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Dear Proprietor & Board of Trustees Chairperson

Regularisation of property in state integrated schools

This letter has been sent to all state-integrated schools and their proprietors.

A number of state integrated schools have an unintentional breach of the law recorded as a note to their financial statements. These breaches are due to historical cases where the boards of state integrated schools have used funds for capital expenditure that may have been the responsibility of their proprietors.

Under integration agreements capital works are the responsibility of the proprietor. Boards of trustees may only fund building projects on their proprietors' land if they have obtained prior written approval from their proprietors and the ministry and there is a written agreement with the proprietor confirming that the property will be owned (or part owned) by the board.

Where this process has not been followed, boards of state integrated schools have unintentionally breached the law by spending public money on property owned by an independent third party. For information on this topic visit www.minedu.govt.nz/goto/10818

Equitable Leasehold Interests

The ministry and the Association of Proprietors of Integrated Schools have agreed that there will be a **one-off** opportunity to resolve breaches that occurred prior to 31 December 2007. The aim of this exercise is to lawfully recognise historic expenditure in a way that protects the interests of all parties.

Where large expenditure occurred proprietors will be asked to recognise an interest in property that was funded in full or in part by the board of trustees. This interest is known as an 'equitable leasehold interest' which is an unsecured interest in capital assets that is not intended to impact on any existing finance arrangements a proprietor may have in relation to that property. The value of the equitable lease will be written off over the economic life of each asset.

At the same time boards will apply to the ministry for approval to acquire an equitable leasehold interest in the property.

What steps need to be followed?

The following actions should be completed by the person preparing the board's financial statements or the school principal. See the attached guidance note and process flowchart for more information.

1. Review Asset Registers

- State integrated schools should review their fixed asset registers and prepare a schedule of capital works to be regularised (download a template spreadsheet from www.minedu.govt.nz/goto/regularisation).
- Capital works with a book value of less than \$40,000 at 31 December 2007 can be included in the schedule of capital works for the equitable lease or written off. Assets with a book value of more than \$40,000 at 31 December 2007 must be included in the schedule of capital works.
- If there are no capital works recorded on the board's accounts, or a decision is made to write off assets under \$40,000, no further action needs to be taken except to note the decision as a resolution in the board's minutes and to move any assets off the fixed asset register.

2. Prepare Equitable Lease

- Each board of trustees should prepare a lease document (template enclosed) that recognises its equitable interest in assets on its schedule of capital works. This lease document should then be forwarded to the proprietor for agreement and signature before being returned board of trustees.

3. Apply for s69 Approval

- The board must apply for approval from the ministry under the provisions of s69 of the Education Act 1989 to acquire an equitable leasehold interest in capital works. A template application letter is enclosed with the guidance notes.
- Each board should seek approval by sending its application, together with its lease document signed by its proprietor and print outs from its spreadsheet, to the local or regional office of the ministry by 28 February 2008.
- The ministry will process this documentation and respond to each school as promptly as possible so that approval can be included with your annual accounts and forwarded to your auditor by 31 March 2008.
- The equitable leasehold interest will be recorded with the integration agreement and in a register held by the ministry.

4. Provide documents to your auditor

- Copies of the ministry's approval letter and the equitable lease (as evidence of the proprietor's recognition of interest) must be provided to the school auditor to assure them that the breach no longer exists.
- Your auditor will check that the assets on the schedule of capital works have been moved from the asset register; an equitable leasehold interest has been recognised as a separate item on the balance sheet; and an appropriate disclosure note has been included.

5. Avoid Audit Qualification

It is crucial that the board starts this process as quickly as possible in order to avoid an audit qualification and full write off of assets. However, we recognise that not all schools will be able to complete the required process and documents in time to include them with their accounts for the auditor by 31 March 2008.

The Office of the Auditor General has agreed not to qualify the annual accounts of a board where it is clear the board has taken all possible steps to comply with this process in the required timeframes.

In this situation the board should include an appropriate disclosure note in its accounts drawing attention to the probability of regularisation, and a letter from its proprietor confirming that it will recognise the school's equitable leasehold interest in assets recorded on the capital works schedule.

6. Future Accounting

Each board will recognise an amortisation cost every year until the equitable lease on assets has expired completely (something which will depend on the remaining economic life of assets where the board has an equitable lease). The template spreadsheet will automatically calculate the annual equitable lease to be recognised in the accounts and the total remaining amortisation amounts.

Impact of an Equitable Interest

The recognition of the board's equitable leasehold interest in assets it has contributed funds towards is intended to recognise the board/community's financial interest and remove a breach of law from the board's accounts.

This is an unsecured interest in capital assets that is not intended to impact on any existing finance arrangements a proprietor may have in relation to that property. The proprietor should advise its financial institution of the arrangement.

In future the board's equitable leasehold interest in the property must be taken into account when school property is sold or otherwise disposed of. That may involve a financial settlement or ongoing recognition of the board's equitable interest by a new proprietor. Please contact the ministry for advice at the time.

Who can help?

If you have questions about how to prepare the required documents or the process of determining whether an asset is capital works we recommend you contact your financial service provider or one of the ministry financial advisors.

Yours sincerely

Patrick J Lynch
Chief Executive Officer
Association of Proprietors
of Integrated Schools

Margot Brough
Senior Financial Advisor
Ministry of Education

Encl: Regularisation of State Integrated School Property Guidance Note
Request for Approval of Acquisition of an Equitable Leasehold Interest template
Application to ministry for approval to acquire property template

NOTE: The Guidance Note and spreadsheet are available for download from the Ministry of Education's website at <http://www.minedu.govt.nz/goto/regularisation>.