

# SPECIAL CHARACTER COMPLIANCES REQUIRED OF BOARDS OF TRUSTEES OF INTEGRATED SCHOOLS

## PART THREE

### PROPERTY MATTERS

- 3.0 The property obligations of the Proprietor and the Crown are set out in the Private Schools Conditional Integration Act and the Integration Agreement.
- 3.0.1 **Ministry of Education Information** - The document *Property Management Guidelines (for state non-integrated schools)* is available on the Ministry of Education web-site. A document specific to Integrated schools is expected to be available during 2010. It too will be placed on the Ministry of Education website, [www.minedu.govt.nz](http://www.minedu.govt.nz), and amended regularly, as required.
- 3.0.2 Other documents available on the Ministry of Education website are the *Capital Works Projects at Integrated Schools (Protocol)*; *Capital Works Expenditure by Boards of Trustees of State Integrated Schools (Regularisation)*; and, *Fundraising Advice (Boards of Trustees of Integrated Schools) Statutory Requirements*.
- 3.1 **The Integrated Area** – The site plan attached to the Integration Agreement will distinguish clearly the land and buildings which are Integrated from those which are not. The Board of Trustees’ legal responsibilities are confined to the Integrated areas. Unless other arrangements are made with the Board, the Proprietor is responsible for any costs associated with the non-Integrated areas, e.g. chapel, hostel. The Proprietor may allow the school to use such facilities but may require the Board to pay for their use by an agreed rental or other contribution.
- 3.2 **Shared Obligations** – The Board of Trustees of an Integrated school is a Crown Entity. The Proprietor owns the Integrated school areas but the obligations with regard to these areas are shared among the Proprietor, the Board of Trustees and the Ministry of Education as described below. Areas of shared access between the Board of Trustees and the Proprietor need to be regularised by way of an agreement between the parties.
- 3.3 **Maintaining the School** – The Integration Agreement requires the Minister of Education to maintain the Integrated area as he/she would for an equivalent State school. The Minister fulfils that obligation in several ways:
- (i) by funding the Board of Trustees for ordinary maintenance on the same basis as for a State school;
  - (ii) by supplying schools with furniture and equipment for new facilities;
  - (iii) by funding the Proprietor to do works such as:

- major items of maintenance (replacing roofs, boilers etc.);
  - modernising existing facilities;
  - significant emergency work, other than that covered by insurance;
  - major maintenance works needed to comply with the Building Act, Health and Safety in Employment Act etc (including fire doors and disabled access);
- (iv) by funding the Board for insurance of school contents.

3.3.1 The 2010 Policy One Property Maintenance Guidelines agreed between The Minister of Education and The Association of Proprietors of Integrated Schools provides up to date details about the Proprietor's obligations in relation to the spend of and accounting for this money.

3.4 **The Proprietor's Obligations** – The Proprietor's obligations in relation to Integrated areas involve:

- (i) works referred to in clause 3.3 (iii), as well as new buildings for agreed roll growth;
- (ii) insurance of buildings.

3.5 **The Proprietor's Works** – The Proprietor or their Agent undertakes, year by year, a plan of work covering the works the Proprietor is obliged to implement. The purpose is to keep the school up to the standard of equivalent State schools. The Proprietor's Property Office prepares a ten year rolling plan in which it prioritises and plans those works as funds allow. The Proprietor's Property Office or the Proprietor's Agent normally consults with the Board of Trustees on these matters.

3.5.1 Because the Proprietor owns the land and buildings, the Proprietor's Agent has the right to visit the school, after giving reasonable notice, to ensure that the asset has not deteriorated through lack of maintenance. If the Proprietor's Appointees have cause for concern, the matter should be raised with the Proprietor's Property Office or the Proprietor's Agent. In any case, the Proprietor's Appointees on the Board are required to report on the state of repair of the Integrated and non-Integrated buildings and grounds when they make their annual report to the Proprietor.

3.6 **Capital Works** – The Proprietor is responsible for capital works, as well as new or replacement buildings. Capital works can include, but are not restricted to, any of the following:

- Altering the shape or area of any building by adding, removing or moving any interior or exterior wall, partition, ceiling, floor, staircase, lift-well etc;
- Removing any building from the site;
- Moving any building already on the site;
- Placing any building on the site;
- Altering the topography or shape of the grounds;
- Changing the surface of any part of the grounds, e.g. by asphaltting over grassed areas;
- Erecting or removing fences, hedges, trees or out-houses etc;
- Altering any area of grounds so as to change its use or function, e.g. removing a line of trees to make a vegetable garden;
- Building or removing a swimming pool or tennis court.

- 3.6.1 In the State Handbook referred to in 3.0.1, the Ministry of Education states that to help decide whether a task is capital works or maintenance, it is useful to assess the volume change required. For example, if a few sheets of iron on the roof need replacing, this is maintenance. However, if most of the iron needs replacing (so that in effect the building needs a whole new roof), this is capital replacement. Further, the Ministry states that work categorised as capital work must cost at least \$5,000, excluding GST, otherwise it is maintenance work and is to be paid for by the Board of Trustees from operational funding.
- 3.6.2 **New Buildings** or other additional accommodation may be required because of changes in the State school minimum accommodation code or because of approved roll increases or because the complete replacement of a building is required since it is no longer maintainable. When such become necessary, they will be the responsibility of the Proprietor. Sometimes the Crown may assist with Policy Two capital funding.
- 3.6.3 Immediately upon the completion of any capital works, the Proprietor or the Proprietor's Agent completes the Property Maintenance Information Schedule and lodges it with the District Property Office of the Ministry. Within one month of lodgement the local Office will ensure that the details supplied on the form are placed on the Ministry's PMIS (Property Management Information System), which is a computerised record of all the assets (including buildings and land) at every state and state integrated school. This will ensure that any appropriate change in Operational Funding is made available to the Board of Trustees for the upkeep of the new accommodation.
- 3.6.4 Boards of Trustees can access their details on the Ministry's website and check whether they are receiving the correct amount of property maintenance funding that flows from their Integrated School Property Portfolio. The Proprietor has similar access to the Ministry's information about schools. Boards can check with their local Ministry office if they have any queries about accessing this information.
- 3.7 **Insurance** - The Proprietor is obliged to insure the buildings against fire, earthquake, storm, flood, burglary, arson, vandalism and malicious acts. The insurance of contents (i.e. any items which meet the definition of furniture and equipment, and which are on the Board's asset register), except for items noted in Part 3.7.3, is the responsibility of the Board of Trustees as is other insurance (e.g. public or third party liability, loss of cash, fidelity guarantee, etc), and insurance of any Board-owned buildings.
- 3.7.1 In this context "buildings" includes any item fixed to the buildings or grounds, e.g. toilet pans, doors, fixed shelving. It does not include tractors, computers, library books etc. which are contents.
- 3.7.2 Damage to buildings due to reasonable wear and tear, high spirited student behaviour, carelessness, is not a claim on the Proprietor's insurance but is covered by maintenance, which is a cost to the Board of Trustees.

- 3.7.3 There may be items which are, in effect, contents but which are lent to the school by the Proprietor (including items listed as such in a Schedule to some Integration Agreements), or items which are stored in the school but not owned by it, e.g. equipment belonging to an associated sports club. In these cases it is the responsibility of the owner of these items to make sure they are insured.
- 3.7.4 Insurance is therefore a shared responsibility among the Proprietor and the Board of Trustees and possibly others who use the school. It is wise for the Board of Trustees to consult with the Proprietor to make sure that the cover is adequate and, if deemed useful, to have one cover for all risks.
- 3.7.5 Because insurance can sometimes be complex, information and advice on particular matters should be obtained from the insurance broker consultants retained by Proprietors' Offices.
- 3.8 **The Obligations of the Board of Trustees** - The Board of Trustees is responsible for: all repairs to the contents of buildings; replacing worn out furniture and equipment; buying new furniture and equipment; insuring the contents of the school (as in 3.7 – 3.7.4); and, and keeping the grounds and environment in good order.
- 3.8.1 The Board of Trustees is also responsible for all maintenance of buildings and fixtures which is expected to recur within a ten year period, e.g. ordinary repairs, exterior and interior painting. The Board is obliged to have a ten year maintenance plan, and to provide an adequate budget to ensure that money is set aside to pay for maintenance when it becomes due.
- 3.8.2 The Board of Trustees has no authority to make structural changes to the buildings or grounds, e.g. putting up or removing a dividing wall or constructing a changing shed or relocatable classroom, without first consulting the Proprietor's Property Office and obtaining the Proprietor's written permission.
- 3.8.3 The Board of Trustees is required to bring to the attention of the Proprietor any items which are in the major maintenance category.
- 3.9 **Fundraising – Statutory Requirements for Proprietors and Boards of Trustees** – Funds raised by Boards are Crown funds, and therefore cannot be used to fund buildings that will legally belong to the Proprietor. Any funds derived from Board fundraising activities must be deposited as soon as practicable into an account in the name of the school, which can be opened and used only by the Board. Any funds raised by the Board cannot be used to take on any of the responsibilities of the Proprietor. For further information see *Fundraising Advise (Boards of Trustees of Integrated Schools) Statutory Requirements*. (Ministry of Education Website)
- 3.9.1 School communities may wish to participate in fundraising carried out by (or on behalf of) the Proprietor. The document *Fundraising Advise (Boards of Trustees of Integrated Schools) Statutory Requirements* states “Section 37 of the PSCI Act states that the Board of Trustees, staff or students of an Integrated school **cannot** take part in any fundraising for the benefit of the Proprietor during normal school

hours. However, Board, staff or students of Integrated schools may choose to participate in fundraising carried out by (or on behalf of) the Proprietor outside of school hours.” It is crucial that schools make clear to all concerned on whose behalf the money is being raised, and that they follow the Statutory Requirements outlined in full in the fundraising document quoted above. (See the Ministry of Education website.) Money raised on behalf of the Proprietor can be used for buildings which are owned by the Proprietor, not the Board of Trustees or community. Proprietor’s Property offices can give further advice.

**3.9.2 Grants from Community Organisations** - Schools sometimes seek funding grants from community organisations for items such as shade sails or playground equipment. The resulting structure will be owned by the Proprietor not the Crown. NZCEO has a formal letter to explain this situation, which Boards can use to accompany their grant application. Boards can ask for a copy of this letter if needed.

**3.10 Boards of Trustees Undertaking Capital Works Using Crown Funds** - Boards of Trustees may wish to undertake major capital improvements to the school buildings or grounds.

3.10.1 Major capital work funded by the Board of Trustees may only be undertaken to provide facilities in excess of code entitlement. (In relation to Board fundraising 3.9 above.)

3.10.2 No capital works may be undertaken without the written permission of both the Proprietor and the Ministry of Education. Likewise a local body building consent and, if necessary, resource management consent are required.

3.10.3 It would be most unwise to commence planning or financing such projects without the written permission of both the Proprietor and the Ministry of Education. All relevant issues need first to be clarified, for example, costings, and who is responsible for what; responsibility in future for insurance and maintenance; whether the Ministry of Education will supply furniture and equipment; whether the project will affect any covenant of mortgage on the land; whether it meets the Ministry of Education’s health and safety requirements; whether the addition or alteration is permanent or temporary and, if so, for how long. The Ministry of Education document *Capital Works Expenditure by Boards of Trustees in State Integrated Schools (Regularisation)* details the process for obtaining approval from the Ministry and recording a Board’s investment in Proprietor’s property. See the Ministry of Education website.

3.10.4 If a capital work is executed without fulfilling all the Ministry of Education’s requirements, particularly those related to health and safety, the Ministry could require the school not to use the new facility until these requirements are completed at the Board’s expense.

3.10.5 If a capital work is executed without the Proprietor’s authority, then the Proprietor would be within his/her right to require a reversal of the work at the Board’s expense.

- 3.10.6 Boards need to be aware that a building funded by Crown monies would not be able to be integrated. The Proprietor may not wish to have an unintegrated building on Proprietor-owned land, and may therefore withhold permission for it to be built.
- 3.10.7 Any building on the Proprietor's land belongs legally to the Proprietor unless, by consent of the Proprietor, it is vested in the Board. An amendment to the Integration Agreement between the Minister and the Proprietor may be required before the Board of Trustees has exclusive use of the new building.
- 3.10.8 A Memorandum of Understanding is required between the Proprietor and the Board of Trustees to ensure that ownership and maintenance of any building that has been constructed with any input of Board (Crown) funds is clearly delineated.
- 3.10.9 **Joint Ownership** - The Ministry of Education accepts that it is possible to put up a building that is jointly funded by, and jointly owned by, the Board of Trustees and the Proprietor. However, most Proprietors would be likely to refuse permission for such a proposal.
- 3.11 **Lending Money to the Proprietor** - Lending Board (Crown) money to the Proprietor to assist with providing a school building is illegal.
- 3.12 **The School Site** - A Board of Trustees cannot add to the school site, dispose of any part of the school site or otherwise alter the boundaries or dimensions of the school site. If a Board considers any of these desirable, then it is required to approach the Proprietor with a recommendation to that effect. Such changes can be done only by the execution of a Supplementary Agreement between the Proprietor and the Minister.
- 3.13 **Use of School Property** – The Proprietor has granted the use of the school premises to the Board of Trustees, but subject to conditions set out in the Integration Agreement. Among these conditions are the following:
- 3.13.1 If the Proprietor asks the Board to make available all or part of the school premises or equipment to the Proprietor or other persons, the Board may not unreasonably or arbitrarily withhold consent. Examples may include using classrooms for parish meetings; using the school hall for church functions; parking in the school grounds during Church services. The user should pay to the Board sufficient to recover costs, e.g. heating and lighting, and be responsible for any damage caused.
- 3.13.2 The Board may itself grant or hire its facilities to other users, but requires the consent of the Proprietor who shall not unreasonably or arbitrarily withhold that consent. Normally the Proprietor's consent would be through the Proprietor's Appointees on the Board. If those Appointees have any doubt whether a proposal to grant or hire the premises is appropriate, they should consult the Proprietor. The proposal could be deemed inappropriate if there

was danger of damage to the asset or if the use the premises were to be put to was unsuitable.

- 3.14 **Access by the Proprietor** – The Integration Agreement allows the Proprietor, or the Proprietor’s Agents access to the school at any reasonable time to ensure that the Special Character is being maintained or to ensure that the property is being looked after. It is envisaged that the Proprietor’s Agents would first get in touch with the Principal and make sure that, in exercising this right, they do not disrupt the school. In all interactions between Agents of the Board and Agents of the Proprietor, reasonableness is the tenor of the relationship.
- 3.15 **Health and Safety in Employment** – Under the Health and Safety in Employment Act 1992, it is the duty of the Board of Trustees to ensure that the school is safe, that all actual and potential hazards are identified and all practical steps taken to eliminate, isolate or minimise them.
- 3.15.1 The full details of the Board’s obligations are set out in the *Health and Safety Code of Practice for State and State Integrated Schools* issued by the Ministry of Education to each school. Copies can be found on the Ministry’s web site.
- 3.15.2 Where a Board of Trustees becomes aware of an actual or potential hazard or a situation where the standards of the Code are not being met, it is obliged to take all ‘practicable steps’ to remedy the situation in order to protect the employees.
- 3.15.3 If the work needed to remedy the situation involves capital or major maintenance work, the Board will report it to the Proprietor through the Proprietor’s Property Office or Trust Board, and the Proprietor will do what is necessary to eliminate, isolate or minimise the hazard.
- 3.15.4 The revised Code no longer has provision for indemnity by the Ministry for Boards against payment of fines resulting from Boards not carrying out their responsibilities properly.
- 3.16 Property issues can sometimes be complicated. If a Proprietor is unsure about a proposed course of action it is better to check out what is proposed in order to obtain clarity as to the best course of action to take.

**Association of Proprietors of Integrated Schools  
2010**