was incorrect. The information provided to schools (discussed below) did not provide a clear picture of the rationale for the proposals. It also appears that that Ministry officials were not well briefed prior to the announcements, which made it difficult for them to respond to questions. A senior Wellington-based official stated that she was invited to attend the meeting in Christchurch but 'wasn't really sure' what was going to happen. Her role that day was to talk about the general process, and it would have been better if she had known what was going to happen before the actual day. She stated:

I was really aware that schools were thrown into the situation...they weren't ready to hear about merger. They were just like I'm supposed to merge with your school but I hate you...It was challenging for everybody involved.

What went wrong — what happened and why

321. The Christchurch school reorganisation presented a unique challenge, due to the extent of property damage and demographic change, together with underlying issues in the local school network. Unfortunately, there was no authoritative guide or established process for undertaking a wider-scale school reorganisation at the time the Christchurch earthquakes occurred. The *Strengthening Education* policy was used for reorganisations in Dunedin and Kawerau, but this was not a fully fleshed-out or well-tested approach.
322. Ministry officials explained that, in the absence of an explicit and detailed policy for school reorganisations, the strategy for closing or merging larger groups of schools depended on context and was informed by the previous approaches taken (including the lessons from the network review period). This does suggest to me that, when the February 2011 earthquake devastated the physical schooling infrastructure in Christchurch, there is a large extent to which the Ministry had to make up the rebuilding process as it went along. After the immediate challenge of helping schools to

reopen had passed, the government started to focus on a longer-term solution for the restoration of the schooling network. It was at this stage that the discussion between education agencies and ministers turned to the opportunity to renew the provision of education in Canterbury. A highly ambitious project was in the making. There was no clear roadmap to inform this endeavour, nor was there any guide for school communities to help them understand what was about to happen.

323. Katrina Casey commented that:

The city wide nature of the Ministry's focus has been difficult for some schools to understand. A view expressed to me a number of times was that if this process had come about because of the earthquake, the Ministry should only be looking at earthquake damage. The Ministry's broader focus has been hard for many schools to accept. Schools tend to look at themselves and ask 'why us?', rather than seeing the wider city perspective that the Ministry is taking. This is normal in any network reorganisation and we have at all times tried to be very sensitive to the reactions. It is understandably hard to see the opportunity involved in investing \$1bn in schooling infrastructure and in significantly modernising that infrastructure to better suit the way children of today best learn, when your [school] appears not to be part of that opportunity because it is proposed to close. The students of the closed or merged school are, of course, very much part of the opportunity.

We have needed to explain throughout this process that the plan to renew education in Christchurch that Cabinet has authorised, requires looking at the health and state of the whole of the city and looking across the next ten years and beyond, to identify the opportunities to significantly [improve] children's education. The Ministry is firmly focused on the best educational outcomes that can and should be achieved for all Christchurch children. The Ministry needs to be both reactive and progressive. Our thinking was, what a tremendous opportunity to provide the current and future children of Christchurch with one of the most, if not the most, extensive modern learning environments in any part of the county. In saying this, we have never been blind to the fact that doing this involved some very difficult decisions with very real interim impacts.¹³⁰

324. There was an ongoing tension in the Christchurch reorganisation process — between the desire to engage on the Ministry's part (which was particularly evident in the earlier stages of the process) and the demands of certainty (which became more influential as the process unfolded). The final shape of the consultation process in Christchurch was the result of ongoing discussions between the Ministry and Minister. These interactions do not appear to have taken place with the benefit of a thorough analysis by the Ministry of the prerequisites for a good consultation process. The lack of a clear framework for school reorganisations at the time of the earthquakes, combined with the demand to integrate a new Treasury model for major

¹³⁰ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), affidavit of Katrina Casey dated 20 August 2013.

investments into the process, and the ambition of the ‘education renewal’ vision, left the Ministry having to cobble together a complex programme of restoration in a highly pressured environment. In practice, the IBC component was simply allowed to run separately from, yet at the same time as, the public consultation on high-level concepts, and this drove a blunt wedge through the idea of engagement — which the education renewal process never recovered from. In my view, the Ministry failed to ensure that the process of education renewal was coherent, open and explicable, which meant that true stakeholder engagement never got off the ground.

325. While the importance of engagement was noted in the July 2011 decision-making principles, and the August 2011 Cabinet paper stated that the *‘plan would not be directive’*, analysis of precisely how community engagement would be incorporated into all aspects of the Education Renewal Plan does not feature in the Ministry’s advisory material. To my knowledge, the Ministry did not produce any formal advice about the risks of undertaking the IBC process without fully engaging with the sector. There was an assumption that it was appropriate for the IBC to be developed by the Ministry property and network divisions (with the assistance of Aurecon), without the direct involvement of schools — even though the involvement of key stakeholders is specifically contemplated by the BBC model. Engagement was confined to developing a vision, rather than translating this into specific decisions. This compromised the rigour of the proposals on the table and resulted in defensive rather than constructive discussions with the sector. I have seen no evidence to suggest that the lessons from other school reorganisations, including Kawerau and South Dunedin, were applied to the development of the IBC or its implementation.
326. Nicholas Pole commented that, a consequence of not fully engaging, the Ministry did not have co-construction with the sector and *‘the vision of Christchurch being a leader in education in New Zealand was lost’*. He suggested that it shifted from being a story about education and community to being a story about property management. The cultural appropriateness of certain decisions was not tested with the sector. It moved from opportunity and optimism to a process where *‘everyone grabbed their wagons’*, as tends to happen in a closure or merger process which is not community owned.
327. In my view, the Ministry failed to communicate properly with the sector about the process of education renewal. I consider that the Ministry’s communication material provided a vague and incomplete picture of the process in Christchurch by failing to disclose the IBC component. The general message provided to schools about the process of education renewal — that the options would be considered after the wider consultation process had resulted in a coherent vision — was seriously misleading. The schools were simply not told of the interface between the wider consultation process and the development of individual options. The final *Directions* document published in August 2012 stated that the response to network renewal would fall within a broad continuum — leaving the impression that little thought

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had been given to the options at that stage. On the contrary, they were fully developed, and a Cabinet decision about the level of investment was imminent. There was a disjunction between what schools were told about the process, and the full extent of what was actually going on.

328. As noted above, the Ministry made public statements, including during the Phillipstown judicial review proceedings,¹³¹ suggesting that the IBC was prepared after the *Directions* document was finalised (rather than at the same time and parallel to it). I understand that the Ministry did not want to inhibit what it saw as the fundamental conversation by engaging publicly on options for individual schools. However, I consider that the Ministry should have been open and unambiguous about the fact that it was in the process of developing a business case, which included options about the future of individual schools. The Ministry should also have been cognisant of the fact that it had created an expectation of collaboration through the high level of consultation undertaken with the sector concerning the conceptual underpinnings of ‘education renewal’ in Canterbury. The failure to deliver on the promise of ongoing consultation for all parts of the process was a serious breach of trust.
329. It also seems that there might have been other more appropriate ways of managing the process despite the pressures at play in Christchurch. For example, several Ministry officials suggested to me that it would have been good to continue with the process of engagement and collaboration — coupled with some definitive decisions where required — with further review after the network had stabilised. Burnham School suggested that a better process would have been to deal with schools in the red zone first, then work on the next layer. Linwood Avenue School echoed this sentiment, stating that post-disaster settings need a different process. Necessary changes could have been made with other proposals tested in the sector before proceeding further. Similarly, Chisnallwood Intermediate thought that a better approach would have been to merge Aranui and Wainoni Schools and then wait until the population settled before deciding anything else. Nicholas Pole indicated that if he had continued to be involved in the process, he would at least have sought to ‘*have seconded and used local principals as leaders in their community*’ within the constraints and framing that had been established to drive the transformation of education.
330. Katrina Casey stated that all the remedial work in overseeing the business case and the process of developing the education renewal plan had been completed by the end of 2011. Thus, her understanding was that the former Chief Executive decided that it was not necessary to have an ‘*on-the-ground*’ Deputy Secretary after this time. With the benefit of interviewing a range of people involved, my assessment is that a lacuna of effective oversight may have contributed to some of the deficiencies in the process. Nicholas Pole stated that although he shepherded discussion documents through

131 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28).

Cabinet before he left in April 2012, he was primarily *'off the case'* and working on other matters from the end of 2011. After Mr Pole left in April 2011 responsibility for the business case rested with the General Manager of the Property Group, while matters relating to communication, engagement or consultation with the sector were dealt with by the Christchurch Education Renewal Team. However, in terms of overall responsibility, a senior official advised me that after Mr Pole left, *'there was a gap in terms of who was managing the project'*.

331. Katrina Casey advised my investigators that, while she commenced her role with the Ministry in July 2012, she did not assume overall responsibility for the education renewal project until the announcements in September 2012. It is striking that no senior Ministry official was adequately tasked with leadership of the education renewal project for large parts of 2012. While the nuts and bolts of the process had been set in place, and the regional staff were regarded as highly competent, the Ministry appears to have allocated insufficient resources to the strategic oversight of the project during this time. I emphasise that a lot of good work was undertaken by Ministry officials during 2012 and 2013, and it is not my intention to attempt to sheet home responsibility to any particular individuals. However, managing such a large project on a *'business-as-usual'* basis without clear and agreed lines of accountability at senior levels has obvious risks, even on an interim basis. The acknowledgement by Ms Casey that the Ministry *'didn't join the dots'* concerning its communication with the 38 schools subject to closure or merger proposals speaks volumes about the level of strategic attention the Ministry afforded to the project during critical periods of 2012. I also reiterate that the focus of the IBC on property and network considerations,¹³² and the lack of engagement with schools before the options were crystallised, were a fundamental weakness of the proposals presented by the Minister on 13 September 2012.
332. My criticisms of the process need to be tempered by the acknowledgement of the difficulties faced by the Ministry in undertaking the herculean task of education renewal in a post-disaster environment. The pressures at play in Christchurch meant that some compromises were inevitable. Ministry staff worked very hard to restore the education network to a semblance of normality, and to engage with schools in Christchurch to develop a vision. The process of building a new school takes several years. Starting the business case process **after** developing the wider vision for education, and fully involving schools in working up the options, may have required extra time and resources before construction could commence. One official considered that if the decision-making process had taken longer some schools would have *'bled out'*, leading to an imbalance in the school network.
333. Nonetheless, taking all these factors into consideration, my view is that the Ministry lost its way during the education renewal process. In doing

My criticisms of the process need to be tempered by the acknowledgement of the difficulties faced by the Ministry in undertaking the herculean task of education renewal in a post-disaster environment.

132 See paragraph 268.

so, the Ministry failed to give adequate consideration to the shape of the consultation process and did not communicate with the sector in a frank and transparent manner.

The statutory consultation process

334. The balance of my analysis of the Canterbury reorganisation is focused on the statutory consultation process, including issues of information, support provided to schools, and the process of analysis. In addition, I have included case studies which are intended to shed light on the experience of a number of Christchurch schools involved in the consultation process.

Background

335. For ease of understanding, the following text should be read in conjunction with the Decision Chart for Canterbury Schools at **Appendix 3**.

336. On 28 September 2012, the Minister wrote to boards of trustees and principals to initiate consultation on the proposals. The deadline for the return of submissions was 7 December 2012. The Ministry would then provide reports and recommendations to the Minister on each proposal before the next stage in the process was commenced.

337. On 10 October 2012, the Ministry released an updated version of the booklet *Building Sustainable School Networks*, entitled *Building Effective Schooling Networks*,¹³³ which was intended to provide a general guide to schools about the process of reviewing schooling provision. Rather than introducing a new policy iteration, the booklet explained the process of school reorganisation which had emerged during the *Strengthening Education* period. The legislative requirements for consultation concerning individual schools (as articulated in the desk files) were integrated into the process as appropriate. The key steps were described as follows.

- The Ministry recommends to the Minister (Education Report One) that a review of schooling provision be initiated. If the Minister agrees, the review is announced, including the options that the community will be consulted on. In cases where the review is particularly broad or complex, there may be a preliminary engagement with the community to develop a vision for education in the area.
- The community is consulted by the Minister on a set of options, commencing the statutory consultation process. The Ministry reports to the Minister (Education Report Two) on the views of the community — as well as other relevant information, such as costs and demographic forecasts — and makes recommendations for future schooling provision.

133 See paragraph 118.

- The Minister considers the Ministry's report and makes a preliminary decision. If part of the Minister's decision involves the closure of schools, boards of trustees then have a further 28 days to provide reasons to the Minister why their school should not close.
 - The Ministry analyses the resulting submissions from schools and reports to the Minister (Education Report Three), who makes a final decision on the review.
338. On 12 October 2012, the Ministry provided the *Rationale for Change* documents to help principals and boards of trustees understand the reasons for closure and merger proposals.¹³⁴
339. On 19 October 2012, the Ministry wrote to the boards of 70 schools to consult them on the Minister's behalf about the effect the proposals would have on their rolls, pursuant to section 157 of the Education Act.
340. On 22 November 2012, the Ministry released the IBC and associated Cabinet papers and minutes to provide fuller background to the proposals, including detailed property information.¹³⁵
341. On 18 January 2013, after reviewing the submissions it received from schools, the Ministry reported to the Minister.¹³⁶ The Ministry recommended that eight out of the thirteen proposed school closures should proceed,¹³⁷ but that the Minister should reverse her proposal to close Ouruhia Model School, Burnside School and Burnham School. It floated an alternative proposal for the Minister's consideration for Linwood and Manning Intermediate Schools, which involved deferring a decision about their proposed closure until the local schools had been consulted about changes that would be needed as a result (including recapitulation of some primary or secondary schools). Of the nine proposed mergers (involving 18 schools), six mergers were recommended to continue.¹³⁸ The Ministry no longer supported the merger of Linwood Avenue and Bromley Schools; Gilberthorpe and Yaldhurst; and Te Kura Kaupapa Māori o Waitaha and Te Kura Kaupapa Māori o Te Whānau Tahī.
342. Minister Hekia Parata stated that she spent '*many hours*' going through the reports and relevant documents before making her interim decisions.¹³⁹ She received reports on each individual proposal with submissions attached from the boards and other affected schools. Various additional papers were also provided at her request. The Ministry stated:

134 See discussion at paragraphs 386–391.

135 Various redactions were made to these documents pursuant to provisions of the Official Information Act. The papers are available on the Ministry website at <http://shapingeducation.govt.nz/>.

136 The process of analysis undertaken by the Ministry is discussed at paragraphs 418–429.

137 Linwood Intermediate School, Manning Intermediate School, Branston Intermediate School, Shirley Intermediate School, Glenmoor School, Greenpark School, Kendal School; and Richmond School.

138 Burwood School and Windsor School; Central New Brighton School and South New Brighton School; Freeville School and North New Brighton School; Lyttelton Main School and Lyttelton West School; Phillipstown School and Woolston School; and Unlimited Paenga Tawhiti and Discovery One Schools.

139 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), affidavit of Hekia Parata, dated 13 August 2013.

From the advice streams from Officials, from what the Minister had read and from what she had heard and seen when visiting the schools, the Minister was satisfied that the consultation process had truly engaged the communities and that the Board and parents had had extensive and meaningful opportunities to provide considered feedback.¹⁴⁰

343. The Minister also stated:

I knew from the earlier engagement process that there was broad support for the renewal plan in the greater Christchurch area. However, there was little unanimity about the details reflecting, I think, the scale of the proposals being considered. I was not surprised by the number of schools that proposed alternatives to the original announcements. In a totally human way, a number proposed that their own school be not merged or closed but rather, the better way to achieve the Ministry's broad policy objectives was to merge or close a neighbouring school.¹⁴¹

344. On 30 January 2013, the Minister reported to the Cabinet Business Committee on the interim decisions she intended to make. The Minister advised the Committee that she intended not to proceed with *'more than one-third of the original proposals'*. Of the thirteen schools that were originally recommended for closure, the Minister recommended that six closures should proceed.¹⁴² The Minister adopted the alternative proposal for Linwood and Manning Intermediate that further consultation be undertaken on Year 7 and 8 provision before making a decision. She agreed that Ouruhia Model School should remain open, but that it should be relocated to a nearby site in Belfast to serve the population at an appropriate time in the future. The Minister acknowledged Burnham School's unique role in meeting the needs of children whose parents serve in the Defence Force and proposed relocation rather than closure. She accepted the proposal by Burnside Primary School to rebuild the school to create a modern learning environment, and to share facilities with Cobham Intermediate (and Burnside High). The proposal to close Duvachelle and Okains Bay Schools and operate them as part of Akaroa School would also not proceed.

345. The Minister's report to Cabinet made no changes to the (six) mergers suggested by the Ministry. The Minister was persuaded that both of the kura should be retained, and agreed with the Ministry that one should be relocated to ensure that Māori medium schooling was available in the north of Christchurch. She endorsed the Ministry view that the interim decision to merge Phillipstown and Woolston Schools on the Woolston site (instead of the Linwood College site) meant that merging Bromley and Linwood Avenue Schools would *'create a hole in the schooling network'*. The Minister also agreed that Gilberthorpe and Yaldhurst Schools should be retained to

On 30 January 2013, the Minister reported to the Cabinet Business Committee on the interim decisions she intended to make. The Minister advised the Committee that she intended not to proceed with *'more than one-third of the original proposals'*.

140 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), defence statement.

141 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), affidavit of Hekia Parata, dated 13 August 2013 at [80].

142 Branston Intermediate School, Shirley Intermediate School, Glenmoor School, Greenpark School, Kendal School, Richmond School.

cater for population growth and avoid overcrowding while new patterns of enrolment were being established. Following discussion, the Cabinet Business Committee referred the Minister's submissions to Cabinet. The Minister was invited to present her submissions, with amendments as discussed at the meetings.

346. On 1 February 2013, the Ministry provided the Minister with an addendum to the Education Report dated 13 January 2013 entitled 'Outcomes of consultation on proposed school closures and mergers in Greater Christchurch'. The addendum recommended that the proposed closure of Shirley Intermediate School should be replaced with a recommendation to retain the school, and stated:

Schools in the Shirley Learning Community Cluster have been some of the most affected by damage in the earthquakes and subsequent people movement...Given the extent of the changes to schooling in this Learning Community Cluster, there is a case for the retention of Shirley Intermediate School since this will bring some stability to the schooling network in this area and some certainty to local families.

347. This meant that the Minister was now recommending proceeding with a total of five closures. Katrina Casey commented:

In some cases, the Minister asked us to examine some aspects more carefully and to consider some new elements. An example of this is Shirley Intermediate, which we had recommended to close. The Minister wanted us to go back and focus on the cumulative impact on that particular community and changes to the schools being proposed. This was a factor we had not considered in-depth but when we did, it was clear that this particular community was very badly affected by a number of changes and our concern was to try and provide some form of stability in that network. We subsequently changed our recommendation and recommended instead that Shirley Intermediate not close.¹⁴³

348. The Minister's recommendations were considered by Cabinet on 4 and 11 February 2013. It was agreed not to close Shirley Intermediate School, as families in the Shirley area had been seriously affected by changes to the local network of schools.¹⁴⁴ It was decided that Burnham School should remain on its current site and not be relocated, due to its special links with the Defence Force. It was also decided that the proposal to close Linwood Intermediate and Manning Intermediate would in fact proceed in the interests of providing certainty rather than undertaking further consultation on how Year 7–8 education would be configured. (It appears this decision was the result of Cabinet discussion rather than additional advice from the Ministry).

¹⁴³ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), affidavit of Katrina Casey, dated 20 August 2013.

¹⁴⁴ The proposal for the Shirley Learning Community Cluster was to close Richmond and Shirley Intermediate Schools, recapitate Shirley Primary School, and recapitate and relocate Banks Avenue School. Hammersley Park School closed on 27 January 2013.

349. On 8 February 2013, the Ministry of Education Chief Executive Peter Hughes commenced as the Acting Chief Executive (following the departure of Lesley Longstone).
350. On 18 February 2013, the Minister announced interim decisions for 31 of the 38 schools affected by the proposals. (Of the seven other schools, Hammersley Park and Le Bons Bay Schools had elected to voluntarily close. The other five schools were in the Aranui cluster.) In summary, she announced that the following seven closures would proceed.
- Linwood Intermediate School
 - Manning Intermediate School
 - Branston Intermediate School
 - Glenmoor School
 - Greenpark School
 - Kendal School
 - Richmond School.
351. The merger proposals set to go ahead were as follows.
- Burwood School and Windsor School
 - Central New Brighton School and South New Brighton School
 - Freeville School and North New Brighton School
 - Lyttelton Main School and Lyttelton West School
 - Phillipstown School and Woolston School
 - Discovery One School and Unlimited Paenga Tawhiti schools.
352. The schools were given six weeks to give feedback as to why the merger or closure should or should not go ahead, before a final decision would be made. The Minister also asked the two kura to consider relocating to another part of Christchurch and invited feedback on which would relocate.
353. On 27 March 2013, the Minister was in a position to announce final decisions for 12 schools in greater Christchurch. The boards of the schools where the interim decision was not to close or merge agreed with the decisions. The boards of Discovery One and Unlimited Paenga Tawhiti schools also agreed with the decision to merge. The final decisions were that Burnham Primary School, Burnside Primary School, Duvauchelle School, Okains Bay School, Ouruhia Model School and Shirley Intermediate would remain open. Bromley School and Linwood Avenue School would no longer be merged, nor would Yaldhurst Model School and Gilberthorpe School. In addition, Discovery One School and Unlimited Paenga Tawhiti schools would merge as a Year 1–13 designated character school, effective from 27 January 2014.

354. By 28 March 2013, the Ministry had received further submissions from all 19 schools still involved with closure/merger/relocation proposals. The Ministry utilised the same process of analysis to prepare the recommendations on the interim decisions.
355. On 19 April 2013, the Ministry reported to the Minister on the *'Outcomes of consultation on proposed school closures and mergers in Greater Christchurch'*, provided together with thirteen individual Education Reports, concerning the remaining seven proposed closures, the five proposed mergers and the proposed relocation of one of the two kura. There were some changes to the proposals, but not to the same extent as the first round of consultation. In summary, the Ministry confirmed its advice that the schools previously identified for closure should close. It was also recommended that the Minister proceed with three of the five remaining proposals to merge.¹⁴⁵ For the New Brighton schools, the Ministry recommended that the merger of South New Brighton and Central New Brighton Schools proceed, while it presented three options for the future of Central New Brighton, North New Brighton and Freeville Schools.¹⁴⁶
356. The Minister again went through the process of reviewing the Ministry advice, and a Ministerial Paper was considered by Cabinet on 20 May 2013. The Minister confirmed to Cabinet her intention to close seven schools.¹⁴⁷ However, the Minister considered that South New Brighton School should remain open as a separate identity and not merge with Central New Brighton. This is because Central New Brighton had a falling roll which would make up less than 10 percent of the total roll of a newly merged school. The three remaining New Brighton schools (North New Brighton, Central New Brighton and Freeville) would be subject to two new proposals (merger of all three, and the closure of Central New Brighton while the other two merged), which would be consulted on together. The Minister also advised that, in light of the strong arguments made by the kura about their setting and context, they would both remain on their current sites (with a proposal to develop a strategy for Māori medium provision in Greater Christchurch).
357. On 22 May 2013, the Minister announced her interim decision for the Aranui cluster. In summary, Chisnallwood Intermediate would remain open, and the other four schools would be closed, with their student population accommodated in a new Year 1–13 campus.¹⁴⁸
358. On 29 May 2013, the Minister announced final decisions for sixteen schools

145 Burwood and Windsor, and Phillipstown and Woolston Schools should merge in January 2012. Lyttelton Main and Lyttelton West Schools should merge in May 2014.

146 The three options were: consult on a merger of the three schools, merge Freeville and North New Brighton Schools and consult on the closure of Central New Brighton School; and consult on the option of a three-way merger and the closure of Central New Brighton.

147 Glenmoor, Greenpark, Kendal and Richmond School should close in January 2014. Branston Intermediate, Linwood Intermediate and Manning Intermediate Schools would also close in January 2014, with students accommodated in local secondary schools.

148 The Ministry of Education provided the Minister with a comprehensive Education Report about the Aranui Schools, dated 27 March 2013.

and two new proposals for three other schools. (The deadline for further submissions from the Aranui and New Brighton Schools was 10 July 2013.) The final decisions were as follows.

- Glenmoor School, Greenpark School, Kendal School and Richmond School would close in January 2014.
- Branston Intermediate, Linwood Intermediate and Manning Intermediate would close in January 2014 (Year 7–13 schooling would be provided at Hornby High School, Linwood College and Hillmorton High School).
- Burwood School would merge with Windsor School, and Phillipstown School would merge with Woolston School in January 2014.
- Lyttelton Main School and Lyttelton West School would merge in May 2014 initially at the Lyttelton West and then on the Lyttelton Main site when the new school is completed.
- Te Kura Kaupapa Māori o Te Whānau Tahī and Te Kura Kaupapa Māori o Waitaha would not merge and would be retained on their current site.
- South New Brighton would remain open as a separate school on its current site. Central New Brighton, and the other two remaining schools, North New Brighton and Freeville, would be subject to two new proposals that would be consulted on concurrently. The new proposals were either to merge Central New Brighton, Freeville School and North New Brighton School on the North New Brighton site, or to close Central New Brighton and finalise the interim decision to merge Freeville and North New Brighton.

359. The Ministry subsequently went through the same process of analysis in relation to the submissions it received from the Aranui and New Brighton schools. On 11 September 2013, the Minister announced her final decisions for the Aranui and New Brighton schools. In accordance with the interim decision, a new community campus incorporating Year 1–13 schooling would be established on the Aranui High School site. Aranui High, Aranui School, Avondale School and Wainoni School would close. Chisnallwood Intermediate would remain open (subject to review in 2020). In addition, Central New Brighton, Freeville and North New Brighton would merge in January 2015. This would initially occur on the North New Brighton and Freeville sites, and from 2016 on the North New Brighton site after it had been developed.

360. As noted above, on 29 May 2013, the Minister announced her decision that Phillipstown School and Woolston School should merge on the Woolston site and not on the Linwood College site. Phillipstown School initiated High Court judicial review proceedings. On 9 October 2013, Justice Fogarty declared the Minister’s decision concerning Phillipstown School invalid. Justice Fogarty noted that the Crown acted in good faith and had gone to considerable effort to consult. However, Justice Fogarty considered that the

importance of the financial costs to the decision was *'mistakenly played down'* and *'the financial information being relied on by the Minister was not reasonably broken down and explained in a manner which would have enabled a critique'*.

361. In November 2013, the Detailed Business Case for the Greater Christchurch Schools was approved by Cabinet.
362. In November 2013, the consultation process concerning the merger of Phillipstown and Woolston School was recommenced by the Minister. The schools were provided with information about the costs in a comprehensible format.¹⁴⁹ In April 2014, the Minister confirmed her final decision to merge Phillipstown School with Woolston School.

Proactive release of information

Information released on 13 September

363. The information packs provided by the Ministry at the Lincoln meeting included material about the education renewal process, along with basic cluster-specific information, including roll and building information. To ascertain their futures, the schools had to sift through information packs containing mostly generic information. The proposals for individual schools were conveyed by incorporating the relevant network assessment,¹⁵⁰ rather than providing any targeted commentary on the *Rationale*. The school-by-school information included roll and site size, utilisation rate, ERO information and NCEA Level 2 achievement rates. Other than providing an indication of investment level per student, in three broad bands, there was no reference to costs.¹⁵¹
364. The information pack provided to individual schools emphasised the importance of cluster planning. For example, under the heading *'Engagement purpose'*, the material read:
- One of the key drivers of engagement is to ensure shared ownership of the issues, solutions and construction of a Learning Community Cluster Plan that will inform the future shape of education provision within education communities going forward.*
- Learning community cluster plans need to be completed by December 2012 if decisions are to be made in a timely fashion.*
365. Many of the schools expressed dissatisfaction with the adequacy of information provided by the Ministry. For example, Okains Bay School made an OIA request for a copy of the data used to make the decision about the

Many of the schools expressed dissatisfaction with the adequacy of information provided by the Ministry.

149 See discussion at paragraphs 430–439.

150 See **Appendix 2**.

151 For example, the Phillipstown School roll was 137 with a utilisation rate of 97% and site size of two hectares. The total projected cost (maintenance and capital) over the next 10 years was more than \$20,000 per student (the highest of three investment categories). Woolston Schools roll was 220, with a utilisation rate of 103% and site size of 1.5 hectares. The investment level was somewhat lower, at \$10,000–\$20,000 per student.

proposal, as distinct from the 'glossy trivia' sent in the information pack.

366. As referred to above, the Ministry made no changes to the information provided to schools following the Cabinet decision to truncate the process. This meant that information provided to schools about the process incorrectly stated that formal consultation would begin in the New Year. The written material also indicated that the first step in the process was to develop the Learning Community Cluster Plan before the consultation process commenced. The cluster-planning process was subsequently postponed to allow schools to focus on the consultation process. It proved impractical to have cluster-focused discussion while some schools knew that their future was in doubt. On that point, the principal of Manning Intermediate stated:

Once the announcements were made, other schools retreated into their silos and battened down and didn't want to be involved in discussions about deciding what was best, because they might be pointed at.

367. No further information was provided to schools when statutory consultation was initiated by the Minister's letter dated 28 September 2012.

368. During this time, many of the schools contacted the Ministry to seek clarification about the reasons for the proposals. For example, on 2 October 2012, the principal of Freeville School wrote to the Ministry, explaining:

The rationale is what I need. I know I'm sounding like a broken record but the Minister has said this information is available and I haven't seen it yet. If you think we have seen it then I need a discussion with someone to help me understand what information has been used to form the proposal and what conclusions have been drawn from the data.

...

I am sorry but I do not understand. The information provided does not in any way explain the rationale for the proposal. The people information only records our roll. The information you have based this on shows our roll as having grown. The land information supplied only describes our land issues with exactly the same description for North New Brighton land. Some of the building information is incorrect and does not have any explanation with it. We are back to the same question that I still have not had answered which is 'what was the specific rationale for this proposal?'

369. Similarly, on 9 October 2012, Burnham School stated:

[W]e do not feel that we have enough information to clearly explain to our community why the MOE have selected our school to be considered for closure... We would like to be assured that after we meet with staff from the MOE [...] we will have a better understanding of exactly why Burnham School was selected for proposed closure.

370. A book produced in 2013 by the Christchurch Press entitled *A City Recovers: Christchurch Two Years After the Quakes* included the following observation.

Schools were also upset that they were provided with very little information

*about what to do next. It took another 15 days for Parata to announce a consultation period, in which schools were given 10 weeks to provide feedback and alternative options. Principals also accused the Ministry of using incorrect information about schools to come up with the proposals.*¹⁵²

371. Christchurch schools struggled to understand why they were being targeted for closure in the period following the announcement. While some base data was provided, individual schools did not receive any commentary about why they had been selected for closure or merger. The tables enabled some comparison between neighbouring schools, but little of the Ministry's thinking was revealed. The underlying assumptions and decision-making process were opaque. For example, schools with similar property costs (such as Bromley and Linwood Avenue Schools, and Lyttleton West and Lyttleton Main Schools) were not advised as to precisely how the preferred option had emerged (mergers on the Bromley School and Lyttleton Main School sites, respectively). Many schools (such as Freeville and Burnham Schools) contacted the Ministry asking for an explanation of the rationale for the proposals, given that important local factors were not mentioned, nor were the underlying assumptions explained.
372. Katrina Casey commented that it was difficult to determine what information should be released to support the consultation process. She considered that releasing all the information would have been impracticable and overwhelming. She acknowledged that it was imperative to provide a *'really clear rationale at the outset'*, and then to have a good process for providing any further information.
373. In my view, the information released by the Ministry on 13 September 2012 was insufficient to place the schools in a position to provide meaningful comment on the proposals. As referred to above, staff were not well prepared to respond to enquiries on the day itself. Unfortunately, this meant that schools had to go back to their communities without a good understanding of the underlying rationale for the proposals. Nor did they have a clear picture of the process, given the provision of contradictory material. It is disappointing that no further information was provided when statutory consultation was commenced, despite numerous requests from schools for clarification of the fundamental rationale. Some extra explanatory material was provided in mid-October when the *Rationale for Change* documentation was published, but this was still insufficient, as I will detail in the next section.

In my view, the information released by the Ministry on 13 September 2012 was insufficient to place the schools in a position to provide meaningful comment on the proposals.

Accuracy of information

374. Two key streams of data informing the process of network analysis concerned population movement and property (building and land). During the course of my investigation, many schools expressed the view that the

152 Gorman, P. and *The Press* journalists. 'A City Recovers: Christchurch Two Years after the Quakes'. In *Education, Looking to the Future*, T Law. Christchurch: *The Press*/Random House New Zealand, 2013, pp. 180–197.

Ministry should have waited for the census data to become available before undertaking its demographic analysis. In the updated *Rationale for Change* document for the merger of Phillipstown and Woolston Schools,¹⁵³ the Ministry stated:

Recently released 2013 Census data shows that, in the Census Area Units (CAUs) served by Phillipstown and Woolston School, the total population has grown by 5% since the 2006 Census.

The Census data released to date (November 2013) only refers to total population. It needs to be noted that changes in total population are not always matched in the school-age population, due to the different household compositions within different communities.

Further, the Census data provides only an overall snapshot of population change over a period of seven years, during which there were two very different population trends (pre-quake between 2006–2011, and post-quake between 2011–2013).

375. For these reasons, the Ministry’s student distribution data provides a more accurate picture of current population trends in the local school-age population than the available Census 2013 data. The Ministry’s data showed that, in the Census Area Unit served by Phillipstown and Woolston Schools, the Year 1–8 student population had decreased from 2010 to 2013.

376. A senior advisor stated in her affidavit:

Mr Simpson asked why the Ministry has not used Census data in its decision making and about what would happen if the new Census data presented a contrary picture. I responded that the 2011 Census had been delayed by the earthquake and new data collected from the 2013 Census would not be available until 2014. I further explained that the Ministry’s decision was informed by a number of different data sets, including data from the Christchurch City Council and the Ministry’s enrolment data. The [latter] data showed the movement of families and students away from Christchurch following the February 2011 earthquake.¹⁵⁴

377. I am satisfied that the Ministry’s demographic information provided a more accurate statistical representation of the school-age population than the 5 March 2013 Census.¹⁵⁵ It captured the most up-to-date information about school rolls (taken from the March/July roll return and ENROL database) and residential property developments. The data is geo-coded and I understand that 95 percent of students have their location dot-mapped. Therefore, I consider that the Ministry had a good record of the location of students and which school they attended.

378. The demographic information is not simple, but the property information

153 The consultation process for Phillipstown School was recommenced in November 2013 after successful judicial review proceedings.

154 *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28), affidavit dated 20 August 2013.

155 The March 2011 Census was postponed after the February 2011 earthquake, due to the national state of emergency and probable impact on census results.

is arguably yet more complex still. The regional property manager for the Ministry of Education explained that the main property information resource for schools was the MPlan¹⁵⁶ system of condition assessment (for preparing 10-year property plans) and the *Property Management Information System (PMIS)*. With respect to MPlan, he stated:

*Much of the WebFM system and MPlan site is technical and detailed. We do not expect boards and principals to be experts in these matters. If schools need assistance in using MPlan, they either seek the assistance of their project manager, or contact their Senior Property Advisor (SPA) within my team.*¹⁵⁷

379. The Lead Case Manager for GCERP stated:

The Ministry's PMIS contains specific property information e.g. school buildings, ancillary buildings, boiler, pools, roll numbers, financial projects. It includes data relating to the size of buildings, the nature of their construction and the year they were constructed.

...

*It is each school's responsibility to send through information which is then used to update PMIS data. This means errors can occur. For example, Manning Intermediate had had older buildings replaced with newer buildings but this was not reflected in the information it fed into the PMIS data.*¹⁵⁸

380. Katrina Casey stated:

*We were comfortable that we had sufficient property expertise and information to input into the generation of proposals and to take us through the consultation and decision-making process. We kept working on this and committed to updating the property information and assumptions particularly if there were any changes that would affect the basis of our proposals. Over time, this process revealed that the initial work was very reliable and very little of the further information we received materially affected the proposals.*¹⁵⁹

381. Following the announcements of 13 September 2012, many principals contacted the Ministry with concerns about the accuracy of the building information. It was alleged that some of the data used to generate the business case was incorrect, including the reported number of school buildings not corresponding with the physical buildings. The cost estimates for remediating schools were subject to vigorous debate, and there was widespread misunderstanding about variables and assumptions. After investigating these concerns, the Ministry concluded that while there were some minor inaccuracies, none of these were significant enough to change any of the recommended proposals. It reported that there were mismatches between some of the buildings and teaching space counts but that, in

¹⁵⁶ MPlan is a web-based application which enables the development of property maintenance plans. It is located on the [WebFM website](#) (WebFM is a company which provides online property management systems).

¹⁵⁷ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28, affidavit dated 21 August 2013).

¹⁵⁸ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28, affidavit dated 20 August 2013).

¹⁵⁹ *Board of Trustees of Phillipstown School v Minister of Education* (see fn 28, affidavit dated 20 August 2013).

all but one case (Manning Intermediate), the records were an accurate representation of the total sum of property. The Ministry advised the Minister:

By [and] large the data is robust and defensible. The Ministry recognised that some principals have concerns about the data that has been published for their school. If you agree, the Ministry will contact all the schools that have already corresponded with you on this matter, and with others as they continue to do so, and explain to them the assumptions behind all of the data for each of their schools.¹⁶⁰

382. On 2 October 2012, a *Campbell Live* broadcast highlighted multiple concerns about the accuracy of property information. In addition, the Minister for Canterbury Earthquake Recovery Gerry Brownlee raised a concern that the indicative costs to repair Burnside Primary School (\$8.9 million) might have been overstated. In response, the Ministry asserted that the majority of the data issues raised about Christchurch schools in the media were inaccurate.¹⁶¹ (The three factual inaccuracies detected were that the Ministry held incorrect information about the number of buildings for Manning Intermediate and Woolston School, and that Burnside Primary was listed as having 50 earthquake-damaged buildings rather than 11.) The Ministry undertook to review the estimated repair costs for Burnside Primary, but, for other affected schools, the inaccuracies were not regarded as having a material effect on the validity of the current proposals. While the costs for Burnside Primary School were subsequently revised down to \$6 million, the Ministry stated:

We do not consider the new estimate is sufficient to reverse the current proposal to close Burnside. The review indicates that there are significant property issues at the school indicating a substantive rebuild would be required if the school was to be retained and the rationale behind the proposal to close the school still stands.

Spending a large amount on a school with only 200 learners is not a good use of Crown funding, especially given that the school is not facing projected roll growth and is located on a particularly large site (4.4 ha) that is being under-utilised.¹⁶²

383. In order to ameliorate the widespread concern about the property information, the Ministry decided to facilitate briefings between schools and independent property professionals, and prepare a detailed rationale for each school that would include property information. It was proposed that schools would be contacted and the assumptions behind the data explained. The Ministry also noted that maintaining accurate records for school property was the joint responsibility of the Ministry and each school's board of trustees. The Ministry was in the process of replacing its PMIS, which was based around original plans for school buildings. The new system would

160 Education Report dated 24 September 2012.

161 Education Report dated 9 October 2012.

162 Education Report dated 14 November 2012.

allow for improved data management processes that would help minimise the frequency of inaccuracies. On this point, the Minister commented:

I asked officials to assess the errors and they prepared a paper for me analysing the errors... This analysis assured me that the errors were minor and not material to the proposals being presented. Nevertheless, they troubled me because, despite my officials addressing each one directly and clearly in their advice to me, the effect was to cast unnecessary and unhelpful doubt on the veracity of the rest of the information.¹⁶³

384. It is important to acknowledge that the property information was constantly evolving in response to ongoing damage by further earthquakes and as more information became available. The cost estimates were based on estimates made by professional loss adjustors, property experts and project managers. The quantification of building damage is an inexact science and final costs might not be revealed until work is commenced. The majority of the property information was retrieved from the Ministry's PMIS database. The Ministry confirmed that it is the responsibility of individual schools to update the PMIS data, and errors can occur which are outside the control of the Ministry. For example, the Ministry's estimated costs for Manning Intermediate were incorrectly predicated on the school having a dental clinic. This was the result of dental services being converted to school use without the property records being updated to reflect the change. Regrettably, the property information relied on was presented without a proper explanation of the underlying assumptions or the methodology. The school utilisation data presented similar issues — many schools thought that the utilisation rate figure was incorrect but misunderstood the basis for the calculation. (Linwood Avenue School was concerned that it used 16 classrooms but the Ministry stated it needed 11.) It was actually a measure of how much student space a school was entitled to, rather than how much classroom space was being used. Similarly, there was widespread confusion about the relevance of Detailed Engineering Evaluations, many of which were not completed until later in the process.
385. Concerningly, the material provided to schools on 13 September 2012 contained multiple errors, which undermined the confidence of the schools in the proposals.¹⁶⁴ It also made some of the Christchurch schools even more determined to contest the proposals. Nonetheless, I accept the Ministry's conclusion that the error rate was low, given the enormous size of the proposal under consideration. The data inaccuracies were mostly of a minor nature and provided an unnecessary distraction. I am also of the view that the Ministry responded appropriately to the concerns about property information by checking the data. However, the possibility that the information held by the Ministry might not be accurate — or that the

¹⁶³ Board of Trustees of Phillipstown School v Minister of Education (see fn 28), affidavit of Hekia Parata, dated 13 August 2013.

¹⁶⁴ This included inconsequential typographic errors which may have reflected the haste in which the material for schools was composed.

information might be misunderstood or difficult to interpret — highlights the importance of setting aside a period to validate the information, and of taking steps to ensure that the underlying assumptions are understood. I consider that springing the proposals on the individual schools without first taking steps to broker some form of shared understanding about the base data provides a poor start to a public consultation process of this type. I cannot emphasise enough the importance of working closely with affected schools as much as possible from the beginning of such complex processes. This helps ensure that when the statutory consultation phase is commenced, the parties can focus their attention on the key issues at hand, rather than litigating factual details or arguing about the process itself. It squarely promotes the interests of fairness, in that consultees are in a position to provide meaningful input from the start.

I consider that springing the proposals on the individual schools without first taking steps to broker some form of shared understanding about the base data provides a poor start to a public consultation process of this type. I cannot emphasise enough the importance of working closely with affected schools as much as possible from the beginning of such complex processes.

The publication of the *Rationale for Change*

386. On 12 October 2012, a month after the initial proposals were announced, the Ministry wrote to all 38 schools subject to a proposal for closure or merger, providing the *Rationale for Change* documents. This included comment about the proposal and updated information about land, buildings and rolls.¹⁶⁵ For example, under the heading ‘Why is it proposed my school change?’, the *Rationale* for Burnham School stated:

The school has a relatively small roll for a full primary school. While some new buildings have been added over time, none have been upgraded since they were constructed. The buildings will almost certainly require earthquake strengthening and the school would require a large investment in comparison to the size of its roll.

Given future population growth is anticipated in the area the Ministry of Education has already announced new education provision for Rolleston as part of the long term plan for education renewal. The Ministry is currently investigating sites for new primary and secondary provision in Rolleston and it is envisaged this new provision will absorb learners from a number of existing nearby schools, including Burnham School. It is proposed to close Burnham School and invest in a nearby school which will provide a modern learning environment. We will ensure Burnham learners are able to have access to it.

387. The *Rationale* to merge Lyttelton Main School and Lyttelton West School stated:

The two schools in the Lyttelton cluster are less than one kilometre apart. Both have small rolls and are operating well below peak roll capacity, so there is an oversupply of primary school age provision in the areas. Lyttelton does not have a sufficiently large enough school age population to support two primary schools. Because Lyttelton is an isolated community learners from surrounding catchment areas are unlikely to attend a Lyttelton school.

388. The *Rationale* also provided the 10-year indicative property costs for each

¹⁶⁵ The documents were also published on the Ministry’s *Shaping Education* website.

proposal. For example, in the Linwood cluster, the indicative property costs for the proposed merger of Bromley School and Linwood Avenue School were \$1.2 million and \$1.6 million, respectively. The 10-year indicative property costs for the proposed merger of Philipstown School and Woolston School were \$3.5 million and \$1.7 million, respectively. These estimated costs were not broken down into the component parts — which were described in the *Rationale* as condition assessment (maintenance requirements for the next 10 years), earthquake damage (indicative repair costs from earthquakes), structural strengthening (an indicative assessment prior to Detailed Engineering Evaluation) and weathertightness remediation (estimated from a national survey of all school buildings).

389. Most of the 19 schools interviewed during my investigation considered that the *Rationale* documentation was too generic and vague to provide much in the way of insight into the decision-making process. Important contextual factors were not identified as relevant, so it was unclear whether these had been considered. In addition, the estimated costs were presented in a manner which many found difficult to understand. Some observations from schools are as follows.

- Burnham School was surprised that the *Rationale* did not mention its special character of providing education and pastoral support to learners from New Zealand Defence Force backgrounds.
- Kendal School thought that the proposal was formulaic and failed to consider its important role in the community or the impact on students. The property information was insufficiently explained.
- Duvauchelle and Okains Bay Schools found it difficult to understand the *Rationale*, as the language was bureaucratic, and the Ministry could not explain how the closures would '*provide better coverage and access to education for learners*'.
- Te Kura Kaupapa Māori O Te Whānau Tahī was concerned that the *Rationale* did not consider the cultural significance of each kura or the wider context of Māori Medium Education in Christchurch.
- Avondale School described the *Rationale* documents as '*bland*', stating that the property information was too general to enable it to be checked for accuracy. The level of damage seemed overstated and it was not clear why the roll of 340 was '*non-viable*'.
- Lyttelton West School characterised the *Rationale* as '*broad and generic*', and did not believe that it demonstrated why Lyttelton Main School was the preferred site of the new school. It was not explained why the Ministry considered that operating two primary schools in Lyttelton was not viable.
- Linwood Avenue School and Bromley School saw the *Rationale* as generally helpful, but insufficiently detailed to enable them to understand the thinking behind the proposal.

- Phillipstown School considered that the *Rationale* raised more questions than answers. Phillipstown School was informed that there was an oversupply of primary schools ‘in the area’, but stated that it received no specific advice that the Ministry was concerned about its location. Phillipstown School advised me that it decided not to challenge the \$3.5 million estimated property costs because the property information was too general to enable informed debate.

390. The *Rationale* contained some helpful information and summarised the key data on which the proposals were based. Some of the schools understood the reasons for the proposals, but simply did not accept them. Nonetheless, I consider that the Ministry could have done a much better job at explaining the reasons for the proposals. The linkages between the base data and the proposals were not made clear, leaving many school boards uncertain why their school (as opposed to another school in the same cluster) had been targeted for closure or merger. For example, the explanation concerning the merger of the two schools in Lyttelton did not differentiate between Lyttelton Main School and Lyttelton West School. Phillipstown School may have generally understood the reasons for the proposal (as acknowledged by Justice Fogarty), but it struggled to understand why the Woolston site was preferred.
391. The *Rationale* was not written in a manner which readily enabled individual schools to understand the proposals. The *Rationale* commentary was too generalised, and the detailed information too technical — leaving many schools confused about why they had been selected for closure or merger. The lack of reference to contextual factors led many schools to conclude they had not been properly considered during the work-up of the options. The *Rationale* did not contain sufficient information to enable all of the schools to understand the reasons for the proposals as it applied to them. As noted above, it is disappointing that the *Rationale* was not provided to schools when the statutory consultation process was commenced on 28 September 2012. I am surprised that the Ministry did not consider it appropriate to provide individual schools with a clear explanation, at that time, as to why they had been selected for closure or merger.

The estimated property costs

392. As Justice French noted in the *Aorangi* case,¹⁶⁶ consultation is not akin to litigation, and there is no requirement to release every associated document. However, it is necessary to present the key information in a comprehensible form. In the *Phillipstown* decision, Justice Fogarty concluded that ‘the financial information being relied on by the Minister was not reasonably broken down and explained in a manner which would have enabled a critique’.¹⁶⁷ While relatively detailed building information was made accessible to schools from March

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¹⁶⁶ See discussion at paragraph 33.

¹⁶⁷ *Board of Trustees of Phillipstown School v Ministry of Education* (see fn 28) at [3].

2012 (through MPlan and the PMIS), this was not presented in a form which could be readily grasped by the layperson. In this situation, schools were heavily reliant on their own ability to analyse technical information in order to gain an understanding of the estimated building costs. Justice Fogarty considered that Phillipstown was not able to respond meaningfully, as it was not properly informed of the reasons for the proposed decision. Thus, the Minister's decision was rendered invalid — although the error was inadvertent and consultation could be recommenced.

393. The Ministry's position is that the property information naturally became more refined as time went on. It was necessary to start with the broader information, and the decisions were also based on other contextual factors. The Ministry emphasised that the schools received all the information that the decision-maker (the Minister) was presented with, and it insisted that full disclosure of information occurred as it became available. The Ministry advised me that the schools were seeking some information which the Minister did not have at the time of making her decision. Katrina Casey stated:

*The Ministry was very aware that the property information was complex. We initially kept it as simple and accessible as we could and, to that end, in summary form. We offered schools the opportunity to meet with engineers and experts who did the property assessments and we did provide details as requested. But we were always clear that the detail effectively added no material benefit because the proposals and decisions were based on a range of factors of which property was one.*¹⁶⁸

394. There is often a sound reason for keeping things simple, and this should be a constant aim in administration, bearing in mind Albert Einstein's caveat that 'everything should be made as simple as possible, but not simpler'. In this case, I consider that the initial presentation of the indicative 10-year property costs in the *Rationale* included insufficient detail. It is my opinion that the lack of any breakdown of the property information was a fundamental flaw in the information provided to schools. The indicative 10-year property costs were not divided into the four relevant categories referred to in the *Rationale* (condition assessment, earthquake damage, structural strengthening and weathertightness), and information was not provided on a building-by-building basis. The Ministry did not convey that the estimated costs were based on remediation of the existing school as it had been, prior to the earthquakes.
395. The Ministry has claimed that property costs were not the key driving factor, but I consider that the schools' interest in receiving more meaningful information about the property costs was entirely justified. In the *Phillipstown* case,¹⁶⁹ Justice Fogarty came to the same conclusion. He considered that

168 *Board of Trustees of Phillipstown School v Ministry of Education* (see fn 28), affidavit of Katrina Casey dated 20 August 2013.

169 *Board of Trustees of Phillipstown School v Ministry of Education* (see fn 28).

the Ministry gave conflicting signals as to the relevance of the information about costs and did not make the remediation data reasonably accessible. It was crucial that schools involved in this process had clear information about the estimated costs and the underlying assumptions. At the very least, a breakdown of the four categories of property costs should have been set out. This should have been accompanied by further summary information about each category (to the extent that information was available). Accordingly, my view is that the property information provided to the Christchurch schools was inadequate to allow them to make a well-informed response.

396. The information provided to Phillipstown in November 2013 when the consultation process for the proposed Phillipstown/Woolston merger was resumed (after the successful judicial review proceedings) was a vast improvement. It was presented in a layered format and was designed to be understood by the board without recourse to property experts. While Phillipstown did request further information, and the costs were subsequently revised, I consider that the information the Phillipstown board received in November 2013 placed it in a sufficiently informed position to make further enquires as it wished. It is regrettable that this position was reached only as a result of a successful High Court action by Phillipstown School.

Reactive release of information — responding to OIA requests

397. A number of the affected schools made requests for extra information to inform their submissions. The key types of information requested were:
- property reports;
 - funding and costs;
 - staffing;
 - demographic and funding;
 - consultation process;
 - facilitators;
 - rationale for clusters and change;
 - repair costs; and
 - transport zones.
398. The Ministry established the Greater Christchurch Education Renewal Call Centre, which handled enquiries — mostly relating to property and the *Rationale*. Call Centre staff endeavoured to respond to enquiries within a day — or to activate the Ministry’s formal OIA process, if a quick informal response was not possible. It appears that requests for information generally took longer if they were designated as ‘OIA requests’. Katrina Casey stated

that some staff gave *'incorrect'* advice to schools that a specific form of request was required to obtain complex or detailed information. She acknowledged that the Ministry's handling of information requests was *'clumsy'* in the early stages. Former Ombudsman, Dr David McGee, observed that any suggestion that requests could be expedited by somehow bypassing the OIA was unacceptable, as *'any request for information held by an agency falls under the OIA whether the Act is mentioned or not'*.¹⁷⁰

399. The Call Centre received a high volume of enquiries (around 200 enquiries were logged for September and October 2012). The Call Centre log indicates that the Ministry managed to respond to most simple enquiries fairly promptly, but the responses were of variable levels of quality and helpfulness. Many schools expressed dissatisfaction with the adequacy of information provided by the Ministry.
400. The timeliness of the Ministry's response to more complex OIA requests was variable. For example, on 28 September 2012, Avondale School requested *'all information used to formulate the Aranui proposal'*, including any public consultation. The Ministry did not reply until 23 November 2012, well outside the statutory timeframe, and by which point a redacted version of the IBC had been publicly released (which itself was too late for schools to digest before the submission deadline of 7 December 2012). Of five requests made by Avondale School, one was responded to outside the statutory time limit, while the other four were responded to just within the 20-working-day limit.
401. One senior ministry official commented that that the Ministry was *'caught out by the sheer numbers'* of OIA requests that arrived in a very short period of time. At one stage around 100 OIA requests were waiting to be processed, many of which related to property matters. In response, the Ministry established a full-time team to process the requests. The official stated that while *'a few'* OIA requests were answered late, all were responded to. She conceded that if more detailed information had been released in the first instance, this would likely have reduced the number of OIA requests. She stated:
- I don't know that schools got all the information they could have in the beginning. If ever a lesson is to be taken out of this — the lesson has been that they have to have everything given to them.*
402. Another senior Ministry official commented that the schools were *'screaming'* for information, and that this created a huge log-jam of OIA requests, which the Ministry struggled to clear. He also conceded that not enough information was provided at the start of the process and stated that the Ministry had *'absolutely learnt from that'*.
403. In my view, the proliferation of information requests to the Ministry was symptomatic of the difficulties many schools had in fully understanding the rationale for the proposals and the property information. Many schools

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170 Report dated 18 December 2012, *'Investigation of Ministry of Education's management of OIA requests about proposed Christchurch School closures'*, Ministry of Education: p. 12.

were not satisfied by the further information released by the Ministry. For example, Okains Bay School representatives stated that it was a 'battle' to obtain information from the Ministry. When obtained, the information was very hard to understand and, as such, 'added little' to their understanding of the rationale for the proposal.¹⁷¹

404. Dr David McGee considered that the Ministry's responses to OIA requests confirmed the perception that inadequate information was released at the start of the process, and attempts to remedy the issue were frustrated by delay and questionable refusals. Dr McGee endorsed the remedy proposed by the Ministry that it provide additional training to staff and that it review its OIA processes (with peer review of policies by the Ministry of Social Development). He also signalled his intention to review OIA processes in selected government agencies, including the Ministry of Education.¹⁷²
405. The Ministry put itself under additional pressure by belatedly allocating resources to respond to a deluge of requests that was entirely predictable, but which could have been minimised by proactively releasing a lot more information to affected schools. This underscores the importance of proactively releasing as much information as possible, in an appropriate form, when statutory consultation is commenced, and of processing any residual OIA requests as quickly as possible.

Support for the consultation process

406. The Ministry provided a range of assistance to school boards to support the consultation process, including funding for independent facilitators to assist each school. The consultation undertaken by schools with their communities typically included meetings with parents and surveys. A consultation day was allocated, as well as an additional staffing allowance of one day a week during term four, for a member of staff to focus on the consultation process. The Ministry contracted CORE Education to establish a virtual learning network for each school, to facilitate electronic consultation. The Ministry also offered to meet the boards of all affected schools to discuss the *Rationale for Change* document and clarify any of the information provided. This included a meeting with the engineers who had prepared the geotechnical and other building reports.
407. On 16 October 2012, the Minister wrote to each school affected by a proposal and offered to meet with them and their communities to discuss the proposal to hear directly their concerns, issues, and alternative ideas. All but two of the schools subject to closure or merger proposals took up the invitation. The matters discussed at the Minister's visit included:

¹⁷¹ Interview with Okains Bay School board members, dated 20 August 2013.

¹⁷² The Chief Ombudsman's general report of this investigation, *'Not a game of hide and seek'*, was published in December 2015 and may be read at www.ombudsman.parliament.nz.

- the value schools give to their communities;
- whether the consultation process was genuine;
- the desire to improve student achievement;
- the need to develop a more collaborative approach;
- the adequacy of information about proposals;
- communities being unprepared for the announcements;
- concern for already vulnerable children; and
- whether larger schools had worse educational outcomes.

408. The Minister stated:

I personally visited each school affected by a possible merger or closure to hear from them about the proposals. I was there to listen to what the school had to tell me and be informed by what the community had to say.

...

Of the parents, I was moved by the fierceness and the familiarity of their hopes for their children. I was impressed by their pragmatic yet poignant assessment of their own educational experiences. I was comfortable with the emotionalism of their considerations of the issues, but unsettled by the emotiveness of the way information and options provided by the Ministry had been passed on.

...

Because of the scale of renewal being proposed, and the extent of the changes and challenges the communities were facing in every part of their lives, I was particularly conscious of the need to provide as much support and information as possible.¹⁷³

409. Following these meetings, the five schools in the Aranui learning cluster were provided with an extended consultation period, until 7 March 2013, due to the complexity of the proposal. The Minister decided that there was no compelling reason to extend the deadline for other schools (requests were received from five), particularly as it would result in receiving submissions from schools in the same cluster at different times. She also considered that for most schools, there was now a constructive relationship with the Ministry.

410. In a Cabinet paper dated 8 November 2012, the Minister outlined the steps taken to strengthen and enhance engagement with schools and their communities through the consultation process. She commented that the implementation of the Greater Christchurch Education Renewal Programme was proceeding to plan, and advised:

¹⁷³ *Board of Trustees of Phillipstown School v Ministry of Education* (see fn 28), affidavit of Hekia Parata, dated 13 August 2013.

Improvements in the Ministry of Education's engagement with schools and communications, along with my own visits to affected schools, [have] provided for a constructive relationship to be re-established following the initial response to the proposals.

...

The Ministry of Education has recognised that the consultation process put additional demands on Principals, staff and Boards of Trustees and is providing a range of support to help them. The Ministry is funding each school to provide an independent facilitator to run the consultation process and write the school's submission. Schools appoint their own facilitator up to a cost of \$5000 (inclusive). With the exception of one school, all schools have taken up the offer of a facilitator. Ministry staff are attending consultation meetings which schools have organised with their communities to explain the process and answer any questions.¹⁷⁴

411. An open letter from Minister Hekia Parata published in the *Christchurch Press* stated:

Given the extent of the damage to some schools and the population movement following the earthquakes the sector simply cannot be returned to how it was.

We now have a chance to build modern schools in better locations with great new facilities.

There is no doubt that we could have handled the announcement of change better. Over the past two weeks I have visited a number of schools across Christchurch, which has given me the chance to meet principals, teachers, school trustees, parents, grandparents and children. Thank you to all who came and shared your experiences with me.

Everyone has recognised that there must be change. I am committed to working with you to build something better where that change must occur. And so is the Ministry of Education. We want to get this right. We want a school system that is better than what we had before.¹⁷⁵

412. I have no doubt that the Ministry and Minister made a concerted attempt to rebuild relationships with the education sector. The meetings with the Minister were of real assistance to some schools. Certainly, it seems that schools were grateful for the opportunity to make their concerns known to the Minister and to seek clarification of the *Rationale*. I also note that, despite the pressures of the fourth term, 31 schools met the deadline of 7 December 2012 to provide submissions in response to the proposals. The provision of funding for a facilitator helped schools to undertake consultation with their communities, which typically included surveys and meetings.

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174 Cabinet paper dated 8 November 2012, paragraphs 2 and 16.

175 *Christchurch Press*, 17 November 2012, Section C, p. 13.

413. However, the majority of schools my staff spoke to continued to be highly dissatisfied, despite the Minister and Ministry's efforts to provide support during the formal consultation process. A representative sample of views held by the schools is as follows.
- Kendal School said that it felt powerless and disenfranchised throughout the consultation process. The school considered that the Ministry did not properly listen to its argument about its special character.
 - Avondale School considered that the outcome was predetermined, so the provision of a facilitator to assist with consultation was fairly meaningless.
 - Aranui High School (which endorsed the proposal) stated that the support provided by the Ministry was *'pretty good'*. The school considered that the appointment of Karen Sewell as a special advisor to the Minister provided a useful conduit, though it noted that events at the beginning of the process were *'most unfortunate as the message got lost'*.
 - Aranui Primary School said that their facilitator did a *'fantastic'* job. The facilitator was also funded by the Aranui Community Trust to obtain a community perspective.
 - Branston Intermediate believed that their senior advisor did her best, but was overworked and the Ministry was *'dysfunctional'*. While the facilitator did a good job in helping with the school's submission, the consultation process was not thought to be genuine.
 - Manning Intermediate considered that the process was too fast, and there was no opportunity to have a real discussion with the wider community.
 - Windsor Primary School stated that the process was shambolic throughout. There was a sense that decisions would be made in Wellington and that local Ministry staff were left to *'figure out what it actually means'*.
414. Several schools which decided to embark on a more intensive community consultation process struggled with the level of support provided. For example, Chisnallwood Intermediate considered that the \$5,000 grant from the Ministry of Education towards consultation by the school with the community was far too little. The principal said that the school spent a considerable amount of additional money contracting a market research company to help ensure that their consultation process was of an appropriate standard. He believed that the desktop analysis by the Ministry did not demonstrate a real understanding of the situation on the ground. Similarly, Te Kura Kaupapa Māori o Te Whānau Tahī stated that, in order to defend themselves, they had to undertake in-depth research with the Māori Medium Education community, including a comprehensive survey, as a result of the Ministry abdicating from its role.

415. In February 2013, the Ministry sought advice from the Christchurch Primary Principals Association about how to inform schools of the Minister’s preliminary decisions, in order to learn from the September 2012 announcement. It was agreed that schools would be given sufficient time to communicate the decision to their community before any public announcement to the community. There was also an emphasis on transparency, and all Education Reports and Cabinet papers were to be released. The Minister wrote to each individual school and the Ministry published information on its website explaining the rationale for each of the 31 interim decisions, including the Education Reports on which the Minister’s decisions were based. A series of community meetings were held and an 0800 number was established to answer queries.

416. Each school was assigned a senior advisor at the Ministry to act as a contact point for schools affected by a proposal to close or merge. The senior advisor for Phillipstown stated:

The role was specifically to assist schools who were affected by proposals to merge or close. I was the primary point of contact between the school and the Ministry and vice versa. I saw my job as being to link up everything. As a result, I have a comprehensive view of what was happening for these schools. I was there to assist them in meeting their legislative requirements and assisting with the day-to-day matters around governance, management and student achievement.

The role wasn’t narrowly about the proposal process and providing information. Within schools in Christchurch, the earthquakes have had a considerable effect on the students and staff. We were aware that the proposal process could place stress on those already stressed schools and communities. So we provided support for students and staff in those days too.¹⁷⁶

417. Notification of the preliminary decisions was handled in a much better fashion than the announcement of the initial proposals in September 2012 — officials visited schools to inform them of the preliminary decisions and ensured that schools learnt of the decisions before the wider community. The Ministry agreed to provide funding of up to \$2,500 for a facilitator to support each of the 19 affected boards during the final consultation period. There appears to have been an increased emphasis on transparency. However, the real difficulties lay with the front end of the process. Many schools distrusted the Ministry by the time of the second round of announcements and thought that there was an unspoken agenda behind the proposals. Linwood Avenue School summed up the general sentiment of the disaffected schools by stating that the best support that could have been delivered would have been to take the proposals ‘off the table’ — and start the process again.

Notification of the preliminary decisions was handled in a much better fashion than the announcement of the initial proposals in September 2012 — officials visited schools to inform them of the preliminary decisions and ensured that schools learnt of the decisions before the wider community.

¹⁷⁶ Board of Trustees of Phillipstown School v Ministry of Education (see fn 28), affidavit dated 20 August 2013.

The analysis of submissions

418. By 7 December 2012, submissions were received from 33 of the 38 affected schools (including two Aranui schools).
419. The Ministry established a multi-disciplinary team in order to analyse the submissions and to prepare reports for the Minister. This became known as the 'Kiwi Room' process, named after the room where officials met to discuss each proposal. On 18 January 2013, the Ministry provided the Minister with the Education Report entitled 'Outcomes of consultation on proposed school closures'. The report included a summary of the responses the Ministry received from schools and the recommendations to the Minister concerning the schools proposed for closure or merger. Each submission was also provided to the Minister in its original form. The Ministry summarised the process as follows.

The Ministry established a cross-disciplinary team to thoroughly analyse all submissions. This team included staff members with substantial experience of working directly with schools in greater Christchurch. Additional expertise was brought in from property, the school network and early childhood education teams. A strong governance process was also established at an operational level on a daily basis and at senior management level. The Ministry's legal advisors have been involved throughout to ensure that the analysis and process were robust and met the Ministry's responsibilities under the Act, and have reviewed draft education reports about the individual proposals.

Every argument and proposal made in Boards' submissions was carefully considered by the Ministry's analysis team. Where necessary, additional data about demographics, the local school network, and property and financial information was commissioned to allow an informed consideration about all the options which had been raised.¹⁷⁷

420. Alongside the main report, the Ministry prepared Education Reports for each of the closure/merger proposals. All reports were publicly released (including the Minister's handwritten notes), along with the submissions received from schools, which meant that the process of analysis was relatively transparent. This shed light on how the different factors were balanced for each proposal. For example, nearby Kendal School and Burnside Primary School were well-regarded smaller schools with diverse communities, which had both been selected for closure. However, after the first round of consultation, the Ministry recommended that Burnside Primary School remain open, because of the opportunity to share facilities with Cobham Intermediate and Burnside High School. While the estimated costs to repair Burnside Primary School were higher than for Kendal School, the alternative options suggested by Kendal School were not considered to have clear educational benefits.
421. As noted by Justice Woolford in *Kawerau Intermediate School Board of*

177 Education Report dated January 2013.

Trustees v Minister of Education,¹⁷⁸ the precise weight to be given to any particular factor was a matter for the Minister's discretion. However, given the complexity of the Christchurch reorganisation, the Minister was heavily reliant on the advice provided by her officials. On one level, the Ministry appears to have given careful consideration to the information and arguments presented by the schools. Indeed, the number of suggested changes to the original proposals indicates that some previously overlooked factors were given the attention they deserved. For example, the Education Report concerning the proposal to merge Te Kura Kaupapa Māori o Waitaha and Te Kura Kaupapa Māori o Te Whānau Tahī acknowledged that insufficient consideration had been given to cultural factors and the wider context of Māori Medium Education in Christchurch. Burnham School is another example, with the Ministry recommending relocation rather than closure after the first round of formal consultation had concluded.¹⁷⁹

422. The main report included some useful commentary on the assumptions underpinning the analysis. On a broad level, the Ministry concluded that the evidence in relation to the benefits of small and large schools was inconclusive. The Ministry was not persuaded that small schools necessarily provide a better learning environment than bigger schools (the Minister made the handwritten note on the Ministry's report, '*We need both!*'). Similarly, although supporters considered that intermediate schools were best placed to provide education to pre-adolescents, the Ministry concluded that there was a lack of strong evidence for the effectiveness of middle schooling. The report noted evidence that it was the quality of teaching practices rather than the structure of the school network which determined how effectively schools met the needs of Year 7 and 8 students.
423. The main report referred to the Canterbury District Health Board report (also referenced by several schools in their submissions), which stated that the proposed school closures may have a detrimental effect on school communities and the wellbeing of some children. This report stated:

Education is a key determinant of health. Schools are a vital part of their communities. They have more than just an educational function and can serve as a central meeting point for families, which is particularly important for those families who have no other sense of community. Schools contribute to the health of their communities by creating a sense of social cohesion. Many communities in New Zealand have demonstrated their attachment to their local schools by strongly resisting school closures.

Because of the important roles schools play in their communities, proposed school closures or mergers are likely to be perceived by their communities as threatening a range of losses. Some of these losses have been researched but to a relatively small extent, therefore their ongoing effects are inadequately

178 In *Kawerau Intermediate School Board of Trustees v Minister of Education*, July 2012, Woolford J, Rotorua High Court, CIV-2012-463-00138, [2012] NZHC 1632.

179 As previously noted, Cabinet subsequently decided that Burnham School should stay where it is, due to its special links with the New Zealand Defence Force.

understood. In New Zealand, communities have been left bitter and divided over school closures, particularly where they felt there was a lack of consultation.

...

Schools have played a central role in providing a sense of normality for students and parents following disasters, including the Canterbury earthquakes. This is very important, as exposure to disasters can lead to mental health problems in children. Teachers can help monitor the ongoing mental health of children over time. However, teachers themselves need ongoing support following disasters, and the current proposed changes for the school sector in Christchurch may represent an additional burden that is unhelpful for their wellbeing in the wake of the earthquakes.¹⁸⁰

424. In the main report, the Ministry stated that the significant psychological effects of the earthquakes had been recognised by the establishment of a comprehensive programme to support children’s wellbeing and mental health. It insisted that information and support was provided to schools to enable the identification and referral of learners to appropriate health services, as required.¹⁸¹
425. I acknowledge that the Ministry put measures in place to support the health of students. However, I am not entirely convinced that the Ministry, in its actions and advice to the Minister, paid sufficient attention to how school closures might impact on vulnerable students. Student wellbeing was not one of the five IBC criteria, despite its obvious link with educational achievement. The Ministry was of the view that there was no reason why the level of support for student wellbeing provided at the current school could not be continued elsewhere. I consider that assessing health concerns in this manner served to downplay submissions from schools with students already traumatised by the earthquakes, to whom further disruption would be detrimental. This only featured as a compelling consideration in the case of Shirley Intermediate and, even in that case, it was not identified as a relevant factor until the Ministry was asked to provide additional advice.
426. The focus on analysing schools in cluster groups using easily measurable data continued as the process of consultation unfolded. Ministry officials have confirmed to my staff that educational achievement was relevant to its detailed assessment only in terms of the basic measures incorporated into the IBC’s five criteria. Furthermore, as set out at paragraph 268, property and demographic considerations were more influential than achievement criteria. Outside these parameters, officials acknowledged that detailed submissions concerning the quality of education provided by a school (or the support it provided to its students) would rarely have an impact on its assessment. The Ministry team developed a standard response to submissions it received from

180 ‘The role of schools in communities and community recovery post-disaster’. Canterbury District Health Board, 26 November 2012.

181 Education Report dated January 2013, p. 11.

schools about their special character and community support. Generally, the Ministry did not see high standards of education or individualised programmes as persuasive, taking the view that all schools were required to provide quality educational services.

427. Many of the schools interviewed by my staff considered that insufficient weight was placed on their unique character by the Ministry throughout the process. For example, both Okains Bay School and Duvauchelle School struggled to see how education outcomes would be improved by the proposal that they become part of Akaroa Area School. They were not at all persuaded by the level of detail in the answers they received from the Ministry before the proposal was abandoned due to the lack of support from Akaroa Area School. Phillipstown School emphasised the importance of its close relationship with its community, but the Ministry saw no reason why this could not be transferred to the newly merged school. Kendal School drew attention to the benefits of its smaller size and the support it was able to provide to its diverse student population. It felt that the timing and speed of the process gave insufficient attention to the needs of a highly vulnerable student population. The three intermediate schools which participated in my investigation (Branston, Linwood and Manning) felt strongly that the Ministry was biased against intermediate schools generally, and saw themselves as ‘easy targets’ for closure in light of the fact that Year 7–8 students could be absorbed into adjacent primary or secondary schools.
428. As with other reorganisations, the Ministry’s analysis was predicated on the ready duplication of high-quality service and support, particularly when merging with another school was proposed. It did not highlight the important concern, voiced by a number of schools, that it is frequently very difficult to replicate the special features of any closed or merged school. Specialised educational services are established over a period of time and are highly dependent on staff and community commitment. For example, Linwood College is working to become a science, technology, engineering and maths-focused school. It will not happen overnight. The extent to which the character or spirit of any school can be replicated is debatable, and is dependent on the establishment board and resources available to the new school. Several former board members for Phillipstown School considered the way in which the establishment board for the new school was appointed to be disenfranchising. A school principal from another merging school in Christchurch told my staff:
- The appointed board process is an absolute mess, with the skill level questionable. Bringing people together from disparate groups and asking them to suddenly work together for a future concept doesn’t work – they protect their turf.*
429. Overall, I am not entirely persuaded that the manner in which the Ministry addressed some of the arguments presented by affected schools was justified. It was important that the analysis of submissions included attention to the unique characteristics of individual schools, given the prior emphasis

Overall, I am not entirely persuaded that the manner in which the Ministry addressed some of the arguments presented by affected schools was justified. It was important that the analysis of submissions included attention to the unique characteristics of individual schools, given the prior emphasis on more generic quantitative measures.

on more generic quantitative measures. While I agree that unnecessary duplication of education provision should be avoided, my view is that the Ministry gave insufficient consideration, in both the preparation of the IBC and the subsequent Education Reports, to the importance of the special characteristics of certain schools for their communities. I consider the Ministry's confidence that the strengths of any given school were readily transferable — in the face of considerable scepticism by the leaders of affected schools — was unjustified, in the absence of any robust process to ensure that occurred.

Christchurch case studies

Phillipstown and Woolston Schools

430. On 13 September 2012, the Minister announced the proposal to merge Phillipstown School and Woolston School on the site of Linwood College. The schools both had small sites and were considered to be in an area of oversupply of primary schools. Both schools initially opposed the merger, although Woolston School's formal submission supported an alternative merger proposal with it as the continuing school. Phillipstown School was a decile 1c, Year 1–8 full primary school, with a July 2012 roll of 155. It had a technology centre with students from around 30 Christchurch schools. Most Phillipstown students came from lower socio-economic families. There was a community centre and Kohanga Reo on its grounds. The school hall was badly damaged during the 22 February 2011 earthquake, but the other buildings suffered relatively minor damage. Woolston School was a decile 2, Year 1–8 full primary school, with a July 2012 roll of 241.
431. In February 2013, the Minister announced her interim decision that the merger should proceed, but on the Woolston site. In May 2013, the Minister confirmed her decision to merge the two schools, and Phillipstown School lodged judicial review proceedings. In October 2013, the High Court determined that the Minister's decision was unlawful, because of deficiencies in information provided to Phillipstown about the costs. In November 2013, the consultation process was recommenced and further information was provided to the schools. In April 2014, the Minister confirmed that the merger would proceed. In February 2015, Te Waka Unua School opened on the Woolston School site.
432. The proposed merger of Phillipstown School with Woolston School was vigorously opposed by Phillipstown School and the wider community at all stages. In that regard, there are strong parallels to be made with the closure of nearby Aorangi School and of Forbury School in Dunedin. Former Christchurch Mayor Bob Parker wrote the following comment in support of the school.

As an educational provider to primary school children from one of the

In October 2013, the High Court determined that the Minister's decision was unlawful, because of deficiencies in information provided to Phillipstown about the costs.

poorest communities in Christchurch, the survival of Phillipstown is integral to the community. With an average wage of just \$20,000 and 20 percent of the Phillipstown community without a car, the closure of the school would be catastrophic for the area. Phillipstown School's unique demographic comprising of more than 50 percent Maori and Pacific Island children, has strong achievement statistics that are outstanding for any school, let alone a decile one school. This is a testament to the staff and leadership of the school.

433. As with Aorangi, Forbury and other schools, the decision to proceed with the merger (which Phillipstown saw as equivalent to closure) demonstrates the principle that consultation does not require reaching agreement with those consulted. It illustrated the view of the Ministry that larger schools with modern learning environments deliver improved outcomes when compared with smaller, older schools. It also showed the importance of a school's location within the surrounding network of schools. The Minister made the following handwritten note on the front of the Ministry's 24 March 2014 Education Report about the merger of Phillipstown and Woolston Schools following the re-run consultation period.

I have reviewed the material with fresh eyes and open to the possibilities promoted by the Board of Phillipstown on behalf of its parents and students; and I have taken into account the submission of Woolston on behalf of their community, and I have weighed the fresh information together with the Ministry's analysis and advice. While I accept that the focus of this further round of consultation has primarily been on property, I have looked at all the elements that contribute to this decision. It is with this refreshed consideration that I remind us all that the aspiration of education renewal in Christchurch is for significantly better provision and for modern learning environments that will equip all our children and young people with the values, knowledge and skills to be successful in the 21st century. I consider that a merger of the best that is Phillipstown and Woolston provides that opportunity for the parents and students of this community.

434. Phillipstown School was of the view that the consultation was a 'brutal process imposed at the worst possible time', that the process failed dismally to empower the community to have ownership, and that the Ministry displayed high levels of institutional arrogance in the process. The principal, Tony Simpson, described the handling of the announcement by the Minister as 'appalling...belittling, and humiliating'. Phillipstown was disappointed when the Minister did not see the strength of their first submission. Mr Simpson considered that the revised proposal to site the merged school on the Woolston School site was worse than the proposed Linwood College site and provided for a 'completely different community'.
435. The principal and board chair of Woolston School thought that the announcement on 13 September 2012 was poorly managed and that it would have been a much better idea to approach schools individually first. They said that the folders provided by the Ministry were full of information, but it was difficult to find details about the proposal for their school. In addition, the IBC was not particularly helpful in making their submission and

Phillipstown School was of the view that the consultation was a 'brutal process imposed at the worst possible time'

it was *'big and late'*. However, Woolston School considered that the Ministry undertook a high-quality analysis of the submissions, and was pleased that the Ministry supported its proposal. While there were some errors with the data (of a fairly minor nature), Woolston noted that these were resolved in the two-week period prior to the commencement of statutory consultation.

436. Phillipstown considered that the *Rationale* document and associated property information were far too vague, and raised more questions than answers. Mr Simpson considered that he had no useful or specific information on the building cost estimates. Phillipstown said that it found it very hard to obtain clarification, and the information was not building-specific. It eventually did not submit on costs for this reason.
437. In his decision, Justice Fogarty concluded that *'the financial information being relied on by the Minister was not reasonably broken down and explained in a manner which would have enabled a critique'*.
438. In my view, the Ministry did not take all reasonable steps to ensure that Phillipstown understood the basis for the estimated property costs. The property information was difficult to understand and did not provide a basis on which Phillipstown could meaningfully contest the estimated costs. The *Rationale* did not adequately explain the link between the information and the proposal.
439. My criticisms of the Christchurch consultation process as a whole have been discussed in detail above. I have no doubt that a more well-managed process would have enabled the Phillipstown school community and the Ministry/Minister to work through the issues facing the Linwood learning community cluster in a less confrontational manner. The subsequent presentation of property information by the Ministry when consultation was recommenced was a vast improvement. The costs were revised before consultation was resumed in November 2013, which meant that the costs of remediating Woolston increased to \$3.09 million. The costs of remediating Phillipstown were revised to \$2.9 million. The Ministry presented a clear breakdown of costs, which formed a useful basis for further discussion. This proved to be a productive exchange, with further downwards revision of the costs for Phillipstown to \$2.06 million. The queries which arose about the property information were generally of the sort that would be expected, on the basis of an initial release of comprehensible summary information about the make-up of property costs. That said, my impression is that, throughout the entire process, the board struggled to understand why the Woolston site was considered to be better placed in the network of schools.

Aranui schools

440. On 13 September 2012, the Minister announced the proposed closure of all five Aranui schools (Aranui High School, Aranui Primary, Avondale Primary, Chisnallwood Intermediate and Wainoni Primary) and the establishment of the Aranui Community Campus ('the Campus'). In May 2013, the Minister

decided that Chisnallwood Intermediate should not be included in the proposal but that its future would be reviewed in 2020.¹⁸² In September 2013, the Minister decided that the remaining four schools should close and the Campus proposal should proceed.

441. The principal of Aranui Primary School commented that a merger between Wainoni and Aranui School was *'probably sensible'*, but he considered that Avondale and Chisnallwood Intermediate were too different to be merged. He stated that the attitude from his community to the Campus proposal was mostly one of resignation. He expected a gradual return of population in the east as the non-red-zone housing stock was repaired, as he thought the Ministry demographic projections gave insufficient consideration to the loyalty of Christchurch residents.
442. The principal of Aranui High School commented that, although schools' rolls would recover over time, there were clearly too many primary schools in the area. He noted that there was support in the Aranui community for the Campus proposal, and that the Aranui Community Trust had assisted with developing a vision for the Campus. However, he saw the announcement in September 2013 as a *'textbook example'* of how not to commence a process. The principal stated that it was *'the most horribly botched failure on the part of the Ministry to appropriately inform the schools of the Minister's plan'*. He stated that there was a lot of opposition to combining the west and east sides of Aranui and *'an explosion of anti-Aranui feeling'* came out of the process. The school was a strong advocate for the proposal, but it was a *'very hard sell'* as the community didn't trust the Ministry.
443. The principal of Chisnallwood Intermediate stated that he was astounded to learn that a school the size of Chisnallwood Intermediate was selected for closing. He considered that there appeared to be no educational justification for the proposal, and that it showed no real understanding of the community. The simple solution was to strengthen the high school, rationalise the primary schools, and leave the intermediate where it was, so that parents had some choice. The board chairperson felt that Chisnallwood Intermediate parents would never have accepted the proposal, no matter how it was presented. The principal stated, *'If it had been delivered in a way where people had input, there may have been a greater degree of buy-in from wider range of people'*.
444. The principal of Avondale School was disappointed that his school was not exempted from the proposal, along with Chisnallwood. Avondale School has good relationships with nearby schools, but they all recognised their differences. He said that the majority of Avondale students attended Chisnallwood Intermediate, and did not go on to attend Aranui High School.

¹⁸² Chisnallwood is the largest intermediate school in the South Island, with a roll of around 815 before the earthquakes. The majority of its students come from outside the Aranui area.

445. The Aranui process highlights the limitations of not engaging with schools before embarking on a consultation process. The Aranui schools considered that the Minister was not adequately apprised of important local factors by the Ministry. My view is that the proposal would have benefited from more consideration of the relationships between the Aranui Schools. My staff were informed that the announcement of the proposal resulted in a *'toxic outpouring'* within the Aranui community. The Aranui High School principal believes that lot of animosity could have been avoided if the process had been better managed, and the Chisnallwood principal expressed similar sentiments. Avondale School was particularly dissatisfied with the process. It considered that the outcome was predetermined and that the community was not listened to. The principal stated that 99 percent of the parents surveyed by the school strongly objected to the closure proposal. The Ministry eventually acknowledged that the school was viable (contrary to the information released by the Ministry with the closure proposal). However, the Ministry *'needed Avondale's roll to make the new proposed community campus school viable'*. I consider that the process forced the Aranui schools (particularly Chisnallwood Intermediate and Avondale) into defensive positions, rather than having a positive opportunity to engage in meaningful discussion about their futures. While it seems unlikely that Chisnallwood Intermediate (or Avondale School) would have been persuaded of the merits of the proposal, I consider that discussing the pros and cons of the Campus before initiating formal statutory consultation would have been beneficial. It would have enabled the Ministry to fully explain the educational advantages of the proposal, gauge reaction and strategise implementation.
446. It is disappointing that all of the four schools my staff spoke to, including Aranui High School (which supported the proposal), were dissatisfied with the information they received from the Ministry. Aranui School thought that the quality of information provided about the cost estimates was poor, and that it was given nothing to explain how the costs were made up. Aranui High School stated that it received a large amount of information, but it was *'very bureaucratic and difficult to understand'*. Chisnallwood Intermediate made OIA requests but said that the responses took over six weeks. The school found communication with the Ministry to be difficult, as different officials were *'coming and going'*. Avondale School stated that the *Rationale for Change* documents were *'bland'* and the information provided about the cost was very generalised. I note that this is an area which the Ministry plans to improve, with the verification of information being an important initial step in the process, before consultation is commenced.

Māori Medium Education — Te Kura Kaupapa Māori o Waitaka and Te Kura Kaupapa Māori o Te Whānau Tāhi

447. The Ministry considered that the most efficient way of strengthening Māori Medium Education in Christchurch was to merge/relocate the existing kura. The main reason for the decision was the proximity of the two kura and lack of Māori immersion provision in the south-east area. However, the proposal

was soundly rejected by both kura. After two rounds of consultation, the final decision was made by the Minister to retain the two kura. The Ministry's January 2013 Education Report includes an acknowledgment that the original proposal did not consider the wider issues of the protection of the Māori language or the context of Māori Medium Education in Christchurch.

448. Te Kura Kaupapa Māori o Te Whānau Tāhi ('Te Whānau Tāhi') informed me that it struggled to comprehend the decision-making pathway that led to the proposal. The announcement on 13 September 2012 came '*completely from left field*' and put the school under a '*ghastly cloud*'. The decision did not make sense except on a very superficial level and the proposal did not seem fully crystallised. Te Whānau Tāhi did not consider that the Ministry had conducted sufficient consultation with the Māori community before the proposal was formulated. It considered that the consultation by the Ministry with Ngāi Tahu was relatively limited and insufficiently mandated. There was no engagement with other key players, including the kura parent body, Te Runanga Nui o Ngā Kura Kaupapa Māori o Aotearoa. While the two kura were relatively proximate, their catchment areas were quite different, and pupils came from all over Christchurch. The other kura had an entirely different kaupapa. Te Whānau Tāhi requested more information (including under the OIA), but this simply reinforced its view that there was no clear rationale to the proposal. While the Ministry was trying to improve access and maybe quality, the proposal highlighted its lack of knowledge about the school. The kura emphasised that the Ministry also needed to have an idea of what the Māori Medium Education community thought before embarking on a substantial proposal for change. Te Whānau Tāhi set up an online survey and fully analysed the 400-odd responses to strengthen its proposal. However, its view was that the process as a whole put the kura under a tremendous amount of unnecessary pressure in terms of time and available resources.
449. The submissions from both kura highlighted the need for any change to the Māori Medium Education network to occur in a manner which ensured support for Te Reo Māori, in accordance with the Treaty of Waitangi. The need to have a wider discussion with all providers of Māori Medium Education was recognised by the Ministry after the submissions were considered. Te Whānau Tāhi considered that the names, history and aroha connected with the kura were ignored by the Ministry. Its view was that the proposal had been made in isolation, and was divorced from the big picture of Māori Medium Education in Christchurch.
450. In my view, the lack of consideration of the wider issues in the formulation of the proposal provides a graphic example of the limitations of the IBC process. I am inclined to agree with the kura that the merger proposal lacked substance and was insufficiently evidence based. The apparent absence of any consideration of how best to actively protect the Māori language in accordance with the principles of the Treaty of Waitangi was particularly disappointing. While the Minister's eventual decision was to withdraw the proposal in its entirety, the process the two kura had to engage in to defend their position was stressful, time consuming, and poorly justified.

Te Whānau Tāhi considered that the names, history and aroha connected with the kura were ignored by the Ministry. Its view was that the proposal had been made in isolation, and was divorced from the big picture of Māori Medium Education in Christchurch.

Intermediate schools

Branston Intermediate

451. Branston Intermediate School was a decile 3, Year 7–8 intermediate school in the Hornby learning community cluster. The school was on a very large site, located close to new areas of residential growth. Branston Intermediate advised me that there were no school viability issues caused by the earthquakes. It was largely *'business as usual'*, apart from the loss of the swimming pool. However, the Ministry considered that the investment required for earthquake strengthening (around \$8 million) would have made it one of the most expensive schools to remediate on a cost-per-learner basis.
452. Branston Intermediate commented that all three of the intermediate schools identified for closure (Branston, Linwood and Manning Intermediates) were in the lowest socio-economic areas of Christchurch. The schools could largely understand the reasons put forward for the proposals but didn't agree with them. The proposal would bolster high schools with low numbers, which made economic sense. However, they argued that closing the intermediate schools did little to cater for the unique educational and social needs of pre-adolescent children. Branston Intermediate representatives went so far as to say, *'We are not saying thing has been done wrong legally, but morally ethically and educationally it's been appalling'*.
453. The proposed closure of Branston Intermediate was notable for the almost unanimous opposition. The key message from the Branston community was that it preferred to retain an intermediate school option, with merger or recapitation as the alternative. The Ministry considered that community opposition mostly focused on the closure of Branston Intermediate, rather than considering the Year 7–13 model on its merits. The Ministry also took into account the view of Hornby High School that the community would welcome the proposed change. The Ministry planned to work with the Hornby cluster to ensure that the learning and pastoral needs of early adolescent students were met. It considered that the change in class was preferable to recapitation, as it avoided Year 7–8 students being spread across the cluster in small groups. The Ministry also planned to have a conversation with the cluster about how technology could be provided, but there were no definite plans.
454. Branston Intermediate was left with the impression that the Ministry did not properly heed the level of opposition to the proposal. I have some reservations about the Ministry's view that opposition would likely dissipate after the new model of schooling was established. It needs to be acknowledged that the closure of Branston Intermediate reduced the range of options for parents in the Hornby learning cluster. It seems from the survey that most parents did not want Branston Intermediate to close, nor did they want their children to attend a secondary school. It seems likely that a more thorough consultation process would have allowed the strong opposition to the proposal to be better quantified. It would have allowed for the idea

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of recapitation to be considered before momentum for the proposed reconfiguration of Hornby High School had developed. It might also have enabled more certainty around the future provision of technology in the Hornby area.

Linwood and Manning Intermediates

455. Linwood Intermediate was proposed to close because, along with other local schools, its roll had fallen. It was said to be operating at 39 percent capacity, contributing to an oversupply of places in the area. The school would also require substantial investment in its buildings to meet new earthquake building standards. Similarly, Manning Intermediate was proposed to close because its roll has fallen and its buildings required significant investment of around \$7 million. Neither school supported the proposal to provide for their students by changing the year range of nearby primary schools.
456. During interviews with my staff, the principal of Linwood Intermediate stated that Ministry only seemed to be focused on financial savings, even though that was denied. He was aware of research suggesting that smaller schools better cater for lower socio-economic areas. He thought that students from poorer areas tend to get *'lost'* when attending bigger schools. He also emphasised that it was difficult to reproduce a well-performing school and it *'can't be done overnight'*. Linwood Intermediate found it difficult to understand the basis for the Ministry figures and get more detailed information about how they were constituted in order to contest them. The principal said that, when the school asked the Ministry to explain the breakdown of the \$3.2 million property costs, the Ministry implied that the school just had to trust them. For that reason, Linwood Intermediate did not focus their submission on the costs. Nor did the school receive a straightforward explanation as to why the school was closing.
457. The principal of Manning Intermediate advised me that his school community contained one of the poorest areas in the country, and that some of the students had been very badly affected by the earthquake. The most serious behavioural issues at the school came after the announcements, as they were poorly timed and *'the kids got really angry'*. He considered the Ministry took a minimal interpretation of the legal requirements of consultation and he understood that Hillmorton High was *'blocked'* out of the initial discussion, despite repeatedly being asked to be involved. He also thought that the proposal was overly focused on financial matters. The Ministry roll projections seemed too generalised as the roll had been starting to pick up. The educational rationale focused on the provision of modern learning environments, which might make a small positive difference, but other important factors were relevant. The principal considered that a merger would have been a much stronger option for the community, and there appeared to be no reason why this option could not have been pursued. The community came up with the idea of doing something with Hillmorton High School. The Ministry *'took that idea'* and decided to close them earlier than originally stated. The Manning Intermediate principal stated:

Once the Ministry finally started to listen, and was prepared to make recommendations about further consultation, the Minister didn't want to listen anymore ... [The Ministry] would have got better ideas if everyone was involved. Probably still wouldn't have got agreement from everyone, but they would have come up with better ideas about the possibilities. Instead they have got less of what was already there, rather than anything that's really innovative or better.

...

The speed was huge. I don't think anyone would have objected to well-thought-out, well-considered change. We are all professionals and realise change happens. Yes, we would have been disappointed if our school was closing and the legacy we had built up was going. But if it had been well considered, people would have been open minded to looking at it and there wouldn't have been as much loss and hurt as there is now in the community.. Another year is all that it would have taken.

458. Manning Intermediate stated that the biggest frustration once the consultation process had commenced was the difficulty in getting information. It was very difficult to contest the property costs without full disclosure. The principal stated that initially they were told by officials that if they made OIA requests it would take longer to get the information, rather than just having it given to them outside the official request process. But they didn't get the information, regardless, so they eventually made OIA requests. The information came in 'drips and drabs', and they received a large package of information a day before their submission was due. They didn't have time to check all the information, and only a small amount of it referred to them, in any event. The estimated figure to repair Manning Intermediate was reduced from \$7 million to \$5 million, after the Ministry acknowledged that an error in the calculation had led to an inflated structural strengthening and repair cost estimate. However, the principal did not consider that the school received an accurate justification from the Ministry for the \$5 million cost estimate. He believes that it would have been more affordable to demolish then rebuild the school, but the Ministry did not consider this option. Manning Intermediate stated:

We couldn't get information because the Ministry simply just didn't have it, simple things should have been available. For example, the Ministry didn't have full property or demographic information. So how could they have made those decisions they did without the information to base it on?

459. The principal of Linwood Intermediate said that it did not feel like a meaningful consultation process when the 'first thing that happened was that you are told you are closing', rather than being presented with options. He thought that there was a lack of engagement from the Ministry throughout the process, which had been something that was 'done to us rather than us being part of the process'. In my view, a more inclusive process would have provided the participants with reassurance that all possible options were

The principal stated that initially they were told by officials that if they made OIA requests it would take longer to get the information, rather than just having it given to them outside the official request process. But they didn't get the information, regardless, so they eventually made OIA requests.

thoroughly and fairly considered, and that the proposal best met the needs of the community. The Ministry's January 2013 Education Report concluded that there was no compelling evidence that the needs of Year 7–8 students were best met in intermediate schools. While the report concluded that a range of options for the structure of schooling was appropriate, the schools appear to have been left with the impression that the Ministry had a *'master plan'* to close intermediate schools, and that what the community had to say was not particularly relevant.

460. The error with the estimated costs for Manning Intermediate did not appear to have a material effect on the outcome, as the figure was still reasonably high, and other factors came into play. However, it seems that Linwood and Manning Intermediates struggled to fully understand the costs. The schools should have been provided with a comprehensive summary of the basis for the costs. The more detailed information the schools requested was hard to obtain, late to arrive, and difficult to understand. The advice not to lodge OIA requests may have been intended to be helpful, but it undermined the purposes of the legislation.

Bromley and Linwood Avenue Schools

461. Bromley and Linwood Avenue schools were both decile 2, Year 1–6 contributing primary schools in the Linwood learning community cluster. The Ministry considered that there was substantial over-capacity in the cluster, and the total cost to remediate all schools within the group was estimated at \$25 million. The rolls of Bromley and Linwood Avenue were 253 and 289 (respectively), with indicative 10-year property costs of \$1.2 million and \$1.6 million.
462. The proposed merger of Bromley and Linwood Avenue Schools (on the Bromley School site) was primarily driven by demographic factors in the surrounding school network, and the flow-on effect of a separate merger proposal in the cluster. Neither school had significant building costs or a low roll, but the proposal that Phillipstown School and Woolston School should merge and relocate to the Linwood College site would have led to an oversupply of primary school capacity in the Linwood Avenue area.
463. The Ministry was not persuaded by the submissions from the two schools that the merger should not proceed. The reason for the final decision to retain the two schools was new information obtained by the Ministry that the cost of merging Phillipstown and Woolston Schools on the Linwood College site was prohibitive and, as a consequence, both Bromley and Linwood Avenue Schools were required. (Linwood Avenue School advised me that it was relieved at the decision but would also have favoured recapitulation of the school.)
464. Linwood Avenue School informed my staff that the earthquakes caused minimal damage to school property and the school roll settled at around 300. They had around 50 more students than the February roll return which

the Ministry based the proposal on. They were given some basic information provided on 13 September 2012 (including a summary of the proposal and some information about the status of land and buildings), but the school struggled to understand the rationale for the proposal. Linwood Avenue School stated that some of the information the school sought under the OIA was not provided. The school believes that it was disadvantaged in responding to the proposal due to the inadequacy of information provision by the Ministry. The board stated:

Conflicting and incremental release of information

The erratic process followed by the MOE from mid-September to late November added to the confusion that arose immediately following the announcement of the proposal on September 13.

Failure to respond to information requests

This has hampered our capacity to both understand and response to the reasoning behind the MOE proposals, and the consideration of alternatives that were rejected. The OIA request should have been responded to favourably within the provisions of the Act.

Our request for information under the Official Information Act (OIA) that was submitted on October 9, has not been responded to in terms of the Act. No direct reply has been provided . . . to directly answer our request for the specific information regarding our proposed merger.

We only received the indirect provision of information that was released to all schools involved, by the MOE on November.¹⁸³

465. Bromley School noted their bafflement at the process.

We don't understand why there is a proposal to merge two healthy schools, placing children at risk where learning may suffer significantly and yet again they may be exposed to the possibility of further psychological stress. Some of our children (and even parents) have had more than enough already. And it will be even worse if the process is not managed exceptionally well. The risks are huge.

...

We have difficulty in consulting on a proposal with no substance. We don't know if a merger is going to happen. We don't even know why it's being proposed.¹⁸⁴

466. Linwood Avenue School informed me that the *Rationale for Change* provided some assistance. However, they stated that there was no information about how the Ministry had considered and worked through the possible options. They considered that the process was clearly rushed and that the supporting information was full of obvious errors (such as labelling Linwood

183 Submission from Linwood School to MOE, dated 5 December 2012, p. 32.

184 Submission from Bromley School to MOE, dated December 2012, pp. 4 and 5.

Avenue School as an intermediate school, and quoting incorrect numbers of classrooms and students), which meant that school had no confidence in the proposal. Linwood Avenue School considered that the IBC released on 22 November 2012 was virtually unusable. It was too technical and provided too late in the piece.

467. A key feature of this proposal is the difficulty that the schools had in understanding the *Rationale*. Both schools appear to have been bewildered by the proposal when it was announced. Again, this shows the disadvantages of not engaging with the schools to allow information to be validated before initiating consultation. While the schools were provided with school-by-school information about roll and property, they were largely left to their own devices to work out the thinking behind the proposal. The *Rationale* lacked a clear statement from the Ministry about why either school was proposed to merge. The commentary under the heading 'Why it is proposed that my school merge?' remained cluster-focused. For example, the level of investment needed to remediate all schools across the cluster was described as significant (at \$25 million) but the 10-year indicative property costs for Bromley and Linwood Avenue were only \$1.2 million and \$1.6 million, respectively (and the schools were in the lowest per-student investment category). There was no guidance about the impact of building costs for individual schools to the formulation of the proposal. It was made clear that there was an oversupply of primary schools, but reasons about which particular schools were targeted were not given, nor did the *Rationale* seek to explain the tangible benefits of the proposal.

A key feature of this proposal is the difficulty that the schools had in understanding the *Rationale*. Both schools appear to have been bewildered by the proposal when it was announced. Again, this shows the disadvantages of not engaging with the schools to allow information to be validated before initiating consultation.

Duvauchelle and Okains Bay Schools

468. Duvauchelle School was a decile 9 primary school with a roll of 23. Okains Bay School was a decile 3 full primary school (Year 1–8) with a roll of 18. Neither school required significant remedial repairs or strengthening (with 10-year indicative costs of \$0.3 million and \$0.2 million, respectively). On 13 September 2012, the Minister proposed to close the schools, but to retain their sites and operate them as satellites of the Akaroa Area School. The *Rationale for Change* for the two schools (released on 12 October 2012) stated:

Closing Duvauchelle School and Okains Bay School but retaining the sites as hubs of Akaroa Area School would provide better coverage and access to education for learners. Akaroa Area School, which is the only secondary provision directly available to these communities, would be retained, repaired and expanded to support the hubs.

469. The Ministry and Minister ultimately concluded the proposal was untenable because of the opposition of Akaroa Area School.
470. Both schools informed me that they found the rationale for the proposal difficult to understand. They already operated with a high degree of collaboration within the cluster, and the proposal was unlikely to improve education coverage and access. They noted that there was already a variety

of individualised programmes taught at the schools, with good education outcomes. Okains Bay considered implementation of the proposal would have deprived it of some of the benefits of being a small, supportive school — including the ability to deliver programmes to cater for the individual needs of its students.

471. The schools considered that there was no clear vision of how the satellite school would work in practice and were concerned that some students might have to travel to Akaroa (which can be difficult at times). They stated that they found it difficult to obtain detailed information from the Ministry about the proposal and, when the business case material was released, it was difficult to understand. Okains Bay School told my staff:

The whole process should have been more open and understandable by lay people. They should perhaps have done booklets for each school or cluster which clearly set out the reasons in plain language. The Ministry expected the boards to sift through lengthy documents to find information which pertains to them.

472. Okains Bay School stated that the process was very stressful for the community and occurred the 'wrong way around', as community engagement should have occurred before consultation under the Education Act was commenced. Board members felt that the Ministry treated Okains Bay as 'just another place', stating:

The Government just seemed to look at the numbers and gave no consideration to the community.

473. Duvauchelle School considered that the process was 'massively flawed'. They thought that the first step should have been to discuss the proposal in the Akaroa cluster. The proposal did not appear to have taken into account the lack of support in the Akaroa community for the satellite school idea. The Ministry could not give any meaningful data about improved education outcomes – the proposal was like 'reaching into a cloud' and only sounded good in theory. While the Ministry projected savings as a result of the proposal, it was adamant the proposal was not about money. Representatives of Duvauchelle insisted that they received no clear answers from the Ministry about how the satellite school proposal would work in practice.
474. In my view, while the *Rationale for Change* implied that education coverage and access in the Akaroa region was lacking, it did not explain how closing the Okains Bay and Duvauchelle schools would create better education outcomes. While the satellite school proposal may have made sense on paper, it seems that engaging in preliminary discussion with the three schools would likely have identified that the proposal was not feasible.

Burnham Primary School

475. Burnham School advised me that it was surprised by the announcement,

The schools considered that there was no clear vision of how the satellite school would work in practice and were concerned that some students might have to travel to Akaroa (which can be difficult at times). They stated that they found it difficult to obtain detailed information from the Ministry about the proposal and, when the business case material was released, it was difficult to understand.

as its buildings had come through the earthquakes well. Burnham School consider that its strong links with the Defence Forces were not properly taken into account when the proposal was formulated. The board chair stated that the Ministry should have understood and appreciated the school's huge importance to the community it served. On the day the closure proposal was announced, the school community was 'reeling' from New Zealand casualties in Afghanistan. However, senior Ministry officials present on the day of the announcements appeared to have no idea that the school was even on a military base. The rationale for change — that the school was too expensive to repair — didn't take into account the experience and expertise the school had developed in providing education and pastoral care for students from military families. The board chair stated:

The Ministry should have made it their business to look into the background of every school that they put on the closure/merger list. They should have known about the community...Every single school has its own issues and there was no recognition of that fact.

...

In terms of information on that day, we were given an envelope and a little pack and you had to search through to find the status of your school. It wasn't even on the front page or in a letter, or anything like that. So you had to go hunting through it to find out your fate. There was no forewarning. You were literally put together in a room and they dropped a bomb. So it was not a particularly well presented announcement, or even particularly dignified.

476. A Ministry official commented that the Burnham School decision was a good example of the tension between a network perspective and an individualised consideration of each school. The idea of closing Burnham School and building a new school in nearby Rolleston made sense in terms of the overall schooling network (with population predicted to increase in other areas of Rolleston due to green field developments) and taking into account the high cost of repair. However, it was decided that the school should remain at the current location in order to meet the needs of children from New Zealand Defence Force backgrounds.
477. The special nature of Burnham School ultimately operated as the overriding factor in the Minister's final decision. However, neither Appendix M of the IBC nor the *Rationale for Change* document identified the link between Burnham School and the Defence Force community as a relevant factor. This was finally addressed in the Ministry's interim report of 18 January 2013, which stated:

The special characteristics of the Burnham School within the Burnham military camp community are clear to all, as is the role of the school in supporting the community and safeguarding the psychological and educational welfare of learners ... Local schools recognise the relationship Burnham School has to the NZDF and support retaining Burnham School. The Ministry acknowledges the special characteristics represented in the Board's submission and the widespread support for the retention of the school.

478. The Ministry has assured me that *'non-measurable'* factors would have been discussed during the iterative workshop process for the IBC. I consider it likely that Ministry staff who were involved with the IBC were aware of Burnham School's special characteristics. However, there is nothing to confirm the special character of Burnham School was balanced against the wider network considerations before statutory consultation was commenced. In my view, the fact that closure of Burnham School was proposed before all the relevant factors were carefully assessed illustrates a fundamental flaw in the process.

Burnside Primary School and Kendal School

479. Burnside School and Kendal School were both proposed to close (due to surplus capacity and the cost of remediation), but Burnside School received a reprieve after the first round of consultation. The Ministry considered that Burnside School's alternative proposal had clear educational benefits. The Ministry recognised that Burnside School had experience and expertise in dealing with its diverse and multicultural community. The Ministry thought there was no reason why Kendal School students could not attend other local schools, whereas Burnside School students would likely be uncomfortable at nearby schools.
480. Representatives of Kendal School advised me that the school was surprised by the proposal, as it had come through the earthquakes relatively unscathed. They wondered if there was an underlying agenda not disclosed in the *Rationale*. Kendal School felt powerless and disenfranchised during the consultation process, as the special characteristics of the school were not adequately acknowledged or taken into account. The school said it had put a huge effort into making submissions, but did not feel listened to. The school's representatives believe that the Ministry simply applied a formula based on student numbers to reach the proposal, rather than considering the wider context. Kendal School thought that the decision was pre-emptive, as demographic movement had not yet settled after the earthquakes. The school's representatives stated that the estimated cost of earthquake strengthening the school was very hard to refute as they were *'just given a number'*, which wasn't broken down. They said that Ministry officials seemed unable to answer questions on the basis for the estimate other than in very general terms. Overall, Kendal School considered that the process could have been *'much more sympathetic'* and that it *'perpetuated the sense of powerlessness caused by the earthquakes'*.
481. The rationale for closing Burnside Primary School was primarily based on the cost of remediating infrastructure issues. It was only subsequently noted that a significant cohort of learners from the former Aorangi School was now enrolled at Burnside Primary School. It was also identified that many students would not feel comfortable at the other local schools. These are the types of *'soft'* factors unlikely to be properly considered without fully engaging with the school community (which did not occur until the statutory consultation

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process was commenced). Similarly, Kendal School's counter-proposal of expanding its services was the type of idea that would have benefited from discussion at an earlier juncture. In the circumstances, it is not difficult to understand why Kendal School representatives believe that the consultation process was unfair.

Summary of findings — Canterbury

482. School reorganisation policy was unsettled and unclear at the time of the Christchurch earthquakes. The external guidelines concerning school reorganisation policy were unhelpful, as they related to the outdated and under-used CIEP policy. The *Strengthening Education* policy trialled during the Kawerau reorganisation — which shared many of the features of the abandoned network review policy — had not been fully articulated. Nonetheless, what is clear is that it signalled a shift in thinking among senior officials towards asserting more control over school reorganisations and avoiding over-consultation. As discussed earlier, the *Strengthening Education* ethos gave insufficient consideration to the risks of imposing change under the system of self-governing schools. It did not encourage a collaborative mindset.
483. Other important contextual factors for the Canterbury reorganisation were the unprecedented scale of the work required to repair the extensive damage to school buildings and land, a pre-existing overcapacity in the local schooling network, and the need to integrate the reorganisation process into the CERA-led earthquake recovery programme. The planned level of expenditure also required Cabinet involvement and approval. All this meant that the Ministry had to cope with the demands of an extremely complex set of network dynamics, while reconciling the needs of stressed school communities, the Minister and her Cabinet colleagues, and the newly created CERA. All without a suitable and settled policy framework for conducting a school reorganisation.
484. This 'perfect storm' led to high levels of uncertainty about precisely how the restoration of the Christchurch schooling network would be managed. However, in July 2011, Education Minister Anne Tolley confirmed that decision-making concerning the renewal of education in Christchurch would be in accordance with the principles of engagement and 'genuine consultation'. She advised Cabinet that the process of education renewal would not be directive, and would respect the autonomy of individual schools. At first glance, this represented a shift towards inclusive decision-making.
485. In what I have described as the 'visible process', the Canterbury education community was given the opportunity to comment on the draft Education Renewal Recovery Plan (ERRP). This document was progressively developed using a community consultation process, to ensure interested parties had a voice in shaping the future direction of education in the region. The visible process was undertaken in a manner which was consistent with the principles of inclusive decision-making confirmed by the Minister.

486. In the meantime, from September 2011, the Ministry worked on developing the IBC, which mapped out proposals for the future of individual schools. This was the ‘invisible process’, which occurred in a manner more akin to the *Strengthening Education* methodology — whereby school reorganisation was strongly Ministry-led. However, it had an unprecedented additional element, in that it was essentially secret.
487. The Ministry informed me that the IBC was ‘*really a conversation between the Ministry and the Crown*’. It advised that the IBC functioned as a mandate to proceed to the next step by making a robust case for major capital investment in accordance with the newly mandated Better Business Cases framework. The Ministry has insisted that the IBC simply provided a platform for the Minister to consult on proposals for the schooling network, based on the best available information.
488. I accept that some of the information in the IBC may have been commercially sensitive for a time. However, I am not convinced of the need to keep the IBC secret — particularly given the emphasis on stakeholder engagement in Treasury guidelines and the principles articulated by the Minister.
489. When the final *Directions for Education Renewal* document was published in August 2012 (after two rounds of public consultation), the Ministry concluded that the public supported the general direction that there was an opportunity in Christchurch to create a stronger network of schools, although there were high levels of support for the retention of smaller schools and their traditions. There was also a request for ongoing community engagement during the renewal process.
490. The Christchurch school community was completely unaware that specific proposals for individual schools had already been developed through the IBC process. When the Minister Hekia Parata announced her proposals for the Christchurch school network on 13 September 2012, school communities felt ‘*profoundly shocked and betrayed*’ that the Ministry had been undertaking a review of the Christchurch network in parallel with consulting on the much more general ERRP. The Christchurch schools believed that the reorganisation of Christchurch would be undertaken in an inclusive manner. They had expected that some form of network analysis would occur in due course, but only after the vision for education renewal had been completed through the wider consultative process. The high-level education renewal plan now appeared to some to be a ‘*sham*’ or ‘*smokescreen*’ for a process of ‘*network review by stealth*’.¹⁸⁵
491. While the process of community consultation identified a general consensus that reorganisation was required, it did not include discussion about the future of individual schools. The request for further engagement about key issues (such as the preference of retaining smaller schools) was a clear signal from the sector that more groundwork needed to be done. The abrupt

185 These terms were used by a number of school representatives interviewed by my staff.

transition from a general conceptual discussion to announcing specific proposals concerning individual schools — combined with a fundamental lack of transparency about the process — provided a fertile source of dissatisfaction as the statutory consultation process unfolded. As a result, the Ministry and Minister were on the back foot from the start of the process, and spent much of the rest of the first period of consultation endeavouring to rebuild working relationships.

492. In my view, there was a fundamental failure of transparency and communication by the Ministry with schools in the Canterbury school reorganisation. This may partly have been a consequence of a lack of strategic oversight at crucial junctures of the education renewal process. During the course of judicial proceedings concerning Phillipstown School, the Ministry made statements strongly suggesting that the options for individual schools were formulated after the wider consultation process was completed, when in fact this was a parallel process. I also received comments of a similar nature from senior officials during my investigation. At best, there was a degree of confusion at the highest level about how the two components of education renewal interacted.
493. I consider that the Ministry's communications material provided an incomplete picture of the process of education renewal, which contributed to the sense of betrayal felt by schools when the reorganisation was announced.
494. There were a multiple deficiencies with the statutory consultation process. The Ministry neglected to provide suitable explanatory material to schools at the start of the process on 13 September 2012. The information was generic and did not provide adequate commentary on why individual schools were selected for closure or merger. This made it difficult for schools to undertake meaningful discussion on specific issues with their communities. Surprisingly, no further information was provided to schools when the statutory consultation process was commenced on 28 September 2012, despite numerous requests for clarification of the rationale.
495. The Ministry took appropriate steps to investigate the widespread concern about the accuracy of some of the property information. The actual error rate was relatively low, given the size of the proposals. However, the inaccuracies in the documentation about the proposals, and the difficulties in understanding the information, further undermined confidence in an already disenfranchised group of schools. This underlines the importance of verifying complex information and data before proposals are subject to consultation processes.
496. The belated provision of the *Rationale* document, on 12 October 2012, still did not include sufficient information to enable all of the schools to understand the reasons for the proposals. The commentary was too generalised and the property information too technical, leaving many schools confused. The property information was not presented in a readily comprehensible form. The estimated property costs did not include a

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breakdown of the four main categories, or an explanation of the underlying assumptions. The type of material provided to Phillipstown School during the court-ordered resumption of the consultation process in early 2014 should have been made available to all schools when the original statutory consultation process was commenced on 28 September 2012.

497. The Ministry put itself under additional pressure by belatedly allocating resources to respond to a predictable deluge of OIA requests. Much of this could have been avoided if more detailed and readily comprehensible information had been released at the start of the process.
498. The Ministry made resources available to support the consultation process and the level of communication and transparency improved as the process unfolded. The Education Reports were released as a matter of course (rather than schools having to resort to the OIA to obtain relevant information). An attempt was made to rebuild relationships by the Ministry and Minister. However, this did not alter the belief of many schools that the outcome was predetermined, and that the process was fundamentally flawed.
499. The process of analysing the submissions was reasonably thorough, but the approach developed by the Ministry to several issues rendered many of the arguments nugatory. As a result, many schools considered that the Ministry ignored what they said. The special characteristics of individual schools and concerns about the wellbeing of students were categorised as neutral factors when weighed against the more tangible criteria of the IBC (primarily property and demographic considerations), on the grounds that all schools were expected to deliver high-quality education and pastoral services. The Ministry did not take the step of seeking expert psychologist advice about the likely effects of schools closures and mergers on student learning and behaviour in the aftermath of the earthquakes.
500. I have no doubt that the Ministry considered that involving affected schools in the IBC would have been impracticable until after had it been formulated. It is also clear that there was the opportunity for schools to submit on the proposals during the statutory consultation process (and the Ministry had envisaged a period of preliminary engagement which Cabinet did not consider was required). However, the much earlier actions of the Ministry to exclude the schools from the IBC process undermined the potential for the co-development of innovative solutions and positive engagement. This exclusion also meant that important local factors were ignored in the development of a number of the initial proposals.
501. To compound matters, the announcements at the Lincoln Event Centre on 13 September 2012 were seriously mismanaged by the Ministry. The ensuing

chaos was inevitable, given that the Christchurch school community had been given the impression that a collaborative approach was being taken to education renewal. In fact, the inclusive approach was limited to the development of a conceptual document — which was useful to a point, but actually masked what was really going on.

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Part Four — The way forward

Consolidated conclusions

503. The establishment of boards of trustees under *Tomorrow's Schools* in 1989 both strengthened the ties between school and community, and loosened those between schools and central government. This was always going to mean that the imposition of change on schools by government would become more problematic. The need for such intervention could not be designed out of *Tomorrow's Schools*, as the school network operates in a dynamic environment, where occasional intervention is required to maintain the stability and efficiency of the system as a whole.
504. In order to effectively manage this tension between locally controlled schools and a centrally controlled school network, it was important for there to be a scrupulously fair and robust system for the ultimate intervention: school closures and mergers.
505. For individual school processes, this should have been relatively straightforward: by developing clear and stable categories against which the viability of a school could be measured, and then undertaking transparent and inclusive analyses of struggling schools against these criteria. In practice, the Ministry has developed appropriate categories over time, but clarity and inclusiveness in application have been inconsistent and unpredictable.
506. For multi-school reorganisation processes, the task is much more challenging, as the sheer number of variables to factor in is exponentially

greater. Governments have sought to meet this challenge through a succession of reorganisation policies.

507. EDI was highly inclusive in design, whereby change was effected through joint (negotiated) decision-making, rather than via imposed but consultative determinations. However, it caused frustration by its slow pace and the unevenness of associated processes.
508. By contrast, network reviews sped things up considerably, but at the cost of widespread dissatisfaction at the highly directed and imposed nature of the decisions that resulted, and the perception that consultation processes were poorly structured and generally disempowering.
509. Many lessons could have been learned from the shortcomings of network review processes; some were. The development of CIEP saw a dramatic shift back to joint, community-led decision-making. Schools only entered and completed CIEP processes voluntarily. If they didn't like it, they could (and did) walk away.
510. Most recently, *Strengthening Education* was a process where the government seemingly reacted to the sluggishness of CIEP by reasserting sole rights of determination, and retreating from concepts such as 'collaboration' so as to avoid 'over-consultation'. The lessons from the network review experience were, to some extent, unlearned.
511. The first twenty years of *Tomorrow's Schools* yielded a series of school reorganisation policies that did not start from a solid base and progress through ongoing refinement —rather, they swung between poles of highly directive determinations, at one end, and highly inclusive decision-making, at the other. The Ministry's policy and procedure for the management of associated consultation and engagement fluctuated uncertainly within this turbulent environment.
512. It is therefore unsurprising that, when the need for well-tested and finely-tuned school reorganisation processes came about in the Canterbury context of disaster recovery, the Ministry had little to draw on.
513. What is needed at this point is to go back to first principles. Up to and including the Canterbury process, there was an absence of a clear policy framework to support best practice within the Ministry about how to support school reorganisations. In particular, the requirements for a sound process of engagement with schools subject to change were not progressively fleshed out and used as a basis for continually improved Ministry practice in managing consultations.
514. I am acutely aware that the Ministry is obliged to follow the policy prescription of its Minister and the Cabinet. My point is that, when operating within any overall model for closures and mergers as set by the government of the day, the Ministry should seek to ensure to whatever extent is possible within that model, that it meets good standards of engagement

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with the affected community. If the model requires decision-making and option development to be highly directed by the government, then the Ministry should be especially vigilant to maintain good communication and engagement, as the model may not itself guarantee this. Where the government model provides, by its very design, for a high level of community involvement, then clearly the Ministry does not need to take the same degree of care to ensure that sufficient engagement is additionally guaranteed by the procedures it follows.

515. The Ministry should develop a policy framework for supporting the Minister in closures and mergers of groups of schools — one which ensures that affected school communities are informed, involved and invested in the outcome. Once the policy framework has been articulated, a clear and transparent process should be developed and followed in every case. A well-managed and fair process means that schools are more likely to participate in school reorganisations on a voluntary basis. Until that has been achieved, the process of closing and merging schools will remain troublesome, and the best results will not be achieved.
516. In managing school reorganisation processes, the task of the Ministry is to ensure that meeting the minimum statutory requirements of consultation under the Act is not the endgame. The goal should be to implement an approach to school closures and mergers (and establishing new schools) that fosters collaboration with schools and their local communities, to the greatest extent possible.

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Since the quakes — the Ministry’s perspective

517. The Ministry of Education has provided a detailed account to me of the changes it has made both to the consultation process for school closures and mergers, and more generally. I have reproduced it in full.

KEY CHANGES IN OUR CURRENT APPROACHES

The Ministry of Education — Steward of the Education System

As part of our input into the report, we would like to give you an overview of the current context and shifts in practice since late 2013. The Ministry of Education has undergone a significant development and change process over the past three years. The role of the Ministry was formerly defined as leader of the education sector. In practice, there are many leadership roles across the sector at many different levels and it is important that it is recognised that the sector is perfectly capable of leading itself. This role therefore created confusion and, to a certain extent, competition between the Ministry and education professionals and peak bodies.

The Ministry’s role has been re-defined as steward of the education system. In this role we have responsibility for the design, maintenance and support for the system as a whole. We recognise the leadership function played by education peak bodies and by school principals and Community of Learning

leaders, as well as early childhood and tertiary providers and bodies.

The Ministry’s role as steward of the education system gives us a unique function in supporting change and improvements across the whole education system. We do this through focussing on the longer-term health and performance of the education system as a whole. The goal of this work is to deliver our agreed purpose — “We lift aspiration and raise educational achievement for every New Zealander.”

We have access to data and evidence to identify where across the system action and support is needed in a way that no individual school, early learning centre, Community of Learning, or tertiary institution can.

We have implemented a number of organisation-wide changes since 2013, in order to effectively deliver our stewardship role and raise the performance of the Ministry as a whole. These include establishing, communicating and embedding a set of Ministry behaviours.

Our behaviours

We get the job done

We are respectful, we listen, we learn

We back ourselves and others to win

We work together for maximum impact

Great results are our bottom line

Ka oti i a mātou ngā mahi

He rōpū manaaki, he rōpū whakarongo, he rōpū ako matou

Ka manawanui ki a matou me etahi ake kia wikitoria Ka mahi ngātahi mo te tuinga nui tonu

Ko ngā huanga tino pal a mātou whāinga mutunga

These behaviours define how we work with each other and with our colleagues in the education sector. They have helped change our attitude and approach to engagement with the sector. Too often we found ourselves in conflict with education professionals. This was unproductive for all involved and, most importantly, for students and their educational achievement. We now seek to model our behaviours in each engagement we have with education professionals, whether that engagement is focused on teaching and learning practice, supporting particular children and young people with behavioural issues, school infrastructure developments or reorganisations.

Part of our response to this change is the re-design of our organisational structure to improve our internal alignment and deliver our stewardship role. We have renamed our front-line operational group as Sector Enablement and Support, and we now focus on building capability to establish more constructive and collaborative working practices at our regional level. We have appointed ten Education Directors in place of four Regional Managers

to better manage our sector-facing work. These new roles have successfully provided more senior decision-making and relationship management capability closer to local communities and shifted our focus from a largely centralised one to a more regionally focused one. Education Directors are progressively building positive constructive working relationships between themselves and their teams and local education leadership as well as other community leaders.

We seek to engage the sector more effectively in decisions that affect them and have developed more productive mechanisms for collaborative work. This includes a series of Cross-sector Forums at national and regional level — more than thirty of these took place in the 2015/16 year, and they provide an opportunity to consult on and discuss future policy developments or other issues facing education. Consistency of membership, with some rotation to provide greater breadth of engagement, enables an on-going dialogue about the key issues facing education.

We are also enabling the sector to make significant contributions or jointly lead policy design and change processes where possible. Examples include the development of bullying prevention and search and seizure guidelines and significant working groups reviewing professional learning and development, statutory interventions, getting ready for recent changes in Health and Safety legislation and the current review of the funding system for early childhood and schools.

The Ministry is the lead adviser to the Government on education, including early childhood education (ECE), primary and secondary schooling and tertiary education. This role includes providing policy advice as well as 'system maintenance' advice to Ministers. Often the extent and nature of consultation within these Ministerial advisory roles is influenced or defined (within regulatory parameters) by Ministers' views and directions.

The devolved nature of New Zealand's education system has created the environment in which formal decisions are either made within individual Boards of Trustees or by Government — there is no intermediate organisational layer within which decisions that affect more than one school or more than one community can be made. The competitive nature of the system and the self-interest inherent in the governance and leadership of individual schools means that schools often find it difficult to make collective decisions that they perceive to change the status quo and that can result in 'winners and losers'. However, decisions made by the Ministry or Ministers can also be highly contentious in this environment.

Opportunities to generate more collaborative cross-school decision-making are changing with the introduction (from 2014) of Communities of Learning. These are groups of schools, kura and ECE centres that come together to raise achievement for children and young people by creating a pathway for students from early learning into primary to secondary school and beyond into tertiary education and work. They have no statutory role or legal status, but already have a function in establishing shared priorities focussed on the actual achievement challenges of the children and young people in

their community and appointing leadership and teaching roles across the community. In the future we see significant opportunities for shared decision-making within Communities of Learning and the ability to establish a more collective view about the local network of schools and what is best for that community and the efficiency of the system.

We have run regionally-based forums across the ten regions to gain input into major pieces of work such as the update of Special Education and update of the Education Act, and we are in the process of doing this for the Review of Funding in the sector.

Taking any decision that affects a school or schools is highly contentious in New Zealand where we have a high sense of community ownership in the system. The extent of delegated authority to Boards of Trustees and the role of independent professional judgement at the school principal and teacher level in education is high compared to similar international jurisdictions. This creates an environment in which self-management is seen as the norm and the Ministry's role in decision-making can be challenged at the local level.

However the government recognises that in the interests of equity, efficiency and effectiveness decisions need to be made from time to time that individual schools and individual communities may not think are the best options. These decisions where necessary are always made with the best interests of children and young people in mind. The Ministry's stewardship role means analysing and providing advice to government on the best decisions to make for the overall design of the system and its effectiveness, in the face of finite budgets, to deliver high quality teaching and learning and the best educational outcomes for all New Zealanders.

We take very seriously the need for and benefit of, and the responsibility to undertake, consultation with communities affected by school reorganisations. The mechanisms with which we engage and consult on issues of school reorganisation have changed to reflect our stewardship role and our collaborative approach to delivering our responsibilities.

Our stewardship approach to consultation in school reorganisations — current and future practice

This shift in approach towards stewardship is profound. It is still evolving as we work with the sector and shift our support to a stronger focus on regional leadership and collaboration, rather than on the largely centralised and somewhat 'top-down' approach of earlier years.

Stewardship and Community Engagement

The Ministry's work to support school closures and mergers include a range of different Ministry teams and groups (some are at National Office and some based in the ten regions). The complex nature of the Ministry, as well as its relationship with individual Boards of Trustees and their communities, means that one identical process cannot be rolled out to effectively meet the needs of every school and community. Particular contexts (the Board, staff, community and more recently the Community of Learning) need to be allowed to impact on the consultation process. We understand that this is

how consultation is most effective for a particular community.

The Ministry wants to support change effectively. In recent years, the Government has initiated changes in many aspects of the education system in order to help raise achievement. Some of the changes that are now being implemented were initiated prior to 2013.

The Ministry itself has also undergone significant change in recent years, in its structure as well as in its focus. We consider these changes have made, and will continue to make a positive impact on student achievement.

For these reasons, following the Christchurch closures and mergers the Ministry has not developed a single consultation process (with a standard prescribed letter to the Board, consultation timeframe, consultation process etc). Instead we have moved to become more accountable as a steward of the education system, and in doing so also respond with as much flexibility as possible to the needs of Boards and communities that are involved in the closure and merger consultation process.

The following are details of changes that have taken place to do this.

Building collaborative relationships between Boards and the Ministry

1. We share data with Boards of Trustees so they are knowledgeable about their school's current situation and its possible future
 - a. As the Ministry's access to data and its analysis of it have improved, staff are in a better position to provide reliable information and discuss it with principals, Boards and other educational organisations. This is a key role of our Directors of Education, established in 2014, and located in each of the Ministry's ten area offices, replacing the previous four regional offices. This means schools can be updated regularly about the Ministry's view of how factors that are changing or proposed to change in their area may impact on the future of the school. These changes may include, for example, the development of Special Housing Areas in the community, the implementation of new roading, or a neighbouring school reducing its home zone catchment. Data analysis and discussions about that data also takes place at an individual school level.
 - b. The Ministry has also developed its own programmes that provide graphic information (in the form of coloured _A3 sheets) that summarise complex data in graphic and picture form. This is available for both groups of schools and individual schools and makes the presentation of technical information easier for Boards and communities to understand. This is helping overcome the concern raised in the Christchurch consultation process that some information was jargonistic and difficult to understand.
2. We actively build links between the Ministry's Education Infrastructure Service Group (EIS) and schools.
 - a. The newly established EIS Group became operational in early 2014 and was set up to transform the Ministry's approach to working with

Boards in relation to their school property, to enhance the levels of direct support for schools and to increase interaction with school leaders and their communities. In Canterbury, EIS has implemented a programme of school visits to ensure schools are supported and have a good understanding of their position in the Christchurch School Rebuild programme. Staff have visited all schools in the programme multiple times since the programme was established. Following each school visit, staff ask schools to rate how satisfied they were with the service provided by the MOE property team (1 being “not satisfied” and 5 being “very satisfied”). 82% of those who responded gave a rating of 4 or 5 (‘satisfied’ or ‘very satisfied’).

- b. The EIS team in Christchurch also established a Minor Works team in 2013 to help schools remain operational until they enter the main rebuild programme. Since 2013 the Minor Works team has delivered almost 700 minor works projects in more than 100 schools. At any given time the team has around 200 live projects, at different stages of completion. The response from schools on the minor works team has been very positive, with good feedback received in terms of cost savings, responsiveness, and overall service.

The Principal of Waitakiri School, which was a merged school and was significantly rebuilt as part of the Christchurch Rebuild programme, provided the following feedback:

We are delighted with our new school and our work with the Ministry in developing the school design that meets our vision for teaching and learning. The Ministry team were responsive, proactive, and fair in their dealings with the school, BOT and community. I understand how hard the Ministry team work to meet our needs (and deal with my ideas, expectations and revisions) and they do so with professionalism, a positive attitude and in the best interest of our tamariki.

3. Providing information to schools that are involved in consultation

We continue to acknowledge the importance of Boards being informed on all aspects of a proposal for possible closure / merger and have changed our approach to managing this process.

- a. Our primary focus throughout the earlier school reorganisation processes had been to ensure that the formal consultation process was undertaken appropriately. We have now moved our focus to ensure that the engagement process (pre-consultation) is also undertaken effectively. This means that we are having discussions with Boards about factors that may impact on the future of their school well in advance of moving to a formal consultation process.
- b. It is now the Ministry’s practice to include the report to the Minister about the proposed school merger / closure to the Board of the school, when the letter initiating formal consultation under the Act is provided. This letter and the report are now hand delivered by area office staff (usually the Director of Education). This meeting allows details of the process to be discussed to ensure they are understood

and that the Board is also aware of the support that is available to them during the consultation period.

The Minister has been clear that the information and material that she relies on to make her proposal, interim and final decisions is provided to Boards of Trustees and made available on the Ministry's website. This does not just occur at a proposal stage, but at all stages in the process. Either the Minister or senior officials, and often both, meet with the Boards on request and at each stage of the process.

- c. We have extended the practice of putting all relevant documents on the Ministry website. This allows Boards, members of the community and the media to access information about particular schools and the proposal for them. This is done at every critical stage in the process.
- d. We have restructured the Ministry so there is one Group that now has specific responsibility for managing all Official Information Act requests. This team works with subject matter experts (who are familiar with the topic of the request) and closely manages the timeframes for individual responses. They work across all Ministry Groups to ensure that requests are processed consistently and responded to appropriately. Where a request is linked to a formal consultation process this team prioritises the request.
- e. We have undertaken training for Official Information Act subject matter experts. In 2013-14 an OIA training process was provided for staff in each of the ten Ministry offices across the country. Staff in these offices are often the subject matter experts for OIAs. The development of the training package and its roll out included staff from the Office of the Ombudsman and it was supported by both senior Ministry staff and senior staff from the Ombudsman's office.

The Closure / Merger Process

- 4. Our processes have changed to ensure everyone understands the different stages of the closure /merger process and how schools and the wider community are involved. This is reflected in the Ministry's support documentation.
 - a. As stated above, while in the past the Ministry's primary focus of the school closure and merger process was the formal consultation process, it is now equally focussed on the need for an effective engagement process with the school before the more formal consultation process starts.
 - b. Ministry documents that refer to school mergers and closures make the difference between engagement and consultation very clear.

'Engagement' or 'informal discussions' with Boards are a time when the Ministry shares data about the school and its community with the Board, and discusses the future of the school or education in the area. It is noted that not all engagement discussions lead to formal consultation (which is required under the Education Act when a school

change is being proposed). There is no set timeframe for how long the engagement phase may take. In our experience this tends to be longer than the more formal consultation.

This clear demarcation highlights that both are important. When the engagement is effective, the consultation is also likely to be an effective process.

Consultation timeframes

- a. As is noted in the draft report, the legislation does not provide a timeframe for the first round of consultation in a proposed school closure or consultation in a merger. We consider that discussions (or engagement) with Boards about schooling in the area should be regular occurrences, particularly in areas of population growth or population decline.
- b. Where possible we do not use 28 days stated in legislation as the expected period, but more often see this as a minimum. In practice we have had second consultation rounds for proposed mergers, and extended the second period of consultation beyond the 28 day legislated period. We consider requests for extensions to the proposed consultation timeframe if a Board asks. Where requests for extensions are not supported then the reasons for their decline will be made clear to the Board.
- c. The general practice for the Ministry has been that the timeframe for the first round of consultation in a proposed school closure or merger is approximately 4-6 weeks. A second round of consultation is required in a school closure that is not supported by the Board.
- d. We are now as flexible as possible about the consultation timeframe. We want to support Boards during the time of consultation, as this process is being asked of them in addition to their usual tasks. In situations of directed closure or merger we have continued with the practice that started in Christchurch of providing funding for a consultation facilitator to help plan, undertake and write up the outcomes of the Board's consultation process. This consultation report informs the Board's submission to the Ministry.

Schools working collaboratively - Communities of Learning

5. We want to support schools to work collaboratively to raise student achievement rather than being in competition with each other. We want the focus to be on the whole educational pathway each child travels through.
 - a. In 2014 the Investing in Educational Success initiative was launched. This initiative has several components including the establishment of Communities of Learning (CoL). CoL are groups of schools that form a pathway for students (ie they are the schools that provide year 1-13 schooling for most children in a particular area). CoL are currently at the beginnings of their development across the country. The CoL

that have been approved are now working together to consider their achievement data and agree achievement challenges. They can then begin to focus on working collaboratively to help their students achieve in the specific area of the CoL achievement challenges, and also within the wider educational targets that the government sets for the system and Boards set for their students.

- b. The Minister of Education has been clear about her aspirations for the Education System and the work programme to achieve them. Every system lever is being reassessed to identify how they can each individually and collectively support each of our children and young people to achieve. This includes updating the Education Act 1989, funding systems, teaching and learning practice, the quality of teacher supply, role of digital technology in teaching and learning practice, and update of Special Education services. Work in all of these areas is designed to support the sector achieve the best outcomes for our children and young people. Every single one of these levers is being worked on with the sector.
- c. The exact role of CoL in consultation about school closures and mergers has not yet been determined. However, we can envisage the Ministry's engagement process around schooling change in the future being with the CoL and its community rather than with the Board of an individual school and its community. This approach would enable a more collective view of the best path for a whole community, rather than a single school. More than that we would expect that over time each CoL may well want to structure its education provision differently to how it is currently done. We will be ready to work with CoL to achieve any change that benefits the children and young people in the community.
- d. Similarly, if the Board of a school in a CoL requested closure or merger, or was proposed to be closed or merged, the formal consultation process would include all other schools in the CoL (as they would be the schools that would be affected). If the CoL agreed then the Board's consultation process could be undertaken through the auspices of the CoL rather than the Board concerned.

We believe that these innovative changes and the collaborative focus of the Ministry and education sector to work together will have a significant impact on education in the future. As positive relationships develop there will be many constructive flow-on effects. One of these will be that all groups involved with schooling change will work together to ensure there are high-quality consultation processes.

518. I agree that the Ministry has done a lot of work since the beginning of 2013 to repair its working relationship with the schooling sector in Canterbury. In March 2013, a meeting was convened by new Chief Executive Peter Hughes with the Christchurch education sector to start a dialogue about re-establishing effective lines of communication. The message conveyed by sector representatives was that the trust the sector had in the Ministry had been destroyed since the September 2010 earthquake. The Ministry attendees accepted this and emphasised that they wanted to listen and work with the sector to begin the healing process. The group discussed the development of a blueprint for rebuilding a positive relationship. The key principles discussed included information sharing and having a visible process, with a *'broad and deep'* level of communication.
519. The Canterbury Primary Principals Association had an important role in Christchurch after the earthquakes, and it assisted as a conduit between the Ministry and the schools. Former president, Denise Torrey, attended the meeting with Peter Hughes in March 2013. She considered that the meeting helped Mr Hughes understand where the Ministry had gone wrong in Christchurch, and there was an improvement in communication and engagement. With the exception of CIEP, the prevailing approach to recent school reorganisations had been, pre-2013, strongly Ministry-directed. The Ministry states that it now recognises the importance of involving the schools at the critical early phase of the decision-making process when options are being developed, and well in advance of formal statutory consultation. I am told that the pendulum has swung towards a much more collaborative model for school reorganisation.
520. In mid-2013, Ministry officials informed my office that, under the proposed new process, the Ministry would pay for a community-nominated facilitator to assist schools in developing options for education in the area. The role of the Ministry at the initial stage would be focused on providing information, and then on providing an analysis of the community proposal to the Minister, including the financial implications, so that the Minister would have a sound basis on which to decide whether to commence consultation under the Education Act. Katrina Casey stated that, under this framework, if schools wanted to preserve the status quo, then it is unlikely that matters would proceed further unless intervention was absolutely necessary.¹⁸⁶
521. Ministry officials provided a draft flowchart entitled *'Building effective schooling networks'* (dated July 2013), which set out a proposed new process which included the following six stages.

I agree that the Ministry has done a lot of work since the beginning of 2013 to repair its working relationship with the schooling sector in Canterbury.

¹⁸⁶ Ms Casey commented that in the reorganisation of five schools in Flaxmere, Hawkes Bay, the Ministry paid for a facilitator to assist the schools to come up with options how to run education in the area. The first lot of information provided to schools was about achievement rather than property. The role of the Ministry was to provide an analysis of the community proposal to the Minister. On 13 September 2016, the Minister announced that around \$19 million would be spent to redevelop Flaxmere and Kimi Ora Community Schools in Flaxmere.

Table 13: Building effective schooling networks

Trigger for change identified	<p>Community initiates a schooling network change or</p> <p>Ministry identifies an issue through ongoing monitoring or sudden circumstances</p>
Community's education fact file created	<p>Ministry creates a fact file about education in the community based on all available information (including money) in order to guide the community to assess the past and inform the future through innovation and engagement</p>
Community engagement with Ministry	<p>Ministry presents the fact file to the community</p> <p>Discussions between community and Ministry facilitated by independent facilitator</p> <p>Formation of an education steering group for the community</p> <p>Steering group creates a community education profile</p> <p>Steering groups work with Ministry and community to come up with ideas, options or possible outcomes that the Ministry can take to the Minister</p> <p>Report to the Minister to formally consult with the community on options</p>
Consultations and Minister's decisions	<p>Formal consultations undertaken by Ministry, assisted by steering group</p> <p>Consultation reports provided to the Minister for preliminary and final decisions</p> <p>Statutory timeframes followed for this process</p>
Implementation	<p>Appointment of establishment board of trustees and staff</p> <p>ERO readiness review undertaken</p> <p>Boards hold elections</p> <p>Schools built or school property modified</p>
Evaluation/lessons learnt	<p>Evaluate schooling network change and processes and incorporate lessons learnt into this guideline and other strategic documents that underpin schooling network changes</p>

522. Ministry officials commented that the focus on educational achievement and providing information at the front end of the proposal makes for a very different approach. For example, in Kawerau, the Ministry listened to the community and then made a recommendation to the Minister based on what the Ministry thought should happen. Under the new process, the Ministry will go to the community with issues rather than options. The community will say what the solution should be. The community will be asked to create a vision, and explain how they would make that a reality. Information about the cost of the proposals will be provided to the community to inform their discussions, if requested. If a business case is required, then it will not be developed prior to community engagement, and the community will first be advised of the need to seek any additional funding. If formal closure or merger consultation were to commence, it is envisaged that a similar level of support will be provided to communities to match what was provided by the Ministry in Christchurch.
523. A senior ministry manager¹⁸⁷ commented that *'you won't really get good consultation unless discussions are done beforehand'*. He stated that any approach where the Ministry formulates the options *'creates a barrier'* and *'stops conversation in its tracks'*. In his view, the Ministry needs to be aware that the community might come up with a model that responds to all the issues, and he noted that it was imperative that the schools understood the data held by the Ministry before being asked to help develop a new model of schooling. The manager advised that much of the more complex data concerned school property, and it need to be broken down into intelligible language. He stated:
- The data has to be verified not only by the Ministry but also by the community before we start the conversation. The communities have to be with us before we talk about the future.*
- ...
- People working with the schools have to be able to have a conversation with communities which is robust, fair, looks to future and nothing is hidden. All of information should be online and available to the whole community.*
524. The senior official stated that this approach was taken with a group of three proximate kura in the western East Cape, which all had low rolls.¹⁸⁸ He stated that the community *'knew the issues'* but were struggling to develop a solution. The Ministry engaged a community leader to work with schools and iwi. The Ministry listened, provided relevant data (which was then verified), and the schools held a hui that resulted in a proposal. He stated that the Ministry had *'great conversations'* before the Ministry formulated a report for the Minister. The official stated that the Ministry *'would never have thought up the proposal that emerged'*.¹⁸⁹

187 Interview in July 2013.

188 Te Whānau-a-Apanui Area School (84 students), Te Kura o Omaio (17 students) and Raukokore School (13 students).

189 In January 2016, the three kura were replaced with the Te Kaha Community School (a Year 1–13 state school). The principal of Raukokore has stated that, while there were three years of negotiation about the school's future, *'The consultation that took place after an interim decision was made gave the community false hope'*.

A Canterbury update

525. At the time of the September 2012 meeting in Lincoln, 2 of the 38 affected Canterbury schools had already closed. Of the remaining 36:
- 14 remain open;
 - 11 have closed; and
 - 11 have merged to create 5 new schools.
526. Details of how the 38 schools have been reconfigured into 20 schools in operation from 2017 are represented in the 'Decision Chart' in **Appendix 3**.

New and merged schools

527. On 13 May 2016, Radio New Zealand reported as follows on the situation with respect to the new merged schools of Waitākiri and Rāwhiti.¹⁹⁰

Three years ago primary schools across Christchurch underwent one of the most radical shake-ups ever seen in New Zealand.

Thirteen were forced by the Minister of Education, Hekia Parata, to either close or merge.

The new \$14 million Waitākiri School in the city's east opened its doors for the first time four months ago. It is a product of the merger of Windsor and Burwood Schools.

Making the new school work has been a huge challenge, Waitākiri's principal Neill O'Reilly said.

'Neither of us wanted this, neither of these communities wanted it, however if this is about our children, we have to make sure we get the best possible outcome for them.

'So it always had to be how do we do that for our children and how do we honour the traditions of both schools,' he said.

The building of new schools in Christchurch to replace those damaged in the quakes meant there has been a greater take up of so-called modern learning environments. Instead of separate classrooms, 100 children have been brought together under the supervision of four teachers.

Waitākiri is no exception.

The new approach had many benefits, including allowing teachers to work more collaboratively, Mr O'Reilly said.

'Canterbury has an opportunity to be a beacon for positive education in a different way to what we've done in the past.

190 'Merging Chch schools gives principal 'challenge of his career'. Radio New Zealand, 13 May 2016. Retrieved on 1 June 2017 from <http://www.radionz.co.nz/news/regional/303766/merging-chch-schools-gives-principal-%27challenge-of-his-career%27>

'I'd be pretty excited if people visited Christchurch and went back to their own towns and countries and said 'you've got to come back and see this place,' he said.

Troy Duckworth, a teacher at Palmerston North's Russell Street School visited Waitākiri School to see if its approach would work for his school.

'This place is pretty magical.

'It's a space I'd like to work in myself. The space becomes a bit of an enabler for the children's learning, so yeah, it's fantastic,' he said.

A pupil at the school, Shelby Allan, said while she enjoyed working collaboratively with her friends, it was harder to establish a relationship with her teachers.

'You don't get to know them as personally. With the one teacher you got close to them, you knew them.

'But with the four teachers, you've got to get close to four people,' she said.

Rāwhiti School, also in the city's east, merges together three schools: New Brighton, North Brighton and Freeville on the North Brighton site.

The \$13m school stands out in a community that is still waiting for the rebuild to come to its side of town.

Rāwhiti's deputy principal Paul Wilkinson said they were keen to share the school with the whole community.

'Not just the hall, but we've got the netball and basketball courts that people are welcome to come and use.

'We don't lock the school down, the gates are open.

'We're putting a bike track in around the back field which is just really exciting,' he said.

Rāwhiti's deputy principal Paul Wilkinson said the gates to the school are open.

Like Waitākiri, team teaching and large classrooms are now the norm at Rāwhiti.

Teacher Kathy Lumley said she would not go back to the old style of teaching.

'You've got colleagues to work with, you're not in a solitary space. You've got someone to laugh with, someone to wonder with, someone to bounce ideas off.

'For the kids it's a choice about personalities, it's never ending possibilities.'

Bringing the three schools together has worked because the community has been determined to make it work, parent Jen Evans says.

'I just think it's how you talk to your kids about change. We've never been remotely bothered about it and we don't talk about it as a stress, so our kids have been excited and that's all they've ever been.'

While the rolls at Rāwhiti and Waitākiri are smaller than the pre-quake rolls of the stand alone schools they replaced, both are confident of growing their numbers over time as the east of the city rebuilds.

528. The July 2016 ERO review of Waitākiri School states that:

Effective change management strategies have enabled the school and community to successfully transition into its new setting and provide children and their families with a sense of belonging. Careful consideration has been given to recognising and celebrating the traditions and history of both schools and the local area. This is reflected in the school's kaupapa.

The school's achievement information shows that most children achieve highly in reading, writing and mathematics and are at or above the National Standards. Achievement in writing, particularly for boys, is a little lower and the school has plans in place to address this. Considering the challenges involved in the merger process and relocation to a new site, achievement results have remained very positive ... The board and senior leaders are very well placed to implement the next steps identified in this report.

529. The ERO report confirms that students at Waitākiri School are achieving well, and that the cultures of Windsor and Burwood Schools have been effectively incorporated into that of the new school.

530. On 10 May 2016, RNZ reported on the merged school at Lyttelton.¹⁹¹

The port town of Lyttelton has taken a big step forward in its rebuilding after the 2011 Canterbury earthquake with the opening of its new primary school.

The settlement, just through the tunnel from Christchurch, lost most of the businesses on its main street following the quake - but is slowly re-emerging from the rubble.

The new primary school replaces the Lyttelton Main School and will also be home to pupils from Lyttelton West, which was controversially closed by Education Minister Hekia Parata.

Bringing the schools together would unite Lyttelton, said Francie Graham, one of the school's teachers.

'I think there was quite a bit of apprehension. Everyone talked about going to a new school, which it isn't really - we've been Lyttelton Primary for two years.

'I think there's just been a collective sigh of relief, their eyes are just popping, it's just fantastic watching their faces because this is really something quite unique.'

A lack of consultation from the Ministry about what the new school would look like had left a sour taste, said principal Diana Feary.

She was determined to overcome this and had given one teacher the job of working with the community on ways to include it in what the school did.

191 'Lyttelton gets new, post-quake school'. *Radio New Zealand*, 10 May 2016. Retrieved on 1 June 2017 from <http://www.radionz.co.nz/news/regional/303485/lyttelton-gets-new,-post-quake-school>

...

Tim Winfield, whose son Leo is in year two at Lyttelton School, liked what he had seen so far of the new open plan modern learning classrooms.

'It looks like the kids are enjoying it.

'We've done a lot of information stuff with the school around the different learning styles and that sort of thing. It's early days but it seems to be good for the moment.'

531. The protracted process of closing the Aranui primary schools during the transition to the new Haeata Community Campus was undoubtedly very difficult for those involved. For example, the principal of Aranui School advised me that the school developed a well-regarded professional development programme. From 2015, it became very difficult for the school to retain staff, as the closure of the school became imminent. In 2016, staff turnover was 110 percent, with some students having three teachers in one year. Throughout 2016, the school was in a *'parlous and stressful'* state, and recruitment was continual. This was compounded by the new Haeata Campus having a term of transition before opening — which meant that eight teaching staff left Aranui Primary at the end of the third term. The Ministry provided extra funding for six staff to be recruited across the three Aranui schools, but they were very difficult to recruit and quickly moved on. Overall, he considered the length of time between the decision to close and the closure of the school made things very difficult.
532. These sentiments were echoed by Ms Torrey, who stated that the closure process was *'traumatic'* and *'exhausting'* for the Aranui primary schools. She said the Ministry endeavoured to assist with recruitment but it was like *'watching a ship sink'*. She stated that it became very difficult to find experienced staff to assist the Aranui schools on a relief basis. She also confirmed that the ongoing concern among the Aranui schools about the closure process has led to residual ill feelings about the new school. Rightly or wrongly, there is a lingering sense among her members that schools in more wealthy areas (with more social and political capital) were treated more leniently, and some educators consider that the eastern suburb schools have been subject to an *'experiment'*. Ms Torrey also commented that boards of trustees were better placed than principals to *'champion'* their schools, as there was no risk to their future livelihood. She felt that principals should be cautious before entering into public debate.
533. Ms Torrey commented that the Ministry restructure had been perceived by principals as a step in the right direction, and that the Regional Director in Christchurch has been accessible and responsive. However, Ms Torrey stated that the high levels of dissatisfaction and stress which arose from the process of reorganising schools have not entirely abated, and this has affected attitudes to the new schools (and in some cases impacted on enrolment). In July 2016, the Canterbury Primary Principals Association published a report (based on

Ms Torrey commented that the Ministry restructure had been perceived by principals as a step in the right direction, and that the Regional Director in Christchurch has been accessible and responsive. However, Ms Torrey stated that the high levels of dissatisfaction and stress which arose from the process of reorganising schools have not entirely abated, and this has affected attitudes to the new schools (and in some cases impacted on enrolment).

responses from 19 principals, change managers and appointed chairs of boards of trustees from affected schools) which found that the reorganisation was rushed, and created additional trauma and anxiety for schools and their students.

534. Ms Torrey (who is a principal herself) emphasised that the trauma from the 2012 earthquakes was having an ongoing effect on principals and learning. Linwood Avenue principal, Gerard Direen, has also undertaken research which suggests that the Ministry placed unrealistic expectations on principals in the wake of the Canterbury earthquakes.¹⁹² Ms Torrey stated that the children starting school at the moment were very young at the time of the earthquake. She drew attention to a research finding by Canterbury University School of Health Sciences Associate Professor Dr Kathleen Liberty, that the Canterbury earthquakes have caused more trauma in young children than expected.¹⁹³ Ms Torrey emphasised that the consequent increase in behavioural needs of children in Christchurch will require adequate recognition and support by the Ministry for some years to come.

Redcliffs School

535. It is worthwhile to briefly consider the process followed in respect of Redcliffs School, which was handled separately and later than the 38 schools subject to the initial closure and merger proposals. On 7 July 2016, Education Minister Hekia Parata announced that the statutory consultation process had caused her to reverse her interim decision (dated November 2015) that Redcliffs School should close.

¹⁹² Principals from 20 primary school across Christchurch who took part research undertaken by Mr Direen reported 'significant stress' from the constant changes associated with closures or mergers, along with changes to modern learning environments and the school rebuild programme.

¹⁹³ Liberty, K. Tarren-Sweeney, M. Macfarlane, S. Basu, A. Reid, J. 'Behavior Problems and Post-traumatic Stress Symptoms in Children Beginning School: A Comparison of Pre- and Post-Earthquake Groups'. PLOS Currents Disasters. 22 June 2016. Edition 1. doi: 10.1371/currents.dis.2821c82fbc27d0c2aa9e00cff532b402

Dr Liberty found that as many as one in five children starting primary school in east and south Christchurch exhibited classic symptoms of post- traumatic stress disorder. They were aggressive and withdrawn (both reactions to anxiety) and had difficulties in concentrating and learning.

536. The brief background to the consultation process was as follows.

Date	Background
June 2011	Redcliffs School moved to a temporary site at the Van Asch Deaf Education Centre in Sumner.
23 March 2015	The Minister commenced statutory consultation on the proposed closure of Redcliffs School. Although the school could be made safe, the possibility of future rockfall meant that it was not possible to guarantee uninterrupted provision of education on the site.
July 2015	The board argued that the geotechnical issues were minor and that the risk of disruption was highly unlikely. There were high levels of community support for the school to remain open, and the Ministry received 3,000 submissions, which were overwhelmingly in opposition to the proposal.
November 2015	The Minister made the interim decision to close Redcliffs School because of uncertainty about the potential for disruption from rockfall.
March 2016	The board submitted new technical evidence that moving the school forward would mean the risk of disruption would be negligible. The board noted that the Ministry had only undertaken preliminary investigation of alternative sites. The board drew attention to negative psychosocial effects for the community if the school was closed.
April–June 2016	The Minister obtained expert geotechnical and psychologist comment.
July 2016	The Minister announced that Redcliffs School would not close. The Minister would consider the potential for negative psychosocial effects for the children if the school were to return to the original site, and the feasibility of relocating the school to an alternative site in Redcliffs within a reasonable timeframe.
November 2016	The Minister announced that the school would be relocated to nearby Redcliffs Park.

537. Two aspects of this process warrant highlighting. First, Redcliffs School described the initial closure proposal (in its submission) as *'shocking and unexpected'*, as early indications from the Ministry had been that the

school would remain open. Second, the school successfully persuaded the Ministry to give serious consideration to the concerns it raised about the psychological wellbeing of its students. The Ministry obtained its own expert psychological advice and undertook substantial analysis before reaching a conclusion on this point. Previously, the Ministry had only given passing consideration to submissions from other Christchurch schools about the psychological wellbeing of students. This is surprising, given that the impact on the wellbeing of staff and students of the proposals was an underlying theme of the submissions received by the Ministry from many of the schools.

General observations

538. My investigators have spoken recently to a number of education leaders in Canterbury, including representatives from some of the merged schools. The consistent message conveyed by these leaders is that they are enthusiastic about elements of the new learning facilities and collaborative teaching practices at the new schools, albeit with some reservations about whether teachers have been adequately resourced and supported to adapt their teaching practice quickly and effectively to the new co-teaching model. Nonetheless, none of the people we have spoken to consider that the outcomes achieved are any kind of cure for the deficiencies in the processes that got them here. It also appears that the impact of the trauma caused by the earthquakes and the ensuing social upheaval on young children's learning and behaviour is becoming more evident as time passes. This suggests that it is too early to speak confidently about enduring educational outcomes.

The present position

539. The Ministry of Education has introduced a number of structural changes which are intended to enhance the linkages between the systems, and the Communities of Learning are expected to identify systemic issues between groups of schools. They may also prove to have a role in school reorganisation. However, there is currently minimal information available to schools about how the Ministry will undertake school reorganisations. For example, the Ministry's webpage entitled *Running a School* provides no information about the 'new approach' to school reorganisations which the Ministry first made reference to in mid-2013. The section entitled 'Strengthening schooling in areas of population change' simply notes:

There are times when a community gets smaller. This could necessitate changes such as the reorganisation of current schooling provision and/or the closure or merger of schools

...

When a need for change is identified, consultation is undertaken with the boards of trustees of the schools affected by the proposed change, and with the wider community, before any final decision is made.

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540. The Ministry website provides a link to the March 2013 booklet *Building Effective Schooling Networks*.¹⁹⁴ It does not include the Education Reports for recent school closures (with the exception of Redcliffs and Salisbury Schools). The website states that information is released if there is a public interest in the information, which means that lower profile closures and mergers pass below the radar of public scrutiny.
541. It is disappointing that the material available on the Ministry's website does not reflect the new approach.
542. I accept that there is no identical process that can be rolled out for school reorganisations or the closure of individual schools. However, I see no impediment to developing a single coherent policy framework (with appropriate flexibility built in) that is clearly applied and fully understood by stakeholders. Indeed, I consider this to be fundamental to good practice.
543. The Ministry recently commenced consultation on the future of schooling provision in North Porirua,¹⁹⁵ due to roll growth pressures which are expected to continue. In a press release dated 22 August 2016, the Ministry publicly committed itself to a 'full and open' consultation process and will be inviting parents, teachers and the community to have their say about schooling provision in North Porirua. The media release states:

This is an opportunity for schools in the Northern Community of Learning and wider community to think about the best medium-to-long-term response to increasing roll growth and, what form any change to schooling provision in the area should take.

...

The Ministry is proposing a range of options such as building a new primary school near Aotea College but is also keen to hear the views of the wider community.

We encourage students, parents, whānau, teachers and the wider community to have their say. We want to know what the strengths and weaknesses of the options presented might be as well as any other options the community may have.

544. The public commitment to engagement by the Ministry in North Porirua (in the context of population growth meaning that more capacity in the network of schools is required) is very encouraging.

The Review of the Education Act 1989

545. A major recent development has been the passing into law of the Education (Update) Amendment Act 2017 on 15 May 2017.

¹⁹⁴ This booklet was subject to early release by the Ministry in October 2012 to assist the communities involved in the Christchurch reorganisation understand the reorganisation process. See paragraph 33737.

¹⁹⁵ Adventure, Discovery, Papakowhai, Pauatahanui, Plimmerton, Postgate, Pukerua Bay, St Teresa's and Aotea College.

546. The relevant changes are to Part 12 of the Education Act, and were signalled by the Minister in a Cabinet paper in 2015.

I would like to consult on whether it would be helpful to establish a purpose clause at the beginning of Part 12 of the Act setting out the guiding principles for establishing, closing and merging schools, whether they occur as the result of an area strategy or for other reasons. This would provide greater clarity to schools and communities about the principles that would be taken into account when making decisions under this part of the Act.

547. The corresponding sections of a Cabinet paper accompanying the draft Bill in August 2016 read as follows.

Modernising Part 12

Part 12 of the Act deals, amongst other things, with the opening, closing and merging of state schools. I consulted on creating a set of principles to underpin the decisions around opening, closing and merging schools and improving the process for reviewing the provision of education in a particular area.

I believe that having a set of principles or a purpose statement that will guide decisions under Part 12 will help everyone understand the trade-offs that are sometimes needed in making decisions about the establishment, changes to, and disestablishment of schools. I propose that these decisions are based on the following:

- *the Minister has absolute discretion and may consider any matter the Minister considers relevant including:*
 - *the provision of a schooling network that assists parents to meet their obligation to enrol their children in school*
 - *the efficient and effective use of the state's investment in schooling*
 - *the provision of Maori-medium education*
- *the desirability of some diversity in provision of schooling.*

Reducing consultation after a review of the provision of education in an area

The review of the provision of schooling across a particular area is called an area strategy and is usually carried out when demographic change in the area means that there are too few or too many places in the provision of schooling for the foreseeable future. When an area strategy is proposed, there is significant engagement with those affected but this process is not set out in the Act.

Once a decision has been taken to close or merge a school, the Minister has to consult with the board concerned and any other boards whose rolls may be affected. The board of the school concerned then has 28 days to make submissions as to why it should not be closed.

The first part of this statutory process often repeats the consultation that has been carried out as part of the area strategy and this can be frustrating for

all concerned and prolong the grieving period. I propose to amend the Act so that, when the school concerned and other schools whose rolls might be affected have been consulted on an option as part of a review of the provision of schooling in a particular area, then the Minister can proceed straight to the 28 day process if there is a proposal for closure.

548. The clause-by-clause analysis of the Ministry's explanatory note to the Bill did not further explain the rationale for the amendments, but it stated:

Clause 107 amends section 154, which relates to the power of the Minister to close schools and provides that the decision to do so is in the Minister's absolute discretion.

...

Clause 110 amends section 156A, which relates to the power of the Minister to merge 1 or more State schools (that are not integrated schools) and provides that the decision to do so is in the Minister's absolute discretion.

...

Clause 113 amends section 157 to limit the requirement for the Minister to consult about the possibility of closing a school or merging any school or schools with another, if the relevant board or boards have already been consulted on a closure or merger option as part of a review of the provision of schooling in a particular area.

549. The then Acting Secretary for Education, Katrina Casey, advised me in July last year:

I would also like to let you know that the statutory provisions for closure, merger and consultation have been looked at in the context of the Education Act update, with a view to making some improvements which streamline statutory decision-making. These will be included in a bill which is expected to be introduced in August.

550. The proposed amendments (which have now been passed into law) caused me a number of concerns. I outlined these concerns in a submission to the Select Committee,¹⁹⁶ in connection with which I also made an oral submission.

551. It is not appropriate for me to elaborate on my concerns in this report, as decisions on the content of legislation are the province of Parliament. It should suffice to say that the removal of a consultation phase for some processes and the introduction of a Ministerial 'absolute discretion' for closure and merger decisions reduces the checks in the legislation itself on decision-making for closures and mergers. This means it is even more important that the Ministry takes care to ensure administrative good practice in how it performs its role.

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¹⁹⁶ Submission may be viewed at http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/1833/original/education__update__amendment_bill__2016_.pdf?1484014122

Recommendations

552. The ultimate purpose of this investigation is not to find fault with past processes. Rather, it is to analyse what has gone before, in order to make recommendations that will have a real positive impact on the present and the future.
553. Therefore, the focus of my recommendations is on plotting a path for improvement, while drawing lessons from the past and specifically acknowledging the damage to communities in Canterbury that poor process caused. The purpose is not to dwell on the past, but, in order to move on, past harm must at least be properly acknowledged.
554. The second of my recommendations is explicitly future focused, and it looks to joint action to build a solid foundation for school reorganisation processes to come.
555. I recommend that:
- a. the Ministry publish a written apology in *The Press* addressed to the 38 schools subject to closure or merger proposals on 13 September 2012. This should include an apology for the lack of transparency concerning the process of school reorganisation and the manner of the announcements;
 - b. the Ministry agree to convene a working group that liaises with education sector leaders to prepare external and internal guidelines for the process of closing and merging individual schools and groups of schools which incorporate the principles of good consultation as outlined in this report; and
 - c. the Ministry report back to the Office of the Ombudsman on the implementation of:
 - i. recommendation (a) within a month; and
 - ii. recommendation (b) within two months, and at subsequent times as necessary, to be determined by the Ombudsmen.

The Ministry's response

556. The Ministry of Education has provided feedback on draft iterations of this report, some of which has been incorporated into this final report. I am pleased to record that the Ministry has agreed to implement my recommendations. Nonetheless, the Ministry does not agree with all my conclusions and has requested the inclusion of the following statement in the published report:

"The Ministry of Education refutes all statements and implications in this report which suggest that the Ministry undertook two parallel processes in Christchurch, with one of these being the visible process of consultation and the other an "invisible" process of business case development. This characterisation fundamentally misrepresents the nature of these processes and their separate but interrelated purposes. The process of developing a Business Case was necessary to obtain the financial mandate to progress the consideration of proposed schooling changes that, if implemented, would require major capital investment. The consideration of these proposed changes involved consultation with school Boards of Trustees and communities, which resulted in decisions that in many cases differed significantly from the proposals that had been included in the Business Case.

The Ministry further considers that this report does not adequately reflect the magnitude and unprecedented nature of the effects of the earthquakes on the Canterbury schooling network. This presented the significant challenge of balancing the need to allow time for communities to consider the future of individual schools, with the need to provide certainty and stability for students, their families, school leaders and staff.

We acknowledge that the Ministry's communications should have been clearer and that we should have provided more information right from the start about the decision-making process. "

Glossary

Advisory Boards	Three advisory boards proposed in the GCERP as a mechanism to provide for local voices in education renewal issues. The three boards were: the Education Advisory Board, the Waitaha Advisory Board and the Pasifika Advisory Board.
Area review	An examination of education provision within a defined geographical area, undertaken by the community and the Ministry of Education to optimise education services within that area.
Better Business Case (BBC) process	<p>A set of guidelines developed by Treasury for the construction of a business case for proposed projects. The BBC process is structured around the five-case model: strategic, economic, commercial, financial and management components. There were intended to be three development levels to a project business case, following a strategic assessment:</p> <ul style="list-style-type: none"> • Indicative Business Case • Detailed Business Case • Implementation Business Case
Bulk funding	An education funding system whereby schools are allocated a lump sum of government funding, from which to meet all their running costs as they see fit.
Business Case	<p>In the context of the Canterbury education reorganisation, the business case developed under the guidance of the School Property Group. The business case was for the Ministry's assessment of the work required to be done to the Canterbury school network. The business case itself went through a number of stages and iterations, and the Ministry's own documentation varies in the terminology used when referring to it. Alternative names used for versions and components of the document include:</p> <ul style="list-style-type: none"> • Greater Christchurch Education Renewal Business Case • Greater Christchurch Education Renewal Programme Interim Business Case • Indicative Business Case • Indicative Property Business Case • Initial Programme Business Case • Interim Business Case • Programme Business Case • Programme Interim Business Case • Stage One Business Case • Updated Programme Business Case

Cabinet Business Committee	A committee charged with considering policy issues, appointments, bills and regulations, and other matters that require decisions before the next scheduled applicable Cabinet committee meeting.
Cabinet paper	A document put before Cabinet by a minister in order to consult and/or inform on matters of public interest, importance or controversy.
Canterbury Earthquake Recovery Authority (CERA)	An organisation established by the government in response to the Christchurch earthquakes to develop and lead a whole-of-government recovery strategy.
Catalyst for change	A term for the factors used by the Ministry to develop the options for the Canterbury school reorganisation, broadly classified into: People (school-age population changes) Land (geotechnical issues) Building (the physical building infrastructure issues)
Christchurch Education Renewal Team (CERT)	A Ministry team created after the Christchurch earthquakes to provide leadership, management and implementation of education renewal in the region.
Christchurch Schools Condition Assessment Project	Ministry-commissioned inspections of 123 Christchurch, Kaiapoi and Rangiora state schools, conducted following the Christchurch earthquakes.
Commissioner	An independent statutory officer whose powers are derived from statute.
Community Initiated Education Planning (CIEP)	A community-focused process for enabling school reorganisations during the moratorium on network reviews. The focus was on obtaining community agreement.
Consolidation	A category of change proposed within the Christchurch education reorganisation – one which amounted to moderate change.
Consultation	A form of engagement. In a consultation process, the governing body retains the sole final decision-making role.
CORE Education	A learning and development consultancy organisation.
Critical success factors	In the context of the Canterbury reorganisation plans and proposals, success was measured in terms of: Value for money Flexibility and responsiveness to changing requirements Market capability and capacity Future-proofing and delivery of quality in design
Decile	A ranking system used to allocate funding to individual schools according to socio-economic indicators.

Delegation	A form of engagement. Delegation places the final decision in the hands of the public or a particular interested party. Technically the Minister always retains final decision-making power under the Education Act 1989, but in processes characterised in this report as negotiations or delegations, the understanding was that the Minister would only sign off on a closure or merger that had the prior agreement of the affected school.
Designated character school	A state school with a particular character that provides education services not otherwise available in its region. Character schools are designated under the Education Act 1989.
Directions for Education Renewal in Greater Christchurch (Directions)	The document summarising community submissions and setting out the details of the ERRP. There was an initial draft Directions document as well as a document known as the final Directions.
Education Development Initiative (EDI)	A policy emerging from the Ministry of Education's 1991 'Report of the economic and educational viability of small schools review', which called for community involvement in the rationalisation of education provision.
Education Reports	Formal advisory reports prepared by the Ministry of Education for the Minister of Education or another Minister with relevant portfolio responsibility.
Education Review Office (ERO)	Initially known as the Review and Audit Agency, ERO conducts reviews and generates reports on the performance of individual schools.
Emergency Management Overview Group (EMOG)	A group convened by the Ministry of Education in the wake of the Canterbury earthquakes, to provide a leadership structure to manage the emergency.
Engagement	In the context of a course of action proposed by a governing body to the affected community, the act of providing information to that community and collecting and considering feedback in order to arrive at a decision on a way forward
ERO reports	Reports developed and delivered by the Education Review Office, examining the education and care of children and young people in early childhood services and schools.
Greater Christchurch Education Renewal Call Centre	A call centre resource established by the Ministry of Education to respond to a large influx of OIA and other inquiries in the wake of the Canterbury reorganisation announcements.

Greater Christchurch Education Renewal Programme (GCERP)	<p>A plan/programme developed by the Ministry with the agreement of Cabinet, the purpose of which was to develop a vision and process for the future of education in Canterbury. Alternatively referred to as:</p> <ul style="list-style-type: none"> • Canterbury Earthquake Renewal Programme • Canterbury Earthquake Renewal Project • Canterbury Education Renewal Plan • Christchurch Education Renewal Delivery Plan • Education Recovery Plan • Education Renewal Plan • Education Renewal Programme • Education Renewal Recovery Plan • Education Renewal Recovery Programme (ERRP) • Greater Christchurch Education Renewal Plan (GCERP) • Recovery Plan • Recovery Programme
Intensive Wraparound Service (IWS)	An education service providing support for students who have behaviour, social and/or learning needs that are more complex and challenging than can be addressed by the mainstream education services.
Investment Logic Map (ILM)	A framework developed in consultation with key stakeholders, intended to define the nature of the problems in the Canterbury school networks and the scope of potential solutions.
Joint School Initiative Funding (JSIF)	A pool of funding intended to be used in a collaborative manner by a geographical cluster of schools in order to enhance education provision by that cluster.
Judicial review proceeding	A process by which a decision or action undertaken by the executive branch of government can be reviewed and potentially invalidated by the judicial branch.
Kura kaupapa Māori	Māori language immersion schools with a focus on revitalising Māori language, knowledge and culture.
MPlan	A web-based system of condition assessment that enables the development of property management plans.
National Certificates in Educational Achievement (NCEA)	A qualification system introduced in 2002, marking a new approach to teaching and assessment. More information is available on the Ministry of Education's website.
National standards	Quantifiable levels for achievement in the areas of reading, writing and mathematics.

Negotiation	A form of engagement. In a negotiation process, decision-making is shared with at least one other interested party. Technically the Minister always retains final decision-making power under the Education Act 1989, but in processes characterised in this report as negotiations or delegations, the understanding was that the Minister would only sign off on a closure or merger that had the prior agreement of the affected school.
Network review	A process for school reorganisation used between 2001 and 2004, in which the Ministry examined schools within a certain area in order to ensure the best possible education was provided within that school 'cluster'. It was a strongly Ministry-led process.
New Zealand Educational Institute (NZEI)	The largest education trade union in New Zealand.
New Zealand Qualifications Authority (NZQA)	The governing body for qualifications emerging from New Zealand educational institutions.
New Zealand Schools Trustees Association (NZSTA)	An association providing support to school boards of trustees in governance of their schools and representing the interests of those boards.
Official Information Act 1982	Legislation enabling any private party to request access to official information held by a government agency – referred to as an OIA request.
OIA request	A request for information, made under the Official Information Act 1982.
Post Primary Teachers' Association (PPTA)	An education trade union representing teachers employed in state and integrated secondary schools and other providers of post-primary education.
Property Management Information System (PMIS)	An online repository and management system for data about the property of individual schools.
Rationale for Change documents	Documents provided by the Ministry to schools affected by the Canterbury reorganisation, containing information about the reasons for the individual proposals.
Reasonably convenient school	A school within a designated geographical area, convenient to a student's home address, to which the student has automatic right of entry.
Reference group	A group established in the course of the education reorganisation process, appointed by the Ministry of Education to discuss the possible options for school reorganisation.

Regulations Review Committee	A government committee that examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills for consistency with good legislative practice.
Rejuvenation	A category of change proposed within the Christchurch education reorganisation – one which amounted to major change.
Restoration	A category of change proposed within the Christchurch education reorganisation – one which amounted to minimal change.
Satellite school	Education services provided away from the main campus site.
School inspectorate	An administrative group of school inspectors who were employees of the Department of Education under the Education Act 1914 and the Education Act 1964.
School Property Group (SPG)	A Ministry team that manages the state school network property portfolio. Now part of the Education Infrastructure Service (EIS).
Shaping Education Engagement Process	The process of engagement between the Ministry of Education and the Canterbury school communities, feeding into the development of the Directions document.
Special school	A school that supports and provides education for students with high needs.
State-integrated school	A former private school which has integrated into the state education system under the Private Schools Conditional Integration Act 1975, becoming a state school while retaining its special character.
Strengthening Education approach	An approach to the process of school reorganisation that was not formalised but had strong similarities to network review.
Tomorrow's Schools	A government policy geared towards self-management of schools via the establishment of boards of trustees. Detailed in Tomorrow's Schools: the Reform of Education Administration in New Zealand, a policy document given effect by the Education Act 1989.
Zoning	A system by which students are eligible to attend public schools according to the enrolment zone (schools contained within the geographical area the student resides in).

Appendix 1. Better Business Cases quick reference guide

The following BBC quick reference guide has been adapted for display purposes.

BETTER BUSINESS CASES

‘Investing for change’
BBC for business case developers

EFFECTIVE
AUGUST 2012



The purpose of this guide is to provide an overview of what is expected and who needs to do what in the development and assessment of business cases.

newzealand.govt.nz

WHY DO I NEED TO KNOW ABOUT BETTER BUSINESS CASES?

Better business cases lead to:

- better informed decisions
- better value for money
- achievement of better outcomes.

Key stakeholders include:

- Decision makers - better strategic alignment, value for money and evidence-based assurance
- Management - early engagement and influence on direction leading to confidence
- Business case developers - clear expectations and support
- Reviewers - early engagement and common language
- Private sector service providers - early market soundings and clearly specified service requirements

PROGRAMMES VERSUS PROJECTS

Programmes

- are arrangements to coordinate, direct and oversee a set of related projects and activities
- are strategic change initiatives that need to be flexible, where there are complex inter-relationships in a dynamic environment
- can have a lifespan of years and integrates projects to deliver outcomes or benefits that are greater than the sum of the parts.

A Programme business case describes how the activities and projects within the programme will deliver against the strategic objectives of the organisation.

Projects

- are tactical changes that can be relatively well defined and scoped
- focus more on outputs rather than outcomes.

WHEN DOES IT APPLY IN NEW ZEALAND?

State Sector Organisations (since July 2010)
All capital proposals from state sector organisations which are high risk and / or large scale, are considering Public Private Partnerships, require crown investment or disinvestment with significant policy decisions.

Canterbury Earthquake Recovery (Since March 2012)
Projects and programmes requiring Crown investment in whole or part.

Auckland Plan (Since June 2012)
All projects and programmes requiring Crown investment in whole or part.

National Land Transport Programme
Expectation that programmes/projects will start to undertake BBC process.

Good practice
Significant interest from organisations to use as good practice approach.

Please contact betterbusinesscases@treasury.govt.nz if you are considering adopting the Better Business Case process.

WHAT IS A BETTER BUSINESS CASE

- A tool adapted for New Zealand from international good practice (UK and Australia).
- A structured way of thinking.
- A step-by-step approach.
- A way of working together.
- A way to bring convergence, coherence and cohesion.

The supporting principles are:

- Quality analysis
- Thinking not writing
- Fit for purpose effort
- No surprises
- Governance and ownership
- Alignment with other management processes.

216

Office of the Ombudsman
Tari o Te Kaitiaki Mana Tangata

Disclosure

WHAT IS EXPECTED

- Application of the 5 case model is “the heart of the BBC”
- The appropriate level of effort expected depends on the scale and risk of the proposal
- Early engagement with those reviewing the business case to agree whether to take a programme or project approach and which type of business case is required to fit the nature of decision needed:
 - Confirm fit with strategy and need to invest
 - Confirm way forward with short-list of options
 - Confirm best value for money option, outline potential deal and delivery plan, assess affordability.
 - Confirm supplier offering best value, detailed commercials, confirm affordability, detailed management and delivery arrangements.

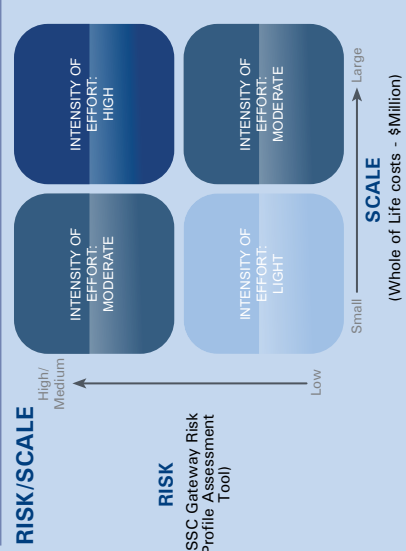
THE FIVE CASE MODEL

- Any business case addresses 5 key questions:
1. Is there a compelling case for change?
 2. Does the preferred investment option optimise value for money?
 3. Is the proposed deal commercially viable?
 4. Is the spending proposal affordable?
 5. How can the proposal be delivered successfully?

WHO NEEDS TO BE INVOLVED

- Stakeholders who have high influence and / or are highly impacted by the proposal.
- To ensure a fit for purpose business case is developed, the lead organisation should secure early agreement with those reviewing the business case:
- Type of business case
 - Timing and nature of decisions required
 - Scale and risk of the proposal
 - Pathway (i.e. Programme or project approach)
 - Right sizing the team
 - Right sizing the effort
 - Right sizing the engagement.

Use the scoping document on the web site to get early agreement and use it to agree any subsequent changes during the business case development process.



WHERE DO I GET SUPPORT

- Overview information**
- Quick Reference Guide, online module, overview presentation and booklet.
- Detailed information for each type of business case**
- Scoping document, to agree effort.
 - Guidance booklets, to understand the standard.
 - Presentation slides, to workshop the thinking together.
 - Word template, to write the business case.
 - PowerPoint “one pager”, to present the business case.

Training

- (Monthly in Auckland, Wellington, Christchurch)
- Seminar for senior managers (awareness - one hour) - free.
 - Foundation course (knowledge - half day) - free.
 - Communities of practice (wisdom - exchange experiences) - free.
 - Practitioners Course modules 1 and 2 (skills - 2 full days) - cost.
 - Reviewers course (skills - full day) - cost.

Support

- Customised seminar to those considering internal adoption.
 - Access to BBC practitioners to attend workshops that are applying BBC thinking to programmes, especially those that could require Crown investment.
- For any queries or for further information please contact:
- betterbusinesscases@treasury.govt.nz

Or visit:
<http://www.infrastructure.govt.nz/publications/betterbusinesscases>

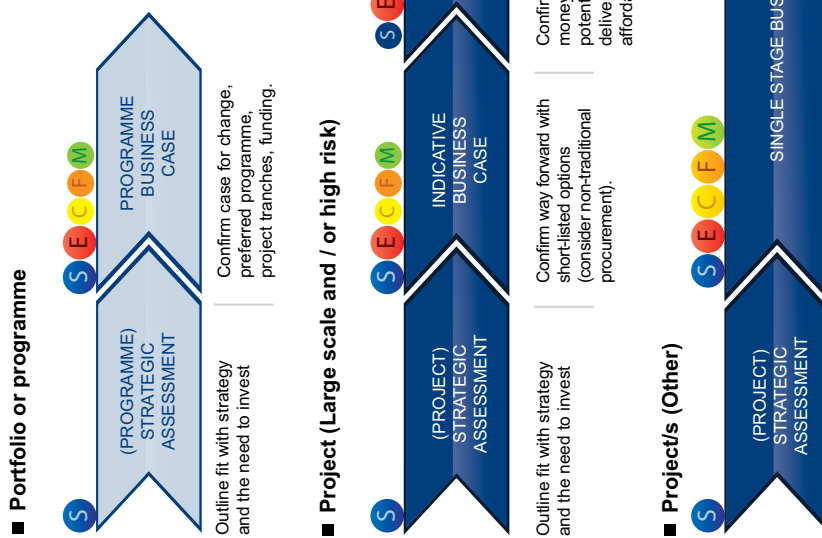
RELATED GUIDANCE

- Programmes (are not projects on steroids)
- Benefits Management Guidance
- Better Capital Planning and Decision Making: Quick Reference Guide
- Cabinet Office Circular CO (10) 2
- Best Practice and Methodology - Projects, Programmes and Portfolios
- Public Private Partnerships (PPP)
- Strategic procurement
- Cost Benefit Analysis Primer Investment Logic Mapping (ILM)
- Quantitative Risk Analysis (ORA)
- Independent Quality Assurance (IOA) Gateway reviews
- Major Project Monitoring

WHAT ABOUT ONGOING DEVELOPMENT

- Version 3 released in August 2012
- Interest in adapting/adopting BBC
- Need to better align/integrate with other processes and decision making frameworks
- Further development for release of version 4 in July 2013

THE PATHWAY OF THE PHASED BBC PROCESS CAN BE USED TO SELECT WHICH TYPE OF BUSINESS CASE BEST DELIVERS THE REQUIRED DECISION/S



HOW DOES BBC ALIGN WITH OTHER MANAGEMENT PROCESSES?

The BBC process aligns with the following other processes at programme and project level as follows:

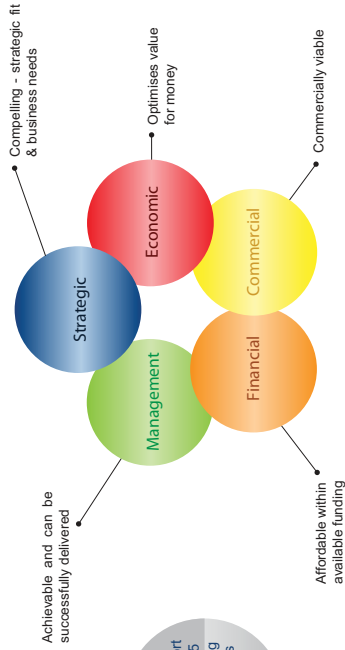
- Programme Business Case**
 - Portfolio and Programme Management (e.g. Managing Portfolios and Managing Successful Programmes)
 - Programme Assurance (Gateway, Independent Quality Assurance)
- Project Business Case**
 - Project Management (e.g. PRINCE2)
 - Public Private Partnerships
 - Strategic procurement including early engagement with suppliers
 - Feasibility, detailed studies, design, develop etc.
 - Project Assurance (Gateway, Independent Quality Assurance, Quantitative Risk Analysis)

AN OUTLINE OF THE ACTIONS REQUIRED FOR EACH TYPE OF BU:

Programme or Project Strategic Assessment	Programme Business Case
<p>Strategic Case - Outlining the Case for Change</p> <p>Enable stakeholders to consider the merits of a proposed investment and determine if it warrants further investigation.</p> <ul style="list-style-type: none"> Strategic context The case for change <p><i>The key questions considered are:</i></p> <ul style="list-style-type: none"> What is the problem or business need that is causing us to consider a new investment? What benefits will the organisation expect in successfully responding to the problem or business need? <p>Approach: The Problems and Benefits are best identified by key stakeholders in 2 two hour ILM workshops being, a Problem workshop and a subsequent Benefits workshop.</p> <p>If the proposal is large scale and high risk the ILM facilitator should be accredited, otherwise a trained ILM facilitator could be used.</p>	<p>Strategic Case - Making the Case for Change</p> <p>Confirm the strategic context for the investment and make a robust case for change.</p> <ul style="list-style-type: none"> Strategic context Investment objectives, existing programmes and projects Key service requirements and potential business scope Benefits, risks, constraints and dependencies <p>Approach: The investment objectives are best identified by key stakeholders in a two hour Strategic Case workshop.</p> <p>Economic Case - Exploring the Preferred Way Forward</p> <p>Identify and assess the preferred programme. Approach: The options are best identified by key stakeholders in 2 two hour Economic Case workshops being, a long list workshop and a subsequent preferred programme workshop.</p> <p>Commercial / Financial and Management cases</p> <p>Based on the preferred programme consider the commercial viability, rough order costs and potential funding sources, the tranches of projects, and how the programme is intended to be delivered.</p>

THE FIVE CASE MODEL

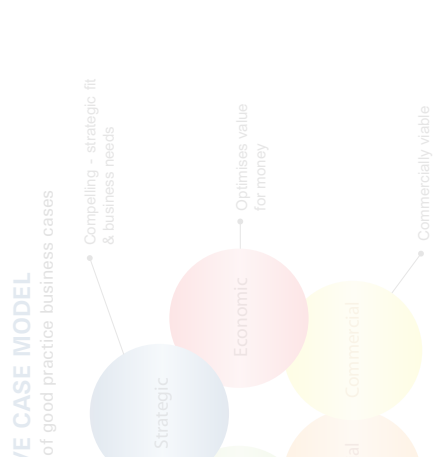
The 5 key elements of good practice business cases



PLANNING AND SCOPING

REQUIRED FOR EACH TYPE OF BUSINESS CASE WITH AN INDICATION OF THE APPROACH REQUIRED

	<p>Programme Business Case</p> <p><i>Strategic Case - Making the Case for Change</i></p> <p>Confirm the strategic context for the investment and make a robust case for change.</p> <ul style="list-style-type: none"> Strategic context Investment objectives, existing arrangements and business needs Key service requirements and potential business scope Benefits, risks, constraints and dependencies <p>Approach: The investment objectives are best identified by key stakeholders in a two hour Strategic Case workshop.</p> <p><i>Economic Case - Exploring the Preferred Way Forward</i></p> <p>Identify and assess the preferred programme. Approach: The options are best identified by key stakeholders in 2 two hour Economic Case workshops being, a long list workshop and a subsequent preferred programme workshop.</p> <p><i>Commercial, Financial and Management cases</i></p> <p>Based on the preferred programme consider the commercial viability, rough order costs and potential funding sources, the tranches of projects, and how the programme is intended to be delivered.</p>	<p>Indicative Business Case (Project)</p> <p><i>Strategic Case - Making the Case for Change</i></p> <p>Confirm the strategic context for the investment and make a robust case for change.</p> <ul style="list-style-type: none"> Strategic context Investment objectives, existing arrangements and business needs Key service requirements and potential business scope Benefits, risks, constraints and dependencies <p>Approach: The investment objectives are best identified by key stakeholders in a two hour Strategic Case workshop.</p> <p><i>Economic Case - Exploring the Preferred Way Forward</i></p> <p>Develop an indicative or preferred way forward as the basis for seeking early approval from decision maker, to proceed with more detailed assessment of the short listed options.</p> <ul style="list-style-type: none"> Critical success factors Long list options³³ and initial options assessment; Recommended preferred way forward (as part of short-listed options). If traditional procurement, proceed to decision maker. <p>Approach: The options are best identified by key stakeholders in 2 two hour Economic Case workshops being, a long list workshop and a subsequent short list workshop.</p> <p>If non-traditional procurement, including PPP, is identified as part of the short-listed options then seek approval from the decision maker to proceed with more detailed economic analysis of the short-listed options. This determines the preferred solution that maximises value for money. (Refer to economic case of Detailed Business Case.) Then determine how best to procure the preferred solution. (Refer to commercial case of Detailed Business Case). Then seek approval from the decision maker to proceed with more detailed assessment of the procurement options in the Detailed Business Case.</p> <p>The Chief Executive's statement</p> <p>(3) The option dimensions include scope, scale, location, service solutions, delivery, implementation and funding. These workshops could include supplier/industry representation for the consideration of service solutions (Refer Overview Booklet for further guidance) and strategic procurement experts for consideration of non-traditional procurement in terms of service delivery.</p>	<p>Detailed Business Case (Project)</p> <p><i>Revisiting the Strategic Case and Economic Case</i></p> <p>Revisit and update the Indicative Business Case to reflect any significant changes in the political, economic and policy environment.</p> <ul style="list-style-type: none"> Revisit the indicative Business Case and confirm the short-listed options or non-traditional procurement option <p><i>Economic Case - Determining Potential Value for Money</i></p> <p>Undertake more detailed analysis of the costs, benefits and risks of the short-listed options.</p> <ul style="list-style-type: none"> Economic assessment of the short-listed options or preferred non-traditional procurement option. If PPP include Public Sector Comparator. Intangible benefits and costs Risk and uncertainty <p>Approach: The short listed options are best assessed, especially in terms of intangible cost and benefits, by key stakeholders in a two hour workshop.</p> <p><i>Commercial Case - Preparing for the Potential Deal</i></p> <p>Plan for the potential deal.</p> <ul style="list-style-type: none"> The procurement strategy Service requirements Risk allocation Payment mechanisms Contractual and other issues <p><i>Financial Case - Ascertaining Affordability and Funding Requirements</i></p> <p>Determine the affordability and funding for the preferred option.</p> <ul style="list-style-type: none"> The financial costing model <p><i>Management Case - Planning for Successful Delivery</i></p> <p>Outline the current project management arrangements and put in place arrangements to manage project benefits and risks.</p> <ul style="list-style-type: none"> Project management planning Change management planning Benefits management planning Risk management planning Post project evaluation planning <p>The Chief Executive's statement</p>	<p>Implementation Business Case (Project)</p> <p><i>Revisiting the Strategic Case and Economic Case - Procuring the Value for Money Solution</i></p> <p>Revisit and update the Detailed Business Case to reflect any significant changes in the political, economic and policy environment.</p> <ul style="list-style-type: none"> Revisit the case for change Revisit the Detailed Business Case options <p><i>Commercial Case - Contracting for the Deal</i></p> <p>Select the preferred suppliers and outline the negotiated deal.</p> <ul style="list-style-type: none"> Evaluation of best and final offers The negotiated deal and contractual arrangements <p><i>Financial Case - Contracting for the Deal</i></p> <p>Consider the financial implications of the deal on the organisation.</p> <ul style="list-style-type: none"> Financial implications of the deal <p><i>Management Case - Ensuring Successful Delivery</i></p> <p>Finalise the arrangements to manage the project and the ongoing delivery of services.</p> <ul style="list-style-type: none"> Finalise project management arrangements Finalise change arrangements Finalise Benefit Management Finalise Risk Management Finalise contract arrangements Finalise post project evaluation arrangements <p>The Chief Executive's statement</p>
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Appendix 2. Detailed Network Assessment

As published on the Minister of Educations 'Shaping Education' website (Linwood Cluster)

LINWOOD- Catalyst for Change: Land / Building / People

Access	Equity	Education and governance	Infrastructure	Scale of Investment
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Network Summary: The Linwood cluster has a number of schools with low rolls. Linwood College is located on a split site, with their sports field being located approximately a kilometer away. Phillipstown School is a technology provider for 1,300-1,400 year 7 and 8 learners.



School by School Information:

School	March 2012 Roll	Out of Zone Learners	Site Size	Investment	Utilisation	ERO Cycle	Unengaged learners	NCEA Level 2 Achievement
Linwood Intermediate	127	0	2.7 ha	\$3,203,801	36%	3yrs	18	N/A
Linwood North	122	0	3.2 ha	\$3,177,785	49%	3yrs	5	N/A
Linwood Ave	259	0	2.5 ha	\$1,630,768	62%	3yrs	3	N/A
Bromley	235	0	2.1 ha	\$1,150,426	72%	3yrs	4	N/A
Phillipstown	137	17	2.0 ha	\$3,529,835	100%	3yrs	0	N/A
Woolston	230	0	1.5 ha	\$1,723,764	100%	3yrs	4	N/A
Linwood College	668	0	8.2 ha	\$12,234,281	84%	3yrs	61	63%

Key Determinants:

- Cluster is currently over supplied and has a number of schools with low rolls.
- Technology is currently provided at Phillipstown School. Education renewal provides an opportunity to review technology delivery in the cluster through shared primary and secondary facilities and possibility of shared facilities with tertiary institutions [REDACTED]
- The locations of Linwood North and Bromley Schools match population demands.
- Linwood College is currently split across two sites (fields are located over 1km away).
- Relocation of Linwood College would provide a better link with secondary learners coming from the Sumner/Port Hills areas.

This information has been withheld to maintain the constitutional convention to protect the confidentiality of advice tendered by officials. This information is still under consideration by Ministers and no decisions have been reached. (section 9(2)(f)(iv))

OPTION 1:

	School	Land & Infrastructure	Entity
Linwood Intermediate	Intermediate (Yr7-8)	Repair	Continues
Linwood North	Contributing (Yr1-6)	Repair	Continues
Linwood Ave	Contributing (Yr1-6)	Repair	Continues
Bromley	Contributing (Yr1-6)	Repair	Continues
Philipstown	Full primary (Yr1-8)	Repair	Continues
Woolston	Full primary (Yr1-8)	Repair	Continues
Linwood College	Secondary (Yr9-13)	Repair	Continues

Access	Equity	Education and governance	Infrastructure	Scale of Investment
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OPTION 2 (Preferred Option):

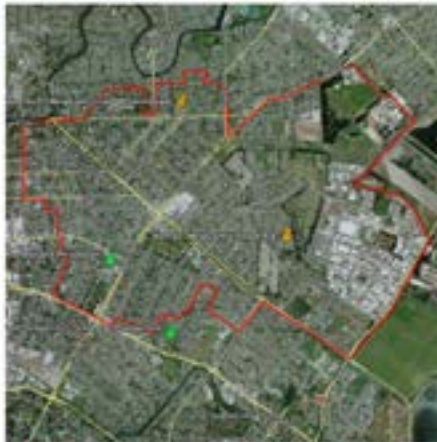
	School	Land & Infrastructure	Entity
Linwood Intermediate	Intermediate (Yr7-8)	Close site.	Close.
Linwood North	Contributing (Yr1-6)	Repair.	Change to full primary (re-capitation)
Linwood Ave	Contributing (Yr1-6)	Close site.	Merge on Bromley site. Change to full primary (re-capitation)
Bromley	Contributing (Yr1-6)	Repair and expand.	
Philipstown	Full primary (Yr1-8)	Close site.	Merge on current Linwood College site. Change to full primary (re-capitation)
Woolston	Full primary (Yr1-8)	Close site.	
Linwood College	Secondary (Yr9-13)	Build new primary education facility for merger of Woolston and Philipstown schools.	Relocate to Linwood College lower fields, next to where current TPU operates from.



Access	Equity	Education and governance	Infrastructure	Scale of Investment
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OPTION 3:

	School	Land & Infrastructure	Entity
Linwood Intermediate	Intermediate (Yr7-8)	Close site.	Close.
Linwood North	Contributing (Yr1-6)	Repair.	Continues
Linwood Ave	Contributing (Yr1-6)	Close site.	Merge on Bromley site.
Bromley	Contributing (Yr1-6)	Repair and expand.	
Philipstown	Full primary (Yr1-8)	Close site.	Merge on current Linwood College site.
Woolston	Full primary (Yr1-8)	Close site.	
Linwood College	Secondary (Yr9-13)	Build new primary education facility for merger of Woolston and Philipstown schools.	Relocate to Linwood College (Yr 7-10) to lower fields, next to TPU. Senior secondary provided by central city schools.



Note: This was prepared when there was considerable uncertainty around the land in the CBD. This has now been overtaken by events.

Access	Equity	Education and governance	Infrastructure	Scale of Investment
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Summary:

A property solution for secondary education is the preferred means to deliver education renewal in the Linwood cluster. The Linwood cluster has an over-supply of primary age education provision resulting in a number of schools with low rolls. This has been addressed by merging adjacent schools.

Senior-Secondary Pathway: Intention learners enrol at Linwood College.

Consultation:

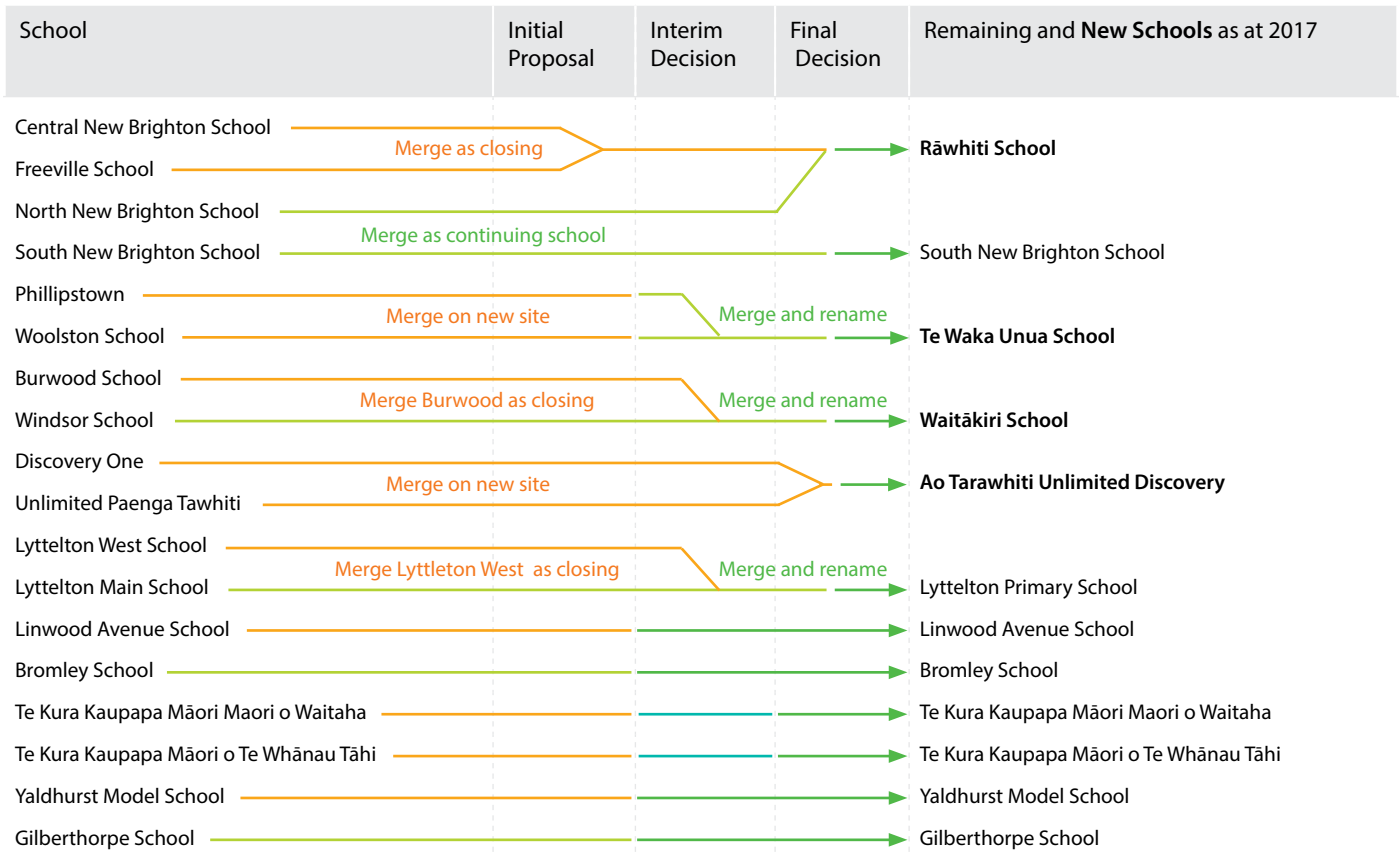
Community Leaders and Advisory Boards: provide input into the best education options for the people of Linwood. Important role in leading change and to ensure local identities, languages and cultures are supported.

Existing Schools, Parents and Learners: Public consultation will ensure that the provide education facility meets the needs of the community. Initiatives to address learner achievement and engagement will be developed using the knowledge of past experiences. Campus design and management and governance structures will be critical to the success of the shared site.

Appendix 3. Decision chart for Canterbury schools

KEY █ Close █ Merge as continuing █ Remaining or new school
█ Merge as closing for new site █ Remain open; one (of two) to move?

School	Initial Proposal	Interim Decision	Final Decision	Remaining and New Schools as at 2017
Branston Intermediate School	→			
Glenmoor School				
Greenpark School				
Kendal School				
Linwood Intermediate School				
Manning Intermediate School				
Richmond School				
Burnham School		→		Burnham School
Burnside Primary School		→		Burnside Primary School
Ouruhia Model School		→		Ouruhia Model School
Shirley Intermediate School		→		Shirley Intermediate School
Hammersley Park School		Already closed		
Le Bons Bay School		Already closed		
Duvauchelle School		→		Duvauchelle School
Okains Bay School		→		Okains Bay School
Aranui High School	→			→
Aranui School				
Avondale School				
Wainoni School				
Chisnallwood Intermediate School		→		Chisnallwood Intermediate School





 **Ombudsman**
Fairness for all