

Chapter One

Background

The school's background

- 1.1 Dilworth School was established as a private school for boys in 1906. Mr James Dilworth, an Irish immigrant to New Zealand, who died in 1894, endowed the land for the school in his will. The will set up a trust to establish a school to educate boys from families in straitened circumstances. Its purpose was to help the boys to be good and useful citizens. The school was to be led by a headmaster and the trust administered by a six-member trust board. A chaplain was to be appointed to guide the students in the Anglican faith.

James Dilworth's arrival in New Zealand

- 1.2 Mr Dilworth was born in Ireland and educated by a wealthy single relation, Miss Anne Dilworth, who also guided his career and urged him to emigrate to Australia at a time of severe poverty and over-population in Ireland. At 23, he emigrated first to Australia but soon moved on to New Zealand where he became a successful banker, acquired land, married Isabella Hall and established a farm on land purchased in Remuera, Tāmaki Makaurau (Auckland).
- 1.3 Miss Dilworth's plan had been for Mr Dilworth to establish a base for other Dilworth family members. His nephews, Mr James Mossman and, later, Mr William Mossman, were dispatched to join him on the farm.
- 1.4 Mr Dilworth's sister, the mother of his nephews, and her family moved to New Zealand and joined the other Dilworths on the farm. Ultimately, several Dilworth family members benefited from the assets built up by James and Isabella Dilworth and acquired valuable farms in other parts of the country.

Original Dilworth School site

- 1.5 According to an account provided by Dilworth School, Mr Dilworth purchased the land between Ōhinerau (Mount Hobson) and Titikōpuke (Mount St John) in Remuera, Tāmaki Makaurau (Auckland) in 1844. This land became the site for a farm and homestead and, later, the original Dilworth School, which opened in 1906. As with the land in the wider Tāmaki isthmus, the land Mr Dilworth selected was already widely valued. Indeed, the name Tāmaki Makaurau, specifically references the desirability of the region to many.³⁸
- 1.6 Recent reviews indicate that the land Dilworth acquired was likely originally part of a *tuku whenua*³⁹ by Te Kawau of Ngāti Whātua Ōrākei to Weterere of Ngāti Māoho, Ngāti Tamaoho, and Ngāti Te Ata in 1842–1843.⁴⁰

Modern Dilworth School sites

- 1.7 The land on which the modern Dilworth School operates is extensive, with the school now operating over three sites. The senior campus is located on the original school site, towards Newmarket, between Great South and Manukau Roads in Auckland. The junior campus is located nearby on Omahu Road and borders Market Road. Te Haerenga – Mangatāwhiri Campus (the rural campus) operated from 2012 until 2023 as the entry point for year 9 students.⁴¹ This campus sits on land and uses facilities formerly occupied by Hotel du Vin. In 2023, it was converted into the school's dedicated outdoor education centre.
- 1.8 The school advises that, over the decades, any formal relationships between the school, the Board and Ngāti Whātua Ōrākei or any *mana whenua* in the wider Auckland area from which the school intake has traditionally been drawn, have been mostly non-existent. Since the development of Te Haerenga, however, links have been established with Ngāti Tamaoho in Mangatangi, primarily through a local *kaumātua*. This has seen consultation and involvement with Ngāti Tamaoho around *tikanga*, history and curriculum delivery, visits to Mangatangi marae, and the attendance of *kaumātua* and *kuia* at campus events. More recently, initial engagement has occurred with *mana whenua* in relation to the development of two building projects.⁴²

38 Tāmaki Makaurau translates as “Tāmaki desired by many”.

39 Land gifted in accordance with *tikanga* Māori.

40 Ngāti Whātua Ōrākei tribal narrative cited in *Ngāti Whātua Ōrākei Trust v Attorney General (No 4)* [2022] NZHC 843, para 11 and pp 156–158. See also R Stone, James Dilworth, Dilworth Trust Board, 1995, pp 45–46.

41 Previously known as form 3.

42 Schedule 2 of correspondence sent by Dilworth to the Inquiry. Note: All references to ‘the Inquiry’ in the footnotes are to the Independent Inquiry into Abuse at Dilworth School.

Terms of the will endowing a school for boys

- 1.9 The most important part of Mr Dilworth's will dated 15 November 1894, was the establishment of the trust to be administered by the Board that would build and operate a school for boys on land gifted to the trust for that purpose. The land gifted was largely that farmed by Mr Dilworth and his wife, Mrs Isabella Dilworth, in Remuera, and the original Board comprised six trustees (Board members) who would govern the school in a structure that has persisted until the present.
- 1.10 The original six trustees were appointed under Mr Dilworth's will. Mrs Dilworth was the first named, along with her younger brother, Mr Robert Hall; the Reverend William Beatty, an Anglican vicar; Sir Maurice O'Rorke, an academic and farmer, who later became a member of Parliament; the Reverend George MacMurray, a friend of James Dilworth; and Mr William Gardner who was not a trustee of the will because he was not a member of the Anglican Church, but remained an executor. Mr Gardner died in 1899, and Mr James Carpenter a farmer and prominent businessman, was elected to replace him.
- 1.11 There were clear qualifications to be a trustee, including membership of the Anglican Church, business acumen and farming knowledge. The most glaring omission, one that has continued to the present, is that of any focused relevant educational expertise among the trustees. Over the decades, it appears that a practice has emerged for a former Dilworth student to chair the Board.
- 1.12 Mr Dilworth had long been interested in education, and it can be assumed that this led to him endowing a school for boys from New Zealand and Ireland on his death. Clearly, Mrs Dilworth was supportive of this proposition, as she relinquished her home to provide a first building for the school.
- 1.13 The terms of the trust are complex and have been varied regularly to provide additional trustee powers or reflect changing social patterns.
- 1.14 The will provided that, after erecting a suitable building, the trustees should develop a school for boys of "sound bodily and mental health being orphans or sons of persons of good character and of any race to support train and educate the [selected] boys [who] shall be either destitute orphans or children of parents of straitened circumstances" from the Auckland or Ulster (Ireland) Provinces. Detailed provisions were made to support and educate the boys while at the school and to provide discretionary powers to assist them after they left it. The purpose of the trust as it related to the boys' education was to "make them good and useful members of society".
- 1.15 In light of the issues the Inquiry has been asked to address, it is important to note that one of the trustee duties was to "do everything else they think necessary for the health, recreation and education of the pupils".

Immediate amendment of trust terms required

- 1.16 The need to amend the trust became apparent very soon after Mr Dilworth's death. Significant obstacles had to be overcome before the trustees could begin fulfilling the trust's main purpose of setting up the school. In essence, Mr Dilworth required the trustees to reach a certain level of earnings each year before they could start building the school, and this was not possible due to restrictive terms prohibiting the sale of valuable land in central Tāmaki Makaurau (Auckland). Amendments to the terms of the trust were required to enable the trustees to manage the trust assets to produce sufficient income to begin the school project. This pattern has continued as financial and social conditions have required over the 128 years since Mr Dilworth's death.
- 1.17 The amendments were not in themselves sufficient to guarantee an income adequate to meet the large capital and income requirements to establish a school. New Zealand authorities refused to grant charitable status to the trust, which would have given it tax-free status. The trust took an appeal to the Privy Council for this to be achieved in 1898.⁴³ The trust was registered under the New Zealand charitable trust legislation in 1903.⁴⁴ The tax-free status of the trust governing the school has been beneficial and according to the most recent filing with the New Zealand Charities Register, it has a net equity of over \$1.12 billion.⁴⁵

Dilworth School opened its doors in 1906

- 1.18 Dilworth finally opened its doors in 1906 with six students, after the trustees had done the necessary legal work in the preceding years and prepared for the school. The original will specified that students aged 3–5 should be admitted, but that was amended to ages 3–9 (and later 10). Originally, the school was solely a primary school, and students attended Auckland Grammar School for secondary education.

⁴³ *Isabella Dilworth (widow) v Commissioner of Land and Income Tax Privy Council*, 26 November 1898.

⁴⁴ Charitable Trusts Act 1903.

⁴⁵ Dilworth Trust Board, Annual report and financial statements for the year ended 31 January 2023, p 19.

- 1.19 Mrs Dilworth took an important role as an original trustee, following her husband's death. She helped the young students in the early stages of the school and vacated the homestead, which was then adapted for the school to use. Another house, later to become MacMurray House, was built for her in the grounds.
- 1.20 In light of the information we received from students and staff, the original young students must have faced daunting conditions, undoubtedly common to all boys' schools at the early part of the 20th century. For a start, a practice was adopted, which endured for many decades,⁴⁶ of assigning a number to each student and using that number instead of the boy's name when addressing the student. More recent students spoke of the dehumanising impact this practice, now discontinued, had on such young children.
- 1.21 It was also during these stern post-Victorian times that boys were expected to wash naked under the gaze of their fellow students, boarding housemasters, matrons and tutors. This too was a practice that has only relatively recently ceased; it was degrading and, as it has transpired, dangerous for boys of any age attending the school.

Governance model

- 1.22 Dilworth has a board of trustees that is solely responsible for all aspects of the governance of the school. The Board's six members unofficially have included at least two 'old boys' or former Dilworth students. The will that established the trust, remains the key document from which the trustees' duties and responsibilities are drawn. Mr Dilworth's objective as stipulated in the will, was the establishment and administration of a school for boys.

Duties attached to Dilworth's objective

- 1.23 The duties attached to Dilworth's objective include:
- selecting boys to attend the school who are of sound bodily and mental health, being destitute orphans or sons of people of good character and of any race and whose parents are in "straitened circumstances"
 - using the trust income to support, train and educate boys (from named geographical areas and within a specified age range) to enable them to become good and useful members of society

⁴⁶ The number assigned to every student is set out in the appendix to M Wilton, *The Dilworth Legacy: The first one hundred years of Dilworth School 1966–2006*, Dilworth Trust Board, 2007.

- having the complete discretion to review at any time, the continuing eligibility of a boy to remain as a pupil at the school
 - appointing an Anglican chaplain and all staff required to run the “business” of the school and paying them appropriate remuneration
 - purchasing land and erecting, maintaining and insuring buildings required for the school
 - doing “anything else necessary for the health, recreation and education of the pupils”.
- 1.24 There are also provisions that enable the trustees to sell land and generally oversee the administration of the trust and provisions for assistance to be provided for successful students to help them achieve a tertiary qualification.

The school as a business

- 1.25 One essential part of governance is the oversight and guidance of the business. The second essential part is the management and day-to-day operation of the business. Effective governance ensures the managers have the necessary finance and tools to conduct the business successfully.
- 1.26 The managers report to the governing Board and receive broad guidance from it. Recognising that management is closer to the daily business operations, however, managers also make proposals to the governing Board on strategies and operational matters that might improve the business and its success.
- 1.27 A private school is a different type of business. In general, its primary objective is not to provide an income for shareholders. The chief executive or general manager is the manager of the Board’s assets and investments, including the school property. The headmaster manages the school and is responsible for its educational performance and the welfare of the students. The chief executive and headmaster report to the Board.
- 1.28 The school charges fees to its students and is in existence to educate its students; ensure their health, welfare and cultural observance; and provide them with opportunities to engage in sport, the arts and recreational activities while at school. The aim is for students to graduate as useful all-round members of society.

As a private school, Dilworth is lightly regulated

- 1.29 Dilworth is a 'private' school for the purpose of the New Zealand educational legislative framework. Private schools are also referred to as independent schools. The collective known as the Independent Schools of New Zealand, which represents 53 independent schools, describes independent schools as, "private entities, each with their unique governance structure, employing their staff under their own contractual terms and setting their own tuition fees".⁴⁷
- 1.30 Equally, independent schools might be described as educational businesses, with governance and management under independent control and the ability to charge fees. For the purpose of this report, we use the legislative term "private school" rather than independent school.
- 1.31 Within the private school model, Dilworth is unique. It does not charge fees and under the terms of Mr Dilworth's will has no power to do so. It admits students further to the terms of the will and assesses and audits their ability to benefit from the school by reviewing progress before they attend the senior school by retaining the right to discontinue the student's scholarship at the school.
- 1.32 The school has a governing board, academic and boarding house staff, and administrative staff and management.
- 1.33 Although the Board's guardianship role has altered significantly in the last two decades, for generations it assumed almost complete guardianship responsibility for students in the school's care with little or no consultation with parents.
- 1.34 Following the enactment of the Private Schools Integration Act 1975, independent schools could integrate with the state education system. There were advantages for many such schools at the time. While there was no legislative requirement that teachers in private schools be trained and qualified, students and their fee-paying parents expected this. Many independent schools could no longer afford to engage qualified teachers and had assets requiring maintenance and development, so integration became a useful compromise. Integrated schools were allowed to retain their special character, in many instances, strong religious associations that were the founding ethos of the school, but also could receive significant state funding. Integration did mean these schools were subjected to the much more stringent regulatory regime that applied to state schools.

47 Independent Schools of New Zealand, FAQs (webpage), 2023.

- 1.35 Financial constraints were briefly a motivation for Dilworth to consider integration. In discussions with us, a former chair of the Board, Mr Derek Firth, recalled a period in the 1980s when, due to restricted income from leased properties owned by the Board, the Board took a series of steps to integrate. But when a change in its investment policy led to sharply increased revenues, the school continued as a fully private entity.
- 1.36 Retaining its completely independent character, however, has not deprived Dilworth of all state financial support. The Education Act 1989 makes provision for grants to private schools, and Dilworth receives a financial contribution. In 2022, that funding amounted to \$853,000.
- 1.37 Critically, this decision not to integrate has resulted in Dilworth being subject to a very light regulatory regime under the state education framework.
- 1.38 The framework applying to state and integrated schools incorporates provisions for the processes for enrolment and review, suspensions and expulsions, attendance, curriculum and charters. It also incorporates extensive provisions for intervention in schools not thought to be operating adequately, the election of trustees, the constitution of boards of trustees that include parent and student representation, teacher registration and disciplinary measures.
- 1.39 By contrast, private or independent schools simply register with the Secretary for Education when they meet eight criteria⁴⁸ and must provide premises that “are suitable for a school of its description, and for the number of students at the school”.⁴⁹ The private school must provide for tuition that is no lower in standard than that given at a similar state school and follow the national curriculum.
- 1.40 Review of the private school by the Education Review Office (ERO) requires consideration of the mode of curriculum delivery and regularity of instruction, and the manager must “have regard” to the Statement of National Education and Learning priorities and ensure the principal and teachers have the same regard. Much of the review is simply a self-assessment and declaration by the school and its board. ERO confirmed it is “substantially reliant on the veracity and integrity of the information that is attested or received from leaders, managers and key informants”.⁵⁰

48 Education Act 1989, section 35C.

49 Education Act 1989, section 35D.

50 Letter dated 5 July 2023 from ERO to the Inquiry.

- 1.41 The Education Act 1964 provided for the inspection of private schools to be based around the concept of 'efficiency'.⁵¹ The Education Act 1989 made minimal changes to how private schools were reviewed. In 1997, however, the Act was amended to require private schools to appoint only registered teachers to teaching positions. This change also meant managers of private schools had an obligation to report to the Teacher Registration Board. At the same time, a discretionary obligation on private schools was introduced to notify the Teacher Registration Board when a school thought any former employee's behaviour was relevant to the performance of their duties.
- 1.42 In 2009, the Law Commission produced a report on the law relating to private schools, identifying substantial gaps, including the absence of criteria against which private schools are assessed and any provision protecting the welfare of students.⁵² The commission noted this might be a breach of New Zealand's international obligations.
- 1.43 The Law Commission considered that provisions governing private schools were far less than those for state or integrated schools and concluded they were inadequate. It recommended that ERO should have the power to review a private school on the same basis as a state school and that the definition of serious criminal activity in the Education Act 1989 should include sexual offences and harm to children.
- 1.44 The legislative amendments that were enacted as a result remained minimal, however, and did not incorporate the comprehensive review provisions to which state and integrated schools are subject. In 2010, the legislation was amended to require private schools to be assessed against a broader range of criteria than that of simple efficiency. Dilworth and other private schools were required to have a curriculum available to parents, the "mode of delivery" was to be considered when assessing the standard of tuition, and the school's registration could be suspended if the welfare of students was considered to be at risk. Welfare was not contained in the definition of efficiency.
- 1.45 Independent schools rely on the integrity and professionalism of their academic staff and governing boards to maintain standards. Many private schools have used external educational consultants to conduct robust, ongoing reviews similar to those ERO would conduct in a state or state integrated school.
- 1.46 In chapter 8, we return to the regulatory framework in assessing its role alongside other factors that contributed to abuse occurring in the school.

51 The Education Act 1964 contained the following definition of "efficient" in relation to any private school. It means "the premises, staffing, equipment, and curriculum of the school are suitable; the instruction afforded therein is as efficient as in a state primary school, secondary school, or special school as the case may be of the same class; And that suitable provision is made for the inculcation in the minds of the pupils of sentiments of patriotism and loyalty". In 1987, the definition was amended to include that the standard was to be measured as not lower than that afforded to students in state schools.

52 New Zealand Law Commission, *Private Schools and the Law* (report 108), Wellington, 2009.