



**Te Tāhuhu o
te Mātauranga**
Ministry of Education

Consultation feedback report:

- **Crown acquisition of land occupied by a licensed early childhood education and care centres**
- **Network approval provisions being taken into account for applications to amend a licence**

Tranche 2 of the Early Learning Regulatory Review

September 2023

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Introduction

Network management for new licensed early childhood services

In *He taonga te tamaiti: Every child a taonga – The Early Learning Action Plan 2019-2029*, the Government set an objective for early learning services to be part of a planned, diverse and coherent education ecosystem that is sustainable and meets the needs of communities across New Zealand. Network management is one action to support this objective, as it establishes a process to manage the supply of new licensed early childhood services.

From 1 February 2023, unless excluded¹, anyone intending to establish a new licensed early childhood service will first need to apply for and be granted network approval by the Minister of Education. Providers who obtain network approval may have conditions attached to the licence of their service to ensure the service delivery is consistent with their network approval.

Crown acquisition of land occupied by a licensed early childhood education and care centre

Under the current regulations, from 1 February 2023 any ECE centre on land acquired by the Crown for public works or urban development will have to get network approval before applying for a new licence when moving to the new premises.

We proposed amending the Education (Early Childhood Services) Regulations 2008 to create an exception enabling the licence for an ECE centre to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquired by the Crown under the Public Works Act 1981 or the Urban Development Act 2020.

Network approval provisions being taken into account for applications to amend a licence

As the current regulations pre-date the introduction of network approval, they do not state that the Secretary can take network approval provisions into account when assessing applications to amend a licence (regulation 33 of the Education (Early Childhood Services) Regulations 2008).

We proposed amending the regulations to make this clearer.

Consultation and submissions

On 30 January 2023, the Ministry of Education released a public consultation document outlining the following proposals:

- enabling the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown; and
- clarifying that the new network approval provisions can be taken into account when considering an application to amend an existing licence.

Respondents could provide feedback on the proposals by completing an online survey (in English or Māori) or by sending a written submission by email to the Early Learning Regulatory Review mailbox. A public online information session on the proposals was held on 20 February 2023. We also held a session with the Early Learning Regulatory Review Advisory Group.

¹ Māori immersion services are eligible to be excluded from the requirement to seek network approval.

Consultation formally closed on 27 February 2023.

Online submissions via the survey

The online survey received 11 responses. Information was collected about these survey respondents' ethnicity, region in which they reside, the stakeholder group and service type they were affiliated with.

Region

Survey respondents were asked which region they lived in. Tāmaki Makaurau | *Auckland* and Te Whanganui-a-Tara | *Wellington* comprised a majority (63%) of all respondents.

Region	Total	Percent
Tai Tokerau <i>Northland</i>	0	0.00%
Tāmaki Makaurau <i>Auckland</i>	4	36.36%
Waikato	1	9.09%
Wairariki <i>Bay of Plenty</i>	1	9.09%
Tairāwhiti <i>Hawke's Bay</i>	0	0.00%
Taranaki-Whanganui-Manawātū	1	9.09%
Te Whanganui-a-Tara <i>Wellington</i>	3	27.27%
Tau Ihu-Tai Poutini <i>Nelson-Marlborough-West Coast</i>	0	0.00%
Waitaha-Rēkohu <i>Canterbury and Chatham Islands</i>	0	0.00%
Ōtākou-Murihiku <i>Otago-Southland</i>	1	9.09%
Other	0	0.00%
Prefer not to say	0	0.00%
Not answered	0	0.00%

Stakeholder group

Survey respondents were asked to select the category that best described their connection to the sector. Most respondents identified as early learning service owners or managers (36%) or representatives of a non-government organisations (27%). Respondents were limited to selecting one category that they identified with, although they could specify further by selecting 'other' in the text box option.

Stakeholder group	Total	Percent
Early childhood service owner or manager	4	36.36%
Early childhood service teacher or educator	0	0.00%
Early childhood service worker (other)	0	0.00%
Parent, whānau or caregiver	0	0.00%
Member of the general public	1	9.09%
Representative of a non-government organisation	3	27.27%
Other	3	27.27%
Prefer not to say	0	0.00%
Not answered	0	0.00%

Type of early learning service

Survey respondents were asked what type of early learning service they were associated with. They were largely associated with education and care centres (54%). Respondents were able to select multiple categories for this question.

Service type	Total	Percent
Education and Care (Puna Reo)	3	27.27%
Education and Care (Other)	6	54.55%
Home-based	2	18.18%
Hospital-based	0	0.00%
Kindergarten	0	0.00%
Kōhanga Reo	1	9.09%
Playcentre	2	18.18%
Playgroup	1	9.09%
Other	2	18.18%
Prefer not to say	0	0.00%
Not answered	0	0.00%

Ethnicity

Survey respondents were asked to select the ethnicity or ethnicities that best described them*. Most respondents were European (72%), With the second-largest population group being Māori (18%).

Ethnicity	Total	Percent
Asian	0	0.00%
European	8	72.73%
Māori	2	18.18%
Middle Eastern/Latin American/African	0	0.00%
Pacific Peoples	0	0.00%
Other	0	0.00%
Prefer not to say	2	18.18%
Not Answered	0	0.00%

*This was a multi-response question, which enabled respondents to choose multiple categories. As such, the sum of the ethnicities is greater than 100%.

Written submissions

We received three detailed written submissions from the organisations listed below.

#	Submitter
1	Montessori Aotearoa New Zealand
2	Auckland Kindergarten Association
3	Office of Early Childhood Education

Method of analysis

The online survey submissions and the written submissions were analysed using a coding framework that organised survey data by question and theme. Most written submissions followed the structure of the online survey which allowed these submissions to also be analysed thematically. The submission excerpts presented for each question come from responses to the online survey and written submissions.

Where respondents discussed several issues related to a given proposal, these were cross-coded to multiple themes. In this way, respondents with comments that spanned multiple themes had their views captured in all appropriate places.

The most common themes are presented in this report. However, in some cases, more minor themes are included to enhance the understanding of other themes or add nuance to sector views. Feedback outside the scope of the consultation has not been included in this report.

Survey responses

In the online survey, survey participants were invited to express the extent to which they agreed with each aspect of the proposal or option being consulted on. Respondents could select 'strongly agree', 'agree', 'neutral', 'disagree', or 'strongly disagree'. A free-text box was also available for each proposal, which allowed respondents to provide written responses.

Survey participants were not required to answer every question, and participants who did not respond to a question were not counted in the number of respondents for that question.

Crown acquisition of land occupied by a licensed early childhood education and care centre

Proposal 1

Explanatory text from the survey

This change allows a licensed ECE centre situated on land acquired by the Crown under the Public Works Act 1981 or Urban Development Act 2020 to permanently relocate, without requiring an application for network approval.

As part of this proposal, we also recommend enabling the Secretary for Education to consider, to the extent relevant, any matter referred to in the granting of a probationary licence (regulation 11(1)) and the granting of a full licence (regulation 13) when considering applications to amend a licence, and not only in cases where a change in the identity of the service provider is sought.

Reference to regulations 11(1) and 13 for all applications to amend a licence require the following licensing requirements be taken into account:

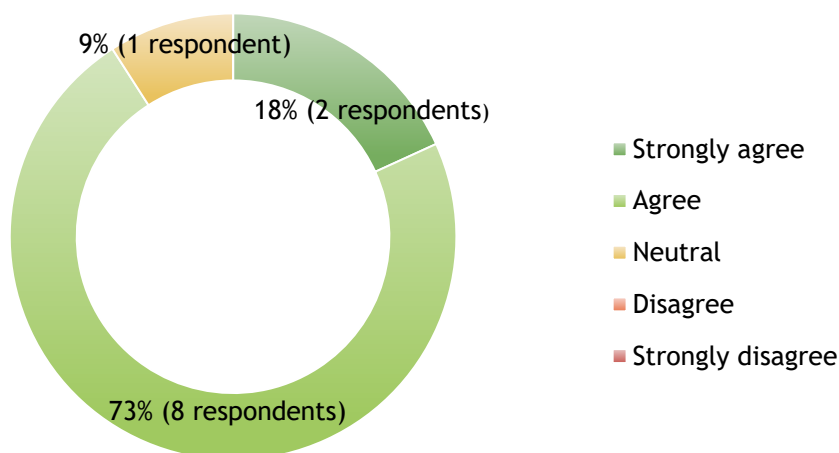
- Qualifications
- Ratios
- Service size
- Premises and facilities standards
- Curriculum delivery standards
- Health and safety practices standards
- Governance, management and administration standards
- Fit and proper status

Why?

This change will provide clarity for both service providers and whanau that early childhood provision can continue uninterrupted in circumstances where land is acquired by the Crown.

Clarifying that assessments for licence amendment, including where an ECE centre is required to move to a new premises, may be to the same level as for a probationary or full licence assessment will give assurance to parents that the new premises meets the regulated requirements. For this reason, it is important to enable the Secretary for Education to consider the matters referred to in regulations 11(1) and 13 when considering an application to amend any licence.

Question: Do you agree with the proposal to enable the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquired by the Crown?



Support for the proposal

Overall, respondents largely agreed with this proposal.

“This is a sensible change that will make it easier for ECE centres that find themselves in this position” –

Representative of a non-government organisation (Puna Reo)

“We consider it would be fair, reasonable and appropriate to not require existing providers to undertake the network approval process when their land has been acquired by the Crown.” – **Auckland Kindergarten Association (AKA)**

Widening the scope of the proposal

Some respondents suggested broadening the scope of this proposal to include other reasons a service might relocate.

“We submit that the Ministry and the Minister also consider allowing existing providers who are required to permanently relocate due to the impact of a natural disaster to do so without requiring an application for network approval.” –

Auckland Kindergarten Association (AKA)

“MANZ agrees with this in principle. However, is there a difference between the Crown acquiring land and a Service needing to move as a lease is not being renewed? Or a Service moving from a leased site into a purchased site? We would like these reasons to all be covered”- **Montessori Aotearoa New Zealand (MANZ)**

Concerns about service quality

A respondent expressed concerns about service quality, suggesting it should be considered within this proposal

“The provider must be already providing a high-quality service and should not be allowed to simply relocate if they have any concerns listed in their operations with ERO or MoE. If any serious concerns have been upheld or reviewed, then they should need to provide more information to meet the standards under network management” – **Operations Manager of a chain of Education and Care services**

Proposed restrictions on amending a licence when a service relocates due to Crown acquisition

Explanatory text from the survey

We are seeking feedback on several restrictions to be built into the amended regulations in relation to enabling the licence for an existing service to be amended, without first applying for network approval, where the service has to permanently relocate because its land has been acquired by the Crown.

These proposed restrictions are:

- i. The amended regulation will apply only to licensed early childhood education and care centres
- ii. The relocated centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community.
- iii. The size of the relocated centre and the number of child places accommodated should not be materially different to the existing centre.
- iv. The application for an amendment to permanently relocate must be made no less than 30 working days of the intended operational date of the new premises; and
- v. No later than 3 months from the date it is unable to continue operating at its current location.

Why?

Overall, these proposed restrictions are intended to:

- i. clarify the scope of the new regulations,
- ii. ensure that the legislative intent of network management is not undermined by the relocating service,
- iii. ensure that an amendment is not used to revive an empty licence,
- iv. encourage business continuity and minimal disruption for whānau, and
- v. clarify the time period wherein an application for an amendment must be made

i. The amended regulation will apply only to licensed early childhood education and care centres.

- Hospital-based centres are only licensed to be within a hospital, so it is unlikely they will be acquired for public works under the Public Works Act or Urban Development Act; and
- While a home used in a home-based service may be acquired, it is not material to the licence because addresses are not listed on the licence. As such, any acquisition of a home under the Public Works Act or Urban Development Act would not require a new licence application, and therefore would not trigger the requirement to seek network approval.

ii. The relocated centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community.

- Proximity will be determined by the Secretary for Education on a case-by-case basis.

- This requirement aims to ensure the intent of network approval is not undermined and the impact on whānau is minimised (so a service cannot go to another area and leave their current enrolled families behind).

iii. The size of the relocated centre and the number of child places accommodated should not be materially different to the existing licensed early childhood education and care centre.

- The regulation change needs to provide some flexibility in the number of child places (as the new premises may not be the exact same size as the existing premises), without being too open (so that the centre cannot materially better their position, which could undermine network approval).

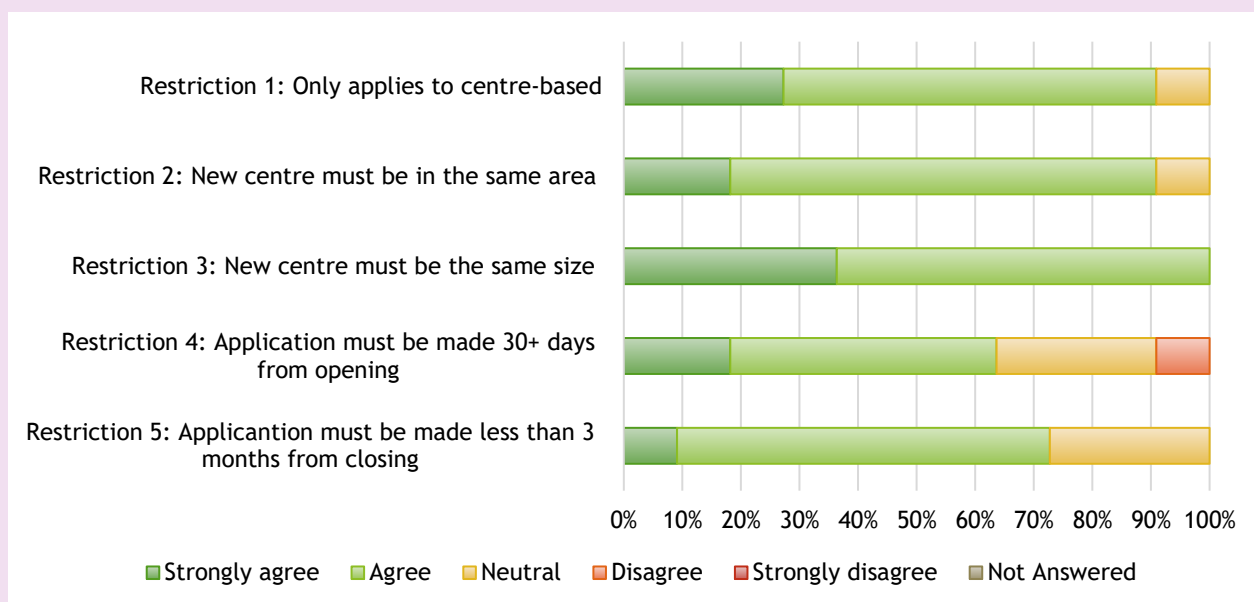
iv. The application for an amendment must be made no less than 30 working days of the intended operational date of the new premises.

- This is to allow the Ministry time to consider the request.

v. The application for permanent relocation must be made no later than three months from the date it is unable to continue operating at its current location.

- A provider could also apply for permanent relocation prior to the closure of operations on its current site.
- This is intended to avoid an amendment being used to revive an empty licence and to ensure business continuity and minimal disruption for whānau.

Question: Do you agree with the proposed restrictions?



Flexibility and feasibility for services

Most respondents indicated that they selected their chosen option on account of it being more flexible for their service.

“The 30-day time frame may be restricting depending on other external factors. Is there potential for this to be extended, on a case by case basis?” – **Representative of non-government organisation (Playcentre)**

“Likely three months is ok, but it may need an extension under special circumstances and if there are no other pressing applications for the area” – **Operations Manager of a chain of Education and Care services**

“We suggest more discretion and flexibility to allow for circumstances where the service provider has not been able to secure new premises within that three-month timeframe” – **Auckland Kindergarten Association (AKA)**

“MANZ agrees ‘yes’ but with flexibility” – **Montessori Aotearoa New Zealand (MANZ)**

Widening the scope of the proposal

Some respondents suggested a larger scope for this proposal.

“I believe that the time frames for applications of amendments must have some lee-way where large scale events have impacted the functioning of service providers. Whether this is something to be included in the regulations is another question of its own but should be considered.” – **Professional Growth and Compliance Leader Education and Care (Puna Reo)**

Suggestions of additional restrictions

A number of respondents suggested additional restrictions in addition to the ones outlined in this proposal.

“My suggestion would be to add a restriction on amending the identity of the service provider as well as relocating – I think that should definitely be a complete new application through the network management process. This is because it basically a new centre (new premises, new operator, likely new policies, and procedures etc).” – **Member of the general public**

“It must also allow services that relocate to increase the amount of regulated physical space per child. The size of licensed space in the relocated centre must not be smaller than the existing centre but can be more spacious/larger” – **The Office of Early Childhood Education**

Network approval provisions being taken into account for applications to amend a licence

Proposal 2

Explanatory text from the survey:

From 1 February 2023, if you want to operate a new licensed early childhood service you will need network approval from the Minister of Education before you apply for licensing. Providers who obtain network approval may have conditions attached to the licence of their service to ensure the service delivery is consistent with their network approval.

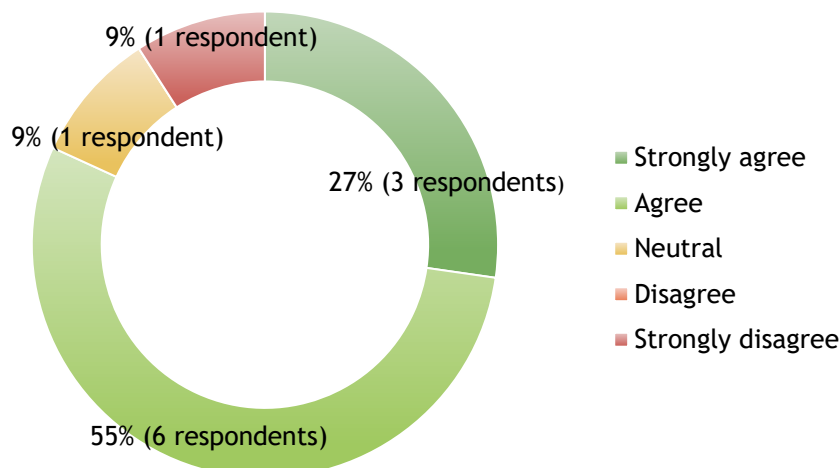
Currently, the Education (Early Childhood Services) Regulations 2008 are not clear that the Secretary can take these network approval provisions into account when assessing applications to amend a licence.

We propose clarifying that the secretary for Education can take into account network approval provisions when assessing an application to amend a licence.

Why?

The current regulations pre-date the introduction of network approval. This change will update the regulations to provide clarity to providers around the Secretary's assessment powers when considering a licence amendment.

Question: Do you agree with the proposal to clarify that the Secretary for Education can take into account network approval provisions when assessing an application to amend a licence?



Support for the proposal

Most respondents indicated that they agreed with this proposal.

“I agree that network conditions should be taken into account.” – **Member of the general public**

“Yes, however, should a service be put in this position, it is imperative that the MoE, Councils and MoH work together to ensure the Service is supported through relocating.” – **Montessori Aotearoa New Zealand (MANZ)**

Concerns about the possible impacts of this proposal

Some respondents were concerned that this proposal would result in pre-existing licenses being suspended due to oversupply in the network.

“It would be unfair to address this oversupply by cancelling existing licenses if the service provider requests an amendment.” – **Auckland Kindergarten Association (AKA)**

“I am not sure if any of the network approval conditions would affect existing centres too much, but they certainly couldn't be judged on things like overcrowding in their area etc and a need for their service” - **Operations Manager of a chain of Education and Care services**

More clarity needed about this proposal

Some respondents suggested that it would be helpful for us to provide further clarification on this proposal.

“It would have been helpful to have some examples of what this might look like in the context of an amendment.” – **Member of the general public**

“We strongly recommend that the Ministry further clarify what is meant by this proposal, the possible outcomes it could have for existing providers, and any safeguards or appeal rights that will be available.” - **Auckland Kindergarten Association (AKA)**



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